



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 294 OF 2011

BETWEEN

GEORGE OKODE1ST PETITIONER

DAVID OTIENO.....2ND PETITIONER

PTER OMENDO.....3RD PETITIONER

JOB ODHIAMBO ODUOR.....4TH PETITIONER

MANASE OBWAO.....5TH PETITIONER

ALBERT OWINO OJING.....6TH PETITIONER

AND

ORANGE DEMOCRATIC MOVEMENT PARTY1ST RESPONDENT

REGISTRAR OF POLITICAL PARTIES.....2ND RESPONDENT

RULING

1. I have considered this matter and it deals with political party activities. There is now a Political Parties Tribunal established under the Political Parties Act that is intended to resolve such issues. This is in line with Article 159 of the Constitution which provides that judicial power vests in Courts and Tribunals. It is therefore not inconsistent with Article 22 of the Constitution to refer such a matter to a body constituted for that purpose.

2. Moreover, Article 23 of the Constitution entitles this court to frame remedy that will give effect to the rights of the petitioners.

3. I am aware that the Orange Democratic Movement has a Constitution that provides for dispute resolution. Such mechanisms are recognised and are indeed encouraged by the Constitution. However, in this matter, they seem to lack efficiency in the sense that the petitioner's lack relief there under.

4. In my view therefore, I would interpret section 40(2) of the Political Parties Act to permit an aggrieved member of the party to bring their grievances before the Tribunal where such party has neglected or

refused to activate the political party mechanism. Such a reading of the statute is consistent with giving efficiency to the political rights enshrined under Article 38 of the Constitution.

5. In exercise of my jurisdiction under Article 23 of the Constitution, I hereby direct as follows;

(i) The 1st respondent, the Orange Democratic Movement Party shall within seven (7) days of service of this order put in motion mechanism to resolve internally the grievances raised by the petitioners concerning the elections.

(ii) Failing which the activation of such mechanisms the petitioners shall be at liberty to lodge their dispute before the Political parties Tribunal for determination.

(iii) Parties hereto are at liberty to apply for further orders.

DATED and DELIVERED at NAIROBI this 27th day of January 2012.

D.S. MAJANJA

JUDGE