



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 263 OF 2017

WASHINGTON OMONDI OGANGA.....1ST CLAIMANT/RESPONDENT
SAMUEL ODHIAMBO.....2ND CLAIMANT/RESPONDENT
VERSUS
ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT
HON. PETER KALUMA.....2ND RESPONDENT/APPLICANT

RULING

1. The present ruling relates to an application dated 24 May 2017 wherein the 2nd Respondent/Applicant sought to have the Complaint dated 16 May 2017 dismissed. The Complaint had sought to implement the decision of the 1st Respondent's National Appeals Tribunal (IDRM) dated 5 May 2017, directing that the nomination certificate issued to the 2nd Respondent/Applicant be withdrawn and a fresh process be instituted for arriving at the nominee for Member of the National Assembly, Homa Bay Town Constituency, in accordance with the party constitution and its election and nomination rules. The 1st Claimant contended that despite the IDRM decision, the 1st Respondent had failed to initiate a fresh process to determine its nominee for the said position.
2. It was the Applicant's contention that the IDRM decision ought to be set aside as the Claimants had not effected service of either the IDRM appeal or the *ex parte* orders of this Tribunal dated 17 May 2017. The Claimants, on approaching this Tribunal, were directed to serve the application bundle, with the extracted directions of this Tribunal upon the Respondents who were to file their responses

and written submissions pending the judgment of the Tribunal on 25 May 2017. However, the Applicant contends that the Claimants did not serve the application, but rather proceeded to file written submissions and wait for judgment.

3. Having received information that there were proceedings pending before this Tribunal where his nomination was in issue, the Applicant proceeded to communicate with the 1st Claimant via text message requesting to be served with the said pleadings, to no avail.
4. The said 1st Claimant appeared in person. He did not file a reply to the 2nd Respondent's application.

Issues for Determination

5. Upon perusal of the material on record and hearing the parties, we have isolated the following issues for determination:
 - a. Whether the Tribunal has jurisdiction to entertain the present complaint;
 - b. Whether there was effective service of the Complaint; and
 - c. What reliefs, if any, are appropriate

Analysis

- a. Whether the Tribunal has jurisdiction to entertain the present complaint**
6. The Applicant called the jurisdiction of this Tribunal into question. He averred that the 1st Claimant, never having been a party to the IDRM process to which was referred in the claim, section 40 (2) of the Political Parties Act had not been complied with.

7. In support of this assertion, the Applicant highlighted that the IDRМ proceedings had been instituted by the 2nd Claimant; the 1st Claimant had simply been referred to as a witness as can be seen at page 3 of the IDRМ decision. It was also asserted that the 2nd Claimant was outside the country during the pendency of the Tribunal proceedings, thus outside the jurisdiction of this Tribunal. It was their assertion that the Claimants were abusing the court process and as such, the Tribunal was divested of jurisdiction. Citing the case of *David Onyango Oloo v Attorney-General* [1987] eKLR to the effect that whereas default judgment was arrived at *ex-parte*, it ought to be set aside as a matter of right in the interests of justice.
8. Section 40 (2) requires that the parties attempt to resolve the dispute through an IDRМ process before moving the Tribunal. It is clear from the material on the record that the Claimants herein were aspirants for the said seat. The IDRМ fees were paid by the 1st Claimant/Respondent. The dispute before the IDRМ was the manner in which the nomination exercise that saw the 2nd Respondent/Applicant declared winner was conducted. It is thus clear that there was an attempt at IDRМ within the meaning of section 40 (2) and therefore this ground fails.
 - b. Whether the Complaint and IDRМ finding should be struck out for want of service**
9. It is not disputed that the Applicant did not participate in the IDRМ proceedings. The IDRМ decision dated 5 May 2017 however indicates that he was notified of the proceedings via text message. It was on this basis that the IDRМ proceedings proceeded *ex parte*.
10. Upon the Claimants moving this Tribunal, by our order dated 17 May 2017 this Tribunal directed the Claimants to serve the Complaint upon the Respondents

together with the directive that they file the responses along with their written submissions. The order also stated the day when this Tribunal would deliver its decision based on the evidence that would have been adduced by the time of it deliberating.

11. During the proceeding before us, the 2nd Claimant did not appear. However, the 1st Claimant was in person and by his own admission, stated that had not filed an affidavit of service. It was the Applicant's contention that where no service was effected, the right to be heard before adverse action is taken was violated.
12. It is clear that the Respondents were not served as directed by this Tribunal. The legal authorities commended to us by the Applicant provide that in such circumstances the effect is that the pleadings ought to be struck out.
13. Election processes are tight time bound processes that must quickly and efficiently be executed to allow for progress towards determination of new leaders. The issue in contention is the result of a party primary. Each political party must quickly determine its representative who can then begin the official campaign against other political party representatives.
14. If this flow presents, it will allow Kenyans to fully engage in the democratic electoral process envisaged in the laws. It is for this reason that all actors respect timelines set by the IEBC on directions as to the nomination period. The Claimants moved this Tribunal *ex parte* and extracted orders that were delivered in a manner intended to ensure that given these said tight time lines, all Parties would have their day in court, so to speak. He seems to have simply sat back and indeed on the day this application was being executed admitted that he had only come for the Tribunal's judgment.

Orders

**Washington Omondi Oganga & another v Orange Democratic Movement &
another [2017] eKLR**

15. In light of the foregoing, we order that the claim dated 16 May 2017 be and is hereby dismissed with no orders as to costs.

Dated at NAIROBI this 31ST DAY of MAY 2017

- 1. M. O. Lwanga(Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member)**
- 4. Dr. Adelaide Mbithi (Member)**