



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELECTION PETITION APPEAL NO. 16 OF 2017

VICTOR ODUOR WESONGA.....APPLICANT

VS.

ORANGE DEMOCRATIC MOVEMENT PARTYRESPONDENT

JUDGEMENT

1. On 12th May, 2017, the Political Parties Disputes Tribunal (**PPDT**) made the following Orders in Complaint **No. 142 of 2017, VICTOR ODUOR WESONGA VS. 1) ORANGE DEMOCRATIC MOVEMENT PARTY 2) RENSON THOYA:-**

i. The complaint contained in Memorandum of Claim dated 10th May 2017 is allowed in the following specific terms:

a. The declaration of the Interested Party issued on 29th April, 2017 by the Respondent as the duly nominated ODM party candidate for Member of County Assembly, Mikindani Ward, Mombasa County is hereby set aside.

b. The nomination certificate issued to the Interested Party by the Respondent as the duly nominated ODM party candidate for Member of County Assembly, Mikindani Ward, Mombasa County is hereby revoked.

c. The 2nd Respondent's Party National Election Board is directed to determine the Party nominee for Member of County Assembly, Mikindani Ward in a manner compatible with the Party constitution, Election and Nomination Rules.

ii. The Respondent shall bear the costs of the Complainant.

iii. The other parties to bear their own costs.

2. Victor Oduor Wesonga (the Applicant herein) is aggrieved that the Party has failed to implement the Order of the Tribunal and has moved this Court through a Notice of Motion dated 26th May 2017 for the following prayers:-

1) That the Respondent do show cause (sic) when (sic) why they should not be held in contempt of this Tribunal Orders issued on 12th May 2017 and served upon them on 13th May, 2017.

3. The Applicant has moved the High Court on an alleged contempt of the Order of the Tribunal because in the design of the contempt of Court Act, the Tribunal being a Subordinate Court, has jurisdiction only to punish for contempt on its face (Section 6 of The Contempt of Court Act, Act No. 46 of 2016).

4. I am afraid I cannot grant the Orders sought. In the short Supporting Affidavit sworn by Mr. Victor Oduor Wesonga on 26th May 2017 he does not lay down any evidence of how the Order or Ruling of Tribunal was served on the Party. Further there is no evidence that the Party or its Advocates were present when the Ruling was delivered or that the Party is aware, by any other means, of the Order said to have been disobeyed. In a word there is no evidence that the Party is aware of the Order and the Court is reluctant to mete out Penal Sanction in the absence of proof of knowledge of the Court Order.

5. That said it is incumbent upon Disputants to obey the Orders made by the Tribunal. As a special mechanism for resolution of Political Disputes, the dignity of the Proceedings of Tribunal and Orders it makes must be upheld and protected. Its orders, if not stayed, reviewed or set aside, must be obeyed. The High Court will therefore frown upon a willful disobedience of the Tribunal's Order and will not hesitate to impose any penalty provided by Law where disobedience is proved.

6. Whilst I will disallow the said Application and strike it out, the Officials of the Party risk suffering penal sanctions set out in The Contempt of Court Act if indeed they have disregarded the Orders of the Tribunal. In the hope that they will not bring these to themselves, I direct that this Ruling be brought to their attention through service of a copy thereof on them by the Applicant.

7. In the meantime the Application of 26th May 2017 is struck out but with no Order as to costs.

Dated, Signed and Delivered in Court at Nairobi this 31st day of

May, 2017.

F. TUIYOTT

JUDGE

PRESENT;

Victor Oduol Wesonga.....Applicant

N/A for Respondent

Alex - Court clerk