



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 67 OF 2017

SUSAN ACHIENG OKWIRRY.....COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

JARED ABAYO ONYANGO.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. This Complaint filed on 4th May 2017 arises out of a nomination exercise held by the 1st Respondent on 25th April 2017. The Complainant was an aspirant for the position of MCA, West Gem Ward, Siaya County. The Complaint avers that, as per her own tallying, she won the nomination with 2,860 votes against the 2nd Respondents 1,520 votes. Her win is supported by the affidavit of the Presiding Officer, Fanuel Onono, who was also the ward tallying officer as per his affidavit dated 28th April 2017. The Complainant appealed to the County Appeals Tribunal (IDRM) which issued a judgment on 3rd May 2017 in which it made a finding that the two provisional certificates issued out of the said primaries be nullified and the matter be referred to the National Elections Board to give directions as to the way forward.
2. The 1st Respondent herein, despite being served did not participate in the proceedings. The 2nd Respondent filed a replying affidavit on 8th May 2017.

Analysis

3. We have considered the pleadings filed, evidence adduced and the submissions of counsel for the Claimant and the 2nd Respondent. The Claimant has not

adduced sufficient evidence to assert her averment that she won the nomination exercise. We cannot rely on her own tally. The presiding officer in his affidavit neither confirmed his appointment as such nor is he allowed to issue the official results. The mandate to declare results under the party constitution is the Returning Officer and not the Presiding Officer. The matter was referred to IDRМ whereby the party organ nullified and recalled the two certificates issued out of the process which it held could not determine the winner of the party primaries. The matter was referred to the National Elections Board as indicated. The Complainant has not directed us to any specific rule that has been violated in this regard for our consideration.

4. The Tribunal has noted the Complainant’s line of argument in prosecuting the complaint and wishes to clarify that it does not exercise appellate jurisdiction over disputes arising out of IDRМ but rather is an enforcer of the Political Parties Act 2011 and political party constitutions. Membership to political parties is a voluntary and constitutional right to which parties subject themselves to the political party constitution and rules.

Reliefs

5. Following from the IDRМ decision and the evidence before us, it is clear to us that the nomination exercise was inconclusive and incapable of determining a winner. In such instances, as per the party rules it is upon the party’s National Election Board to decide the way forward as directed by the party organ. In the circumstances, we decline to order that the nomination certificate be issued to the Complainant. The Complaint is dismissed with no order as to costs.

Dated at **NAIROBI** this **9th DAY** of **MAY** 2017

1. M. O. Lwanga (Presiding Member)

2. Desma Nungo(Member)

3. Paul Ngotho (Member)

4. Dr. Adelaide Mbithi (Member)