

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELECTION PETITION APPEAL NO. 119 OF 2017

ROBERT ORUKO OTUGE.....PETITIONER

VERSUS

ORANGE DEMOCRATIC MOVEMENT PARTY & 3 OTHERS.....RESPONDENTS

JUDGMENT

1. The matter is an appeal from the decision of the Political Parties Disputes Tribunal (PPDT) in Complaint No. 203 of 2017. The grounds of appeal are set out in the memorandum of appeal herein dated 20th June 2017. It is stated that the PPDT made mistakes in finding that the 1st Respondent, Orange Democratic Movement Party, had complied with the decision of the PPDT of 16th May 2017, in finding that the 2nd Respondent, ODM National Election Board, and 3rd Respondent, Independent Elections and Boundaries Commission (IEBC) were not in contempt of court, in finding that the 1st Respondent had carried out a fresh nomination exercise vide direct nomination and in delivering its ruling without any supporting documentation. The Appellant would like the PPDT ruling of 12th June 2017 set aside, the Motion dated 5th June 2017 allowed and costs of the appeal.

2. The matter was placed before me on 22nd June 2017. I directed that the appeal papers be served on the Respondents and the Interested Party, Stephen Ouma Owiti, for *inter partes* hearing on 23rd June 2017. There is an affidavit of service on record sworn on 23rd June 2017 and filed herein on even date. It indicates that the appeal was served on 1st Respondent and on two law firms. It is not indicated who the lawyers served acted for. There is no indication that the papers were served on the 3rd Respondent and the Interested Party.

3. The appeal was argued orally on 27th June 2017 by Ms. Omondi, counsel for the Appellant. Mr Opondo responded for the 3rd Respondent, while Mr Otino stated the case for the Interested Party.

4. The appeal herein arises from the decision of the PPDT on the application by the Appellant to have the 1st and 2nd Respondents cited for contempt of the tribunal. The tribunal found that there had been no disobedience of its order made on 16th May 2017.

5. When contempt of an order of a court or a tribunal is alleged, and an application is placed before the same court or tribunal to have a party cited for disobedience of the said order, the court or tribunal in assessing the application for citation for contempt must of necessity interpret the said order before it can conclude that there was disobedience. I trust that that was what the PPDT did in paragraph 11 of its ruling of 12th June 2017, and upon that interpretation concluded that there was no disobedience.

6. I agree with the submissions of counsel for the 3rd Respondent, it was the PPDT which had made the impugned order, and it was the same PPDT that expressed satisfaction with the manner the order was complied with by the 1st and 2nd Respondents. I do not think it should be the responsibility of this court to interpret the said order for the PPDT.

7. I do not find merit in the appeal herein and I accordingly dismiss the same with costs to the 3rd Respondent and the Interested Party.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE