



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS ELECTION PETITION APPEAL NUMBER 19 OF 2017

IN THE MATTER OF ENDEBES CONSTITUENCY TRANS-NZOIA COUNTY

BETWEEN

MOSES WANJALA AINEAH.....APPLICANT

VERSUS

THE RETURNING OFFICER ODM

ENDEBES CONSTITUENCY.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

PETER WEKESA.3RD RESPONDENT

INDEPENDENT ELECTORAL

BOUNDARIES COMMISSION.4TH RESPONDENT

R U L I N G

This is an application dated 27th May, 2017 by the Applicant **Moses Wanjala Aineah** seeking orders that: -

- 1. That the orders by the ODM county Appeals Tribunal dated 21st April, 2017 ordering for repeat elections and cancelling and nullifying the Nomination of the 3rd Respondent be enforced.***
- 2. That the 2nd Respondent be restrained from forwarding the name of the 3rd Respondent to the Independent electoral and Boundaries Commission.***
- 3. That the 4th Respondent be barred and restrained from accepting the name of the 3rd Respondent till final determination of the matter in court.***
- 4. That in the event the name of the 3rd Respondent has already been submitted and an injunction order cannot issue, the 4th Respondent be compelled to accept the Applicant's name as an Independent candidate.***

The application is supported by the supporting affidavit of the Applicant sworn on 27th May, 2017 in which he deponed that he is a life Member of the Orange Democratic Movement and he vied for the Party ticket for the Member of Parliament in Endebes Constituency. That the nomination process was marred with malpractices that were perpetrated by the 3rd Respondent and despite this, the 1st Respondent irregularly declared the 3rd Respondent as the winner. He avers that he appealed at the 2nd Respondents County Appeals Tribunal, which made an order dated 21st April, 2017 directing for repeat Nomination Process, cancelling and nullifying the nomination of the 3rd Respondent

The Respondents were served with the application but did not appear. Mr. Mumbo for the Applicant submitted that the party nominations elections held on 18th April, 2017 were marred with chaos which the Returning Officer acknowledged. The Applicant appealed the outcome to the Orange Democratic Movement County Appeals Tribunal which on 21st April, 2017 rendered its decision stating: -

“1. From the entire evidence above it paints a picture of a confused voting scenario.

2. The security situation at polling stations above stated appeared uncontrollable till GSU had to be deployed to contain the situation.

3. It is also apparent from the Appellant’s evidence that the presence of GSU personnel instilled fear/intimidation in voters who decided to flee away without voting.

4. The tribunal, therefore, finds that the Appellant’s appeal against the entire nomination process has merit and the whole exercise is hereby declared a nullity as the same was conducted under a very hostile/insecure environment that denied potential voters right to vote. Therefore, the tribunal makes the following orders: -

a. That the declaration/announcement of the 3rd Respondent (Peter Wekesa) as the winner for the nomination of Member of Parliament (MP) for Endebess Constituency, in Trans-Nzoia County on Orange Democratic Movement ticket is nullified and cancelled.

b. The Orange Democratic Movement Election Board is hereby ordered to repeat and conduct fresh nomination for the said post.”

The Applicant submits that the National Elections Board has failed to comply with the decision of the County Appeals Tribunal and prays that this court do order them to comply.

The County Appeals Tribunal is an organ of the Orange Democratic Movement Party created for the purpose of Internal Dispute Resolution Mechanism under their nomination rules. The Applicant has submitted that there is a valid order by the Tribunal (Annexure MWA002). He submits that the Respondent has not complied. No reason has been tendered for failure to comply or difficulties faced in compliance. In my view, the application has merits. I consequently allow the application and direct: -

1. The Respondent Orange Democratic Movement Party do comply with the orders of the Orange Democratic Movement Appeals Tribunal dated 21st April, 2017.

2. The 2nd Respondent Orange Democratic Movement, National Elections Board to conduct repeat nomination for Member of Parliament for Endebes Constituency within 48 hours in accordance with the party’s Constitution and Nomination Rules.

3. Pending the conduct of the repeat nomination the 2nd Respondent is restrained from submitting any name of nominee to the Independent Electoral Boundaries Commission for gazetement.

4. I make no orders as to costs.

Dated, signed and delivered at Nairobi this 31st day of May, 2017.

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S N RIECHI

JUDGE