



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ELECTION PETITION MISC. APPL. NO. 08 OF 2017**

**ELVIS AYIMBO SICHENGA.....APPLICANT**

**- V E R S U S -**

**ORANGE DEMOCRATIC MOVEMENT PARTY..... 1<sup>ST</sup> RESPONDENT**

**DANIEL OTWOMA AMOKOLA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The subject matter of this ruling, is the motion dated 23<sup>rd</sup> May

2017 and taken out by Elvis Ayimbo Sichenga, the applicant herein. In the aforesaid motion, the applicant sought for the following orders:

***1. THAT the instant application be certified as urgent and the same be heard ex-parte in the first instance.***

***2. THAT the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent be summoned to this honourable court to show cause why they should not be cited for contempt and be committed to prison for such period and time as this honourable court may deem fit and just in that the respondents herein have wilfully disobeyed the lawful orders of the honourable tribunal issued on 9<sup>th</sup> May, 2017.***

***3. THAT the respondents be cited for contempt and orders of committable issued as deemed appropriate by this honourable court.***

***4. THAT the 1<sup>st</sup> respondent be compelled to revoke and nullify the 2<sup>nd</sup> respondents nomination certificate as the 1<sup>st</sup> respondent has issued the certificate to the 2<sup>nd</sup> respondent in an unlawful manner and hence forming the basis of the contempt of court.***

***5. THAT costs of this application and the interest thereon be provided for.***

***6. Any other and further relief that this honourable court may deem fit and just to grant in the circumstances.***

2. The motion is supported by the affidavit sworn by the applicant. The applicant filed the affidavit of service of Elvis Muthoka sworn on 25<sup>th</sup> May 2017 to show that the motion was served upon Orange Democratic Movement and Daniel Otwoma Amokola, the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively with a hearing notice for 25<sup>th</sup> May 2017 at 3.00 pm. When the motion came up for interpartes hearing neither

the respondents nor their advocates appeared in court. There was also no reply filed in court in response to the motion. Being satisfied that the respondents were properly served, this court permitted the applicant to proceed argue the motion *ex parte*.

3. I have considered the ground stated on the face of the motion dated 23<sup>rd</sup> May 2017 and the facts deposed in the affidavit of Elvis Ayimbo Sichanga. I have also taken into account the oral submissions of Mr. Mogaka, learned advocate for the applicant. It is the applicant's submission that he participated in the 1<sup>st</sup> respondent's party primaries on 25<sup>th</sup> April 2017 for the position of member of the County Assembly, Vihiga County, Luanda Township Ward. Daniel Otwoma Amokola, the 2<sup>nd</sup> respondent herein and Elvis Ayimbo Sichenga, the applicant, were each issued with a provisional nomination certificate as the winners of the nomination. Being aggrieved by the aforesaid decision, the applicant, filed a complaint with the 1<sup>st</sup> respondent's National Appeals Tribunal. The basis of the applicant's complaint before was that the results of Epanga polling station were not included in the final tally. The 1<sup>st</sup> respondent's N.A.T, heard the complaint and in the end it ordered its National Election Board (NEB) to conduct fresh party primaries for Luanda Township Ward. Daniel Otwoma Amokola, the 2<sup>nd</sup> respondent herein felt aggrieved by the decision of N.A.T hence he filed a complaint before the Political Parties Disputes Tribunal.

4. The 2<sup>nd</sup> respondent beseeched the PPDT to set aside the decision of N.A.T and proceed to declare him as the winner of the contest. After hearing the dispute, PPDT upheld the 1<sup>st</sup> respondent's N.A.T decision of 1<sup>st</sup> May 2017 and went further to order the 1<sup>st</sup> respondent to carry out fresh party primaries for Luanda Township Ward. It would appear the order issued by PPDT has never been implemented.

5. Elvis Ayimbo Sichenga, the applicant herein, is now before this Court seeking for the orders stated on the face of the motion. It is the submission of the applicant that the 1<sup>st</sup> respondent went ahead and issued the 2<sup>nd</sup> respondent with a nomination certificate and declared him its nominee for the post of member of County Assembly of Vihiga County, Luanda Township Ward. It is argued that the 1<sup>st</sup> respondent's decision is contrary to the orders issued by PPDT in which the 1<sup>st</sup> respondent was ordered to conduct fresh party primaries. It is said that the 1<sup>st</sup> respondent instead proceeded to issue the 2<sup>nd</sup> respondent with a nomination certificate just a day after the PPDT issued its orders, therefore the respondents should be found guilty for contempt and they should be punished accordingly. This court was further urged to find that the 1<sup>st</sup> respondent was in flagrant disregard of the PPDT's orders and that it has been deliberate, contemptuous and high-handed, with the aim of bringing into disrepute and interference with the due administration of justice.

6. Having considered the material placed before this court together With the applicant's advocate's oral submissions, I must state that the motion proceeded for hearing *ex parte* therefore this court relies on the averments and the submissions of one side of the dispute. However, this court has no reason or doubt as to why it should not believe the veracity of the arguments. I am convinced that the 1<sup>st</sup> respondent was aware of the decisions of its N.A.T and that of the PPDT. Both bodies issued orders directing the 1<sup>st</sup> respondent to conduct fresh party primaries for Luanda Township Ward. It is also apparent that instead of conducting fresh nominations the 1<sup>st</sup> respondent proceeded to issue the 2<sup>nd</sup> respondent with a nomination certificate. I am therefore satisfied that the 1<sup>st</sup> respondent was in contempt of the PPDT's decision delivered on 9<sup>th</sup> May 2017. In the circumstances of this case, I find that no evidence was laid bare to show the role played by the 2<sup>nd</sup> respondent in influencing the process leading to him being issued with a nomination certificate. The orders issued by the 1<sup>st</sup> respondent's N.A.T and by P.P.D.T were both made and directed at the 1<sup>st</sup> respondent to comply. The fact remains that the 2<sup>nd</sup> respondent is in possession of a nomination certificate issued to him by the 1<sup>st</sup> respondent in breach of the decisions of N.A.T and P.P.D.T. the applicant sought for an order to compel the 1<sup>st</sup> respondent to revoke and nullify the nomination certificate issued it issued to the 2<sup>nd</sup> respondent in breach of the orders issued by the Political Parties Dispute's orders. I think the appropriate order to grant is to direct which I hereby order that the 1<sup>st</sup> respondent to recall and withdraw the aforesaid nomination certificate within 48 hours. In default, the certificate will be automatically deemed to have been cancelled and nullified by an order of

this court.

7. In the circumstances, this court must grapple with the question as to what order should be made to punish the 1<sup>st</sup> respondent? In normal circumstances a party who has been convicted for contempt, is entitled to submit facts in mitigation to enable the court decide the appropriate sentence to mete out. Though the respondents did not participate in the proceedings leading to 1<sup>st</sup> respondent's conviction, this court still feels obliged to have 1<sup>st</sup> respondent appear and make submissions in mitigation before sentencing. Consequently, the applicant is directed to serve the 1<sup>st</sup> respondent with this court ruling with a Hearing Notice for 29.5.2017 at 11.00 am to make submissions in mitigation.

**Dated, Signed and Delivered in open court this 27<sup>th</sup> day of May, 2017.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent