



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
MISC. ELECTION PETITION APPEAL NO. 11 OF 2017
IN THE MATTER OF POLITICAL PARTIES ACT
AND
IN THE MATTER OF POLITICAL PARTIES DISPUTES TRIBUNAL
AND
IN THE MATTER OF WILFUL DISOBEDIENCE OF THE INTERLOCUTORY ORDERS,
JUDGMENT AND DECREE
IN COMPLAINT NO. 240 OF 2017

DAVID ODHIAMBO OFUO.....APPLICANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT PARTY.....1ST RESPONDENT

NATIONAL ELECTIONS BOARD OF ODM PARTY....2ND RESPONDENT

SECRETARY GENERAL,

ODM PARTY, AGNES ZANI.....3RD RESPONDENT

RULING

1. Under **section 41(2)** of the **Political Parties Act (No. 11 of 2011)** –

“An appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to both the Court of Appeal and the Supreme Court.”

2. The present application by the applicant David Odhiambo Ofuo seeks leave to be allowed to constitute contempt proceedings against the respondents (Orange Democratic Movement Party, National Elections Board of ODM Party and Secretary General, ODM Party, Agnes Zani) for wilful disobedience of orders dated 12th May 2017, the judgment and decree dated 18th May 2017 by the Political Parties Disputes Tribunal in Nairobi PPDT Complaint No. 240 of 2017; subsequent to the granting leave, the three respondents be cited for contempt and committed to civil jail for 6 months for that disobedience; service

to the Attorney General of the notice to institute contempt be dispensed with as this is an election matter; and that the respondents be ordered to purge the contempt.

3. The application was not challenged. Its factual position was that the *ex parte* applicant was a contestant in the nomination conducted by the respondents on 24th April 2014 for position of Member of County Assembly for North Sakwa Ward in Migori County. He was the winner but was not issued with a certificate. He complained to the respondents' County Appeals Tribunal which held in his favour. The respondents refused to issue him with the certificate. He appealed to the Tribunal which found in his favour on 18th May 2017. Orders were issued restraining the 1st respondent from issuing the final certificate to any other person than the *ex parte* applicant; in the event that another person had been issued with the certificate, the same be declared to be null and void; and the 1st respondent be ordered to issue final certificate within 12 hours of the judgment.

4. It was the *ex parte* applicant's case that the respondents were served with the orders but failed to honour any of them, and had instead issued the certificate to another person. Mr. Ombwayo prosecuted the application. He also filed written submissions. I have considered them.

5. I have indicated in the foregoing that the powers that this court has over matters heard under **section 40** of the **Political Parties Act** are appellate. It has no powers to enforce the orders of the Tribunal. Under **section 41(3)** of the **Act** the Tribunal has powers to enforce its decisions in the same manner a magistrate's court can enforce its decisions. Under **section 10** of the **Magistrate's Courts Act (no. 26 of 2015)** a magistrate's court has powers to punish any person who is in wilful disobedience of its judgment, decree, order or direction. This means that the Tribunal can punish the respondents if it finds that they have disobeyed its orders. This court can only deal with an appeal arising from the Tribunal's orders in the contempt proceedings.

6. The result is that the *ex parte* applicant is improperly before the court. The application is struck out for want of jurisdiction.

DATED, DELIVERED and SIGNED at NAIROBI this 25TH day of MAY 2017.

A. O. MUCHELULE

JUDGE