



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. 315 OF 2017

JAMES NGANGA MUNYI.....PETITIONER

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

TOM ONYANGO AGIMBA.....2ND RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION....INTERESTED PARTY

JUDGMENT

(Reasons for Decision)

1. On 24 June, 2017, the Petitioner filed this petition and sought relief under urgency. Five days later, on 29 June 2017, with petition duly certified urgent, I heard the parties. I then issued the following order:

The petition is dismissed with no orders as to costs.Reasons to be rendered tomorrow at 11.00am

2. What follows are the reasons for the dismissal.

3. The Petitioner like the 2nd Respondent, is a member of the 1st Respondent, a political party. The interested party is the electoral Commission established under the Constitution and charged with the mandate to organize and manage elections.

4. In April, 2017, the Petitioner and 2nd Respondent expressed a desire to contest the elections for the seat of member of Parliament Embakasi West Constituency. They both sought the 1st Respondent's nomination. A nomination process by universal suffrage was undertaken on 30 April 2017. The 2nd Respondent was declared the winner and duly issued with a certificate of nomination.

5. The Petitioner was not convinced that he had lost fairly. He moved the 1st Respondent's internal dispute mechanism – the ODM National Appeals Tribunal (NAT). The NAT set aside the entire nomination process recalled the provisional certificate that the 2nd Respondent had been issued with and directed a fresh nomination exercise. No repeat nominations were held. Instead the 2nd Respondent was issued with a final Nomination Certificate by the 1st Respondent.

6. Undaunted, the Petitioner moved to the Political Parties Dispute Tribunal (the PPDT) under s.40 of the Political Parties Act. The Petitioner complained that the 1st Respondent had failed to adhere to the directions of the NAT and that the 2nd Respondent's nomination certificate had not been regularly issued.

On 15 May 2017, the PPDT upheld the Petitioner's arguments and proceeded to order thus:

“The nomination certificate issued to the 2nd Respondent, Tom Onyango Agimba by the 1st Respondent on 3rd May, 2017 as the duly nominated candidate for Member of Parliament Embakasi West Constituency is declared null and void and set aside.

An order is hereby issued compelling the 1st Respondent's National Elections Board to abide by the special county Appeals Tribunal ruling delivered on 4th May, 2017.

For avoidance of doubt, the 1st Respondents party National Elections Board is directed to determine the party nominee for Embakasi West Constituency National Assembly seat in a manner compatible with the party Constitution, Elections and Nomination Rules within the next 24 hours of the procurement of this judgment.

In the interest of party interests each party to bear its own costs.”

7. Thereafter and within 24 hours, the 1st Respondent issued the 2nd Respondent with a nomination certificate. The Petitioner then moved to Interested Party's Dispute Resolution Committee. The committee declined to determine the complaint. It cited want of jurisdiction as the reason, prompting the petitioner to launch this petition.

8. The Petitioner's argument was that the 1st Respondent had failed to comply with the PPDT's orders of 15 May, 2017. The Respondents insist that there was compliance. The Respondents assert that a determination was made as directed by the PPDT and a certificate of nomination issued directly to the 2nd Respondent.

9. It is clear that the question being placed before me for determination is whether the 1st Respondent had complied with the orders of the PPDT.

10. I must however first point out that the Interested Party's Dispute Resolution Committee was spot on when it rejected the Petitioner's complaint for want of jurisdiction. The dispute was whether the nomination process had been properly undertaken. Arguments were advanced that it was not proper. A proper reading and interpretation of s.40 of the Political Parties Act would reveal that such disputes are the reclusé of the PPDT. The Interested Party does not interrogate the nomination processes to discern whether it was undertaken in accordance with the relevant constitution and rules.

11. I also hold the same view as far as this court is concerned.

12. The Petitioner's chief complaint is that the nomination certificate issued to the 2nd Respondent on 16th May, 2017 was contra the orders of the PPDT and also contrary to the 1st Respondent's Constitution as well as the Elections and Nomination Rules. The dispute consequently is about the party primaries and whether they were properly undertaken. The dispute falls within the realm of s.40 of the Political Parties Act and thus the PPDT would be the appropriate forum to resolve it.

13. It is also to be noted that the certificate under challenge is not the certificate dated and issued on 3 May, 2017, which the PPDT had cancelled and voided on 15 May, 2017. The certificate in question is the one dated 16 May, 2017. This certificate was issued after a new nomination process had allegedly been undertaken. The process is faulted by the Petitioner. If the Petitioner was not satisfied and it seems he was not, then the right forum once again would have been the PPDT and then either at liberty to move to this court on appeal, if still dissatisfied.

14. Assuming the Petitioner was complaining of non-compliance with the order of the PPDT of 15th May, 2017 and thus alleging contempt, I would similarly not agree with the approach adopted. The current petition seeks order akin to orders which the PPDT issued on 15th May, 2017 save that the certificate now

sought to be nullified is dated 16th May, 2017. The approach is erroneous. Under the law, the PPDT's orders are enforced in the same way subordinate court orders are enforced: see s.41 of the Political Parties Act. It is most definitely not through a petition. A miscellaneous application for contempt proceedings would have been better.

15. For the above reasons, I still hold the same view. The petition was only worthy of dismissal and is dismissed. As ordered earlier, each party will bear its own costs.

Dated, signed & read at Nairobi this 30th day of June 2017

J. L. ONGUTO

JUDGE