



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

IN THE CONSTITUTIONAL & HUMAN RIGHTS DIVISION

ELECTION PETITION APPEAL NO. 2 OF 2017

BOB MICHENI NJAGI.....APPELLANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....RESPONDENT

(Appeal from the judgment of the Political Parties Disputes Tribunal at Nairobi)

(Hon. Kyalo Mboobu, Hon. James Atema and Hon. (Dr.) Adelaide Mbithi)

delivered on 29th April 2017 in Case NO. 28 of 2017)

JUDGMENT

Background

This appeal arises from the decision of the Political Parties Tribunal (“PPDT”, “Tribunal”) in a judgment delivered on 29th April 2017 in PPDT’s Complaint No. 28 of 2017. The appeal is brought by Bob Micheni Njagi (“the Appellant”), an aspirant for the position of Member of Parliament for Kajiado East Constituency on an Orange Democratic Movement (ODM) ticket. In that Complaint, the Appellant had sued one Kakuta Ole Maimai who is also vying for Member of Parliament for Kajiado East, the Returning Officer Kajiado East Constituency and the ODM. The appeal is dated 5th April 2017. It bears the rubber stamp with 5th April 2017 as the date it was filed. This is an apparent error because the receipt for payment of filing fees shows 5th May 2017 as the date of filing. The appeal was filed under certificate of urgency together with Chamber Summons seeking orders to restrain the Respondent from declaring final results of the nominations in Kajiado East Constituency; to stay orders of the PPDT to conduct repeat nominations in St. Monica, Kitengela Primary School, Noonkopir and Solinke polling stations pending the hearing and determination of this appeal and to stop the Respondent from submitting names of the candidates for Kajiado East Constituency to the Independent Elections and Boundaries Commission (IEBC). When both counsels appeared before me on 8th May 2017 at 3.00pm, Mr. Moses Owuor for the Appellant informed the court that he was willing to dispense with the hearing of the Chamber Summons and proceed with the main Appeal after getting reassurance from the court that the Appeal would be heard and concluded urgently. This proposal was acceptable to Mr. Makori for the Respondent. The court fixed the hearing of the Appeal for 9th May 2017 at 9.00am. By the consent of both counsels, the orders of the PPDT issued on 29th April 2017 staying the repeat nominations in the four polling stations mentioned above were extended until this Appeal has been heard and determined.

PPDT is not the first organ to handle this complaint. It was first handled internally by the ODM’s dispute resolution mechanisms in line with Section 40 (2) of the Political Parties Act (No. 11 of 2011) which provides that:

“Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.”

Memorandum of Appeal

The memorandum of appeal advances the following six (6) grounds:

1. The Honourable Tribunal erred in fact and law as it failed to consider the irrefutable finding by the 1st Respondent’s National Appeals Board that the Kajiado East Constituency Returning Officer failed and neglected to keep custody of the election material which included but not limited to ballot papers by having the same distributed by an agent of one of the contestants contrary to

Clause 4.3.1 of the Orange Democratic Movement Election and Nominations Rules.

2. The Honourable Tribunal erred in fact and in law as it failed to consider the fact that voters were disenfranchised through the collusion of one of the contestants and security officials by disallowing access to the polling station for the reasons that they were not natives of Kajiado East Constituency contrary to Article 38 of the Constitution of Kenya 2010.

3. The Honourable Tribunal erred in fact and in law by failing to consider the irrefutable evidence of cancellation of the nomination exercise by the Chairman of the County Election Board undermining the participation of the Appellant herein who had legitimate expectation that fresh nomination exercise by withdrawing all his agents from the polling stations would be organized in accordance with the Orange Democratic Movement Election and Nominations Rules having withdrawn his participation in the nomination exercise after its cancellation.

4. The Honorable tribunal erred in fact and law having failed to consider the irrefutable allegation and findings of the Respondents Appeals Tribunal that election materials were in circulation in the Constituency contrary to the Respondents nominations rules thus materially affecting the integrity of the nominations exercise.

5. The Honourable Tribunal erred in fact and law having failed to consider the irrefutable claim by the appellant that 4000 ballot papers were missing owing to the illegal transportation of the same by an agent of one of the contestant which materially and directly affects the integrity of the results announced in any of the polling stations in Kajiado East Constituency.

6. All in all the Honourable Tribunal so misdirected itself on matters of both law and fact as to occasion a miscarriage of justice against the Appellant

The Appellant is seeking the following orders:

a. That this appeal be allowed with costs;

b. That the judgment and orders made by the PPDT be set aside;

c. That a declaration be made:

i. That the nomination exercise by the ODM for Kajiado East Parliamentary Seat conducted on the 18th April 2017 was not in compliance with Articles 10, 38, 83 and 91 of the Constitution and the ODM Election Rules.

ii. That the conduct of the Returning Officer in allowing an agent of one of the candidates to participate in the custody and transportation of election materials was contrary to the Constitution and thus illegal and irredeemably compromised the free and fair nomination in Kajiado East Constituency and thus declare the conduct of the nomination a nullity.

iii. That a fresh nomination exercise be ordered for the entire Kajiado East Constituency.

iv. That the Constituency Elections Board be disbanded and a fresh one constituted for the purpose of the conduct of fresh nominations.

v. That the contestant herein Mr Kakuta Ole MaiMai be found guilty of election malpractices.

vi. That the Returning Officer grossly misconducted himself and be disqualified to act in any electoral exercise.

d. The costs of the Appeal, and

e. Such other or further orders as this Honorable Court may deem just and expedient.

Appellant's Submissions

Mr. Owuor for the Appellant highlighted the grounds in support of the appeal. These were condensed into five (5) points. Firstly, counsel argued that there was failure to keep custody and ensure integrity of election materials (ballot boxes and papers) as a result of which the accountability and verifiability of the nominations was compromised. Counsel referred to affidavits presented to PPDT and oral testimony presented to the NAT by the Appellant supporting this ground. Counsel submitted that this fact was corroborated by the admission of the Returning Officer that he invited an agent of one of the contestants to assist with the distribution of the election materials. Counsel argued that the actions of the Returning Officer were in contravention of Rule 4.3.1 of the ODM Rules.

Secondly, Mr. Owuor submitted that the nominations in Kajiado East were officially cancelled and suspended after a consultative meeting of all the aspirants, Chairperson of the County Elections Board, the Returning Officer and National Elections Board pending further consultations; that following that cancellation the candidates for various elective posts withdrew their agents from the polling stations as well as their participation in the nomination exercise; that the nomination exercise that proceeded after the aspirants had addressed their agents and supporters to retreat from the polling stations denied them the right to participate in the nominations. Mr. Owuor urged that the nominations that took place after the cancellation of the exercise be declared irregular since all aspirants did not participate.

Thirdly, it was submitted that there was breach of Articles 38 and 81 of the Constitution due to zoning of polling stations in collusion with security officers. Mr. Owuor submitted that after many people were informed that nominations had been cancelled, voters were turned away as deposed in the affidavits of various aspirants in the Complaint presented to PPDT. He named Kitengela GK Prison and Enkasiti as some of the polling stations where voters who were not locals (natives of Kajiado) were turned away in contravention of political rights guaranteed under Articles 38 and 91 of the Constitution. It was submitted that this was not refuted by any Returning Officer. This court was asked to consider that Kitengela is a cosmopolitan area and that the residents of Kitengela have political rights that need protecting.

Fourthly, Mr. Owuor submitted that the Voters Register presented challenges during the nomination exercise in that ODM like the other political parties did not have a voters register; that they had to use the IEBC 2013 and 2016 Registers; that due to this, many voters were turned away in some polling stations because their names were not found in the register.

Fifthly, it was submitted that the accuracy, accountability and verifiability of election results were undermined due to the irregularities; that no election results were declared in Kajiado East, whether for nominations for National Assembly or for Member of County Assembly candidates, in most of the polling stations; that after cancellation no one knows what results were available; that Returning Officers could not verify results; that Article 86 of the Constitution places high standards for Elections; that the verifiability of the results was undermined by one candidate taking custody of election materials which may have facilitated stuffing of ballots; disenfranchisement of votes in many polling stations and failure to keep results in a manner that facilitates accountability and integrity.

Finally, Mr. Owuor submitted that where one candidate is found to have in his possession voting materials, this is a scheme to disenfranchise voters and that the finding that this does not affect the nominations in the entire constituency is irrational and that his court must come in to engender some harmony. Counsel urged the court to overturn the decisions of the PPDT and the NAT because it would be unfair to the appellant if nominations are repeated in four polling stations instead of the entire Kajiado East Constituency. Counsel asked this court to consider allowing repeat of nominations for the MCA positions in Kitengela GK Prison and Solinke Wards.

Respondent's Submissions

The Respondent did not file grounds of opposition. Ms Kwambuha on behalf of Mr. Makori for the Respondent told the court that the Respondent would make oral submissions in support of the Respondent's opposition to this appeal and also rely on the affidavit sworn by Anthony Moturi in opposition to the PPDT's Complaint No. 28 of 2017. Firstly, counsel raised issue with the Appellant's record of appeal submitting that it is not complete and did not have table of contents as is the practice. Counsel further submitted that it is the duty of the Appellant to make sure that the record of appeal has all the necessary documents of appeal. Secondly, counsel submitted the ODM as a party has a legal framework that guides its nominations, in general the constitution and in particular the nomination and election rules as amended in 2016 and that it is not in dispute that the NAT is constituted by Election and Nomination Rules in Rule 19 and therefore it has its own mechanisms of handling party disputes. Thirdly, counsel submitted that the Appellant presented an appeal to the NAT citing irregularities in nominations in Kajiado East and the same was heard ex parte and the appeal determined on the basis of the evidence adduced together with submissions of parties present; that subsequently, NAT rendered its decision on 24th April 2017; that NAT relying on evidence before it declared that nominations be repeated in four (4) polling centres in accordance with its rules and constitution; that it is the appellant himself who pointed out the 4 polling centres: Sholinke, St Monica Kitengela Primary and Noonkopir as the centres without polling materials on the nominations day and that basing their finding on this, the NAT made a decision that a re-run takes place in the 4 polling stations. Counsel submitted that the judgment of NAT shows that the parties were present and the complainant was also present and that they were given an opportunity to ventilate all issues. Fourthly, it was submitted that PPDT heard the appeal from NAT on merit and considered the evidentiary material before it to determine the matter; that the decision is well reasoned and the Appellant has not shown errors of law and fact that the PPDT made; that allegations have been made against parties who have no chance to rebut before the ODM and before this court and this is unfair; that Kakuta Maimai is not a party to this matter and it is unfair to him to ask this court to find him guilty of electoral malpractices. It was submitted that the allegations do not show that ODM failed to comply with its constitution and election rules as to qualify for nullification and repeat of the nominations in the entire constituency. Ms Kwambuha submitted that this appeal is also based on points of law and that in this respect the Appellant is being irrational considering that there is very little time set for organizing, conduction and completing nominations given that the deadline is tomorrow (10th May 2017).

Lastly, it was submitted that the respondent wholly aligns itself with the decisions of the NAT as rendered on 24th April 2017 and the PPDT rendered on 29th April 2017. Counsel urged the court to take cognizance of the fact the Respondent is likely to suffer great loss in the event that this appeal is upheld or not dismissed because its constitutional right under Article 90 will be violated. Counsel urged this court to deem it fit that nominations process takes place in the 4 polling stations as aforementioned.

Issues for determination

My reading of the record of appeal, decisions of the PPDT and NAT and submissions of the parties through their respective counsels, I have picked the following as the general issues for determination in this appeal:

Whether PPDT erred in fact and in law in:

- i. Failing to consider the finding by the NAT that the Returning Officer for Kajiado East Constituency failed and neglected to keep custody and ensure integrity of the ballot boxes and papers.
- ii. Failing to consider that voters in Kajiado East Constituency were disenfranchised first by zoning of some of the polling centres and dis-allowing voters to access polling centres.
- iii. Failing to consider that cancellation of nomination exercise undermined the participation of the Appellant and denied him his legitimate expectation.

iv. Whether the PPDT misdirected itself on matters of fact and law.

Determination

The jurisdiction of the PPDT to decide matters touching on political parties and their members is found under Section 40 (1) of the Political Parties Act. The relevant part for our purpose in this appeal is Section 40 (1) (b) which specifies that the Tribunal shall determine disputes between a member of a political party and a political party. However, before such dispute can be entertained by the PPDT, claimant must have exhausted the internal political party dispute resolution mechanisms. Section 41 (2) of the Political Parties Act donates power to the High Court to hear and determine appeals from the PPDT on points of law and fact. To my mind when determining an appeal from the PPDT, the High Court is the first Appellate Court. The High Court must therefore re-evaluate the facts of the case afresh and make its own findings.

I have given this matter due consideration. I agree with Ms Kwambuha that the record of appeal does not meet the prescribed standards. Mr. Owuor did not address this issue. This court appreciates the tight timelines within which electoral disputes including nominations for electoral positions must be determined and will not unduly lay much emphasis on this failure. The Appellant also finds relief in Article 159 (2) (d) of the Constitution which provides that justice shall be administered without undue regard to procedural technicalities. It is indeed in this spirit that this court was insistence on the Respondent filing grounds of opposition and was amenable to receiving oral submissions in place of filed grounds of opposition.

Before the NAT, the Appellant had sued Kakuta Ole Maimai, The Constituency Election Board and the County Election Board. In the Complaint to that body filed on 20th April 2017, the same issues were raised. This court did not have the benefit of the proceedings before NAT but in its judgment, NAT summarized the issues submitted before it by the Appellant as follows:

- i. Cancellation of elections at 1.00pm.*
- ii. That some voters did not vote in St. Monica, Solinke, Kitengela Primary School and Noonkopir polling stations.*
- iii. That election was marred by violence, intimidation and voter bribery.*

NAT, while noting that these allegations were supported by Returning Officer of Kajiado East Constituency, considered the matter before it and came up with the following orders:

- i. A repeat nomination exercise be conducted by the National Elections Board in St. Monica, Solinke, Kitengela Primary School and Noonkopir polling stations in accordance with the Party's constitution, nomination and election rules.*
- ii. The National Election Board is to ensure that new ballot booklets are used in the repeat nomination exercise to avoid ballot stuffing and rigging.*
- iii. That all aspirants shall adhere to the Party's code of conduct, constitution including the nomination and election rules and that any breach thereof including but not limited to violence, rigging, disruption of the voting process and bribery, will lead to automatic disqualification from the nomination exercise.*
- iv. The National Election Board to conduct an investigation on the conduct of the County Elections Board Chairperson to determine if he acted in breach of the party nomination rules and code of conduct with a view to having appropriate disciplinary proceedings being undertaken against him.*

The Appellant was aggrieved by this decision. He filed another complaint at the PPDT on 26th April 2017. This is the PPDT Complaint No. 28 of 2017. While the Complaint before the PPDT indicates that the Appellant had sued the ODM as the only Respondent, the proceedings of the PPDT and the judgment of that Tribunal show three Respondents, namely Kakuta Ole Maimai, The Returning Officer Kajiado East and ODM Party. Again different parties from those sued before the NAT, save for Kakuta Ole Maimai. This court is not briefed as to why the Appellant has selected who to appeal against among the three Respondents he has sued at the PPDT!

There is a further anomaly in the Record of Appeal. The copy of the Complaint in the Appeal record has some missing pages. Page 1 of the record contains the title and paragraphs 1, 2, 3, 4 and 5. Turning over the page, one finds what I think is the end of paragraph 17 and then paragraphs 18 to 22 all inclusive. I do not know the contents of the missing paragraphs but I want to believe that whatever is missing can be found in the contents of the affidavits in support of the Complaint.

I have had time to read the brief proceedings before the PPDT. The Appellant through his counsel at first appeared before PPDT ex parte and sought to restrain the Respondent who was the 3rd Respondent then, from conducting repeat nominations in the four (4) named polling stations and from declaring the final results of the nominations in Kajiado East Constituency pending the hearing and determination of the Complaint. On 28th April 2017 the Complaint was canvassed. Mr. Owuor made brief submissions referring to the judgment by the NAT about the elections materials in circulation in Kajiado East, which he submitted had been acknowledged by the Returning Officer; that an agent of one of the candidates had been in custody of ballot papers contrary to Rule 4.3.1 of ODM Nomination Rules; that due to those allegations of irregularities the Returning Officer and the Chairperson of the Election Board called a meeting of all candidates at St. Monica and announced cancellation of nominations for Kajiado East but despite this nomination exercise went on in some polling stations; that some voters were turned away in Enbastin and Kitengela polling stations; that accuracy and verification of the elections was not possible and that these irregularities go to the root of the results. Mr. Owuor urged the Tribunal to nullify nominations for the entire Kajiado East Constituency. He also asked the Tribunal to order appointment of new election officials.

Mr. Makori for the Respondent relied on the Replying Affidavit of Anthony Moturi and told the Tribunal that the NAT in its judgment must have considered all the facts and submissions made by the Appellant but found in favour of the Respondent. He urged the Tribunal to uphold the decision of the NAT.

I have keenly read the judgment of the PPDT. It is clear to me that the Tribunal was seized of the issues before it. I note that after analyzing all the submissions, the Tribunal rendered itself as follows:

***“16. We note that such a weighty allegation ought to have been supported by sufficient evidence and or a declaration of cancellation of the nomination process or a notice to that effect. Suffice it to say that a mere allegation of cancellation of a nomination process should not be a ground for nullifying the elections. Proof of cancellation must be provided.*”**

17. In reference to the other allegations by the complainant we find that the complainant has failed to specifically prove to this Tribunal how the irregularities affected the entire results of the polling stations within Kajiado East Constituency to warrant the nullification of the nomination exercise within the entire constituency. We find that the complainant’s statements are more geared towards general statements which fail to explain how the irregularities affected the results. We are guided by the Supreme Court decision in the Raila Odinga. Independent Electoral Boundaries Commission & Others, Supreme Court Election Petition No. 5 of 2013, which enjoins that;

‘a Court is to consider the effect of the alleged irregularities on the election result, before nullifying an election. It is only upon a finding that the irregularities proven affected the declared election results, that a Court will nullify an election.’

We also note that the complainant appeared before the National Appeals Tribunal, he presented his evidence and submissions without opposition from the respondent. Technically this evidence was not subjected to cross examination to verify its veracity. It is his evidence and submission that informed the decision of the NAT that ordered for a repeat in the four polling stations by stating that:

‘taking into account the submissions of the appellant and the Returning Officer the tribunal finds that in four polling stations, St. Monica, Solinke, Kitengela Primary School and Noonkopir no results were recorded and the electoral process was never concluded.’”

PPDT upheld the decision of the NAT.

On my part, I have read the affidavits in support of the Complaint before the PPDT. The affidavits have been sworn by the Appellant a candidate for Member of Parliament for Kajiado East; Lydia Ngaira Odongo, an aspirant for Member of County Assembly for Kitengela ward; Frederick Lalier Kingangir candidate for Member of County Assembly for Solinke Ward and Peter Otieno Atara aspirant for Member of County Assembly for Kitengela Ward. Generally, they allege delay in nomination exercise, transportation of ballot materials by unauthorized persons without security, missing ballot papers, collusion of the Returning Officer with some candidates and denial to access polling stations. These deponents in most cases relied on information from other people who did not swear affidavits to enable verification of these allegations. The Appellant claims that the missing ballot papers were to be used to mark them in favour of the 1st Respondent in the Complaint. The matter before me has no 1st Respondent! Besides, there is no proof of these allegations.

To my mind the polling stations featuring in the affidavits are the four (4) polling stations identified by NAT and by PPDT for repeat nomination. The PPDT considered all this evidence as can be seen in the judgment and arrived at the decision that nominations be repeated in the four identified polling stations. This decision upholds that of NAT.

The Appellant has alleged breach of the law. The articles of the law cited by the Appellant both before the NAT and the PPDT as having been breached deal with sovereignty of the people of Kenya (Art. 1), supremacy of the Constitution (Art. 2), national values and principles of governance (Art. 10), political rights (Art. 38), general principles for the electoral system (Art. 81), voting (Art. 86) and basic requirements for political parties (Art. 91).

Sections 107, 108 and 109 of the Evidence Act, Cap. 80 Laws of Kenya, specifies which party to a suit bears the burden of proof. The spirit of these provisions of the law are captured in the case of **Isaiah Ondiba Bitange v & 3 others v Institute of Engineers of Kenya another [2017] eKLR**, the court stated that:

***“The starting point is that whoever desires any court to give judgement as to any legal right or liability, dependant on the existence of fact which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*”**

The standard of proof depends on the nature of the dispute, whether criminal or civil in nature. Electoral disputes are in a category of their own. They are *suis generis* and courts must bear this in mind when deciding an election related dispute. In various pronouncements by the courts on the issue of burden of proof and standard of proof, it has been held that the standard of proof lies between proof beyond reasonable doubt and prove on a balance of probabilities. The Supreme Court of Kenya had this to say about the standard of proof in election petitions:

“The threshold of proof should, in principle, be above the balance of probability, though not as high as beyond-reasonable-doubt – save that this would not affect the normal standards where criminal charges linked to an election, are in question.”

(See Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR).

Bearing in mind the law and decisions of the courts on the issue of burden and standard of proof, this court poses the question as to whether the Appellant in this case has discharged the burden of proof. As reasoned above in this judgment my answer to that question is in the negative. After considering all the issues before me, the evidence presented before the PPDT and submissions before me and guided by the law and decided authorities it is my finding that there is no evidence to prove that nominations in Kajiado East Constituency, save for the impugned nominations in the four polling stations of St. Monica, Solinke, Kitengela Primary School and Noonkopir, were not conducted in accordance with the principles laid down in the Constitution of Kenya, the written law including the constitution of the Respondent (ODM) and ODM Nominations Rules. I have no evidence to prove, to the standard required, that there was non-compliance with the law. It is my finding that if there were any irregularities in the other polling stations in Kajiado East there is no proof of the same to show that these irregularities affected the results of that nomination in the entire Constituency.

Secondly, it is my finding that this court, sitting on appeal, is not in a position to order repeat of nominations in respect of Members of the County Assembly for Kitengela GK Prison and Solinke Wards as urged by the Appellant. This is a new matter that was not canvassed before the PPDT. Besides, the aspirants for those positions did not come to court as parties in this matter. Further to these findings, I also find that this court is not in a position to order disbandment of the Kajiado East Constituency Election Board. There was no evidence to prove any wrong doing on the part of this body, and again, this is also a matter that was canvassed before the PPDT. I also have no reason to disqualify the Returning Officer or to find Kakuta Ole Maimai guilty of electoral malpractice. These are not parties before me on this appeal and it is against all the legal principles I know to condemn a man before he is given a chance to be heard.

I have considered the authorities cited by the Appellant including **Morgan v. Simpson (1975) 1 Q.B 151** and **Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others**. It was held in **John Fitch v Tom Stephenson & 3 Others QBD [2008] EWHC 501**, which followed **Morgan v Simpson (1975 1 Q. B. 151)** it was stated as follows, and I agree with the court:

“The decided cases, including those which Lord Denning considered in Morgan V Simpson established that the Courts will strive to preserve an election as being in accordance with the law, even where there have been significant breaches of official duties and election rules, providing the results of the election was unaffected by those breaches. This is because where possible, the Courts seek to give effect to the will of the people”.

I think I have said enough to show that the Appellant has failed to establish that PPDT failed in its duty in deciding the Complaint before it. It is my finding that the Tribunal considered all the issues placed before it including the issues raised in the memorandum of Appeal, considered the applicable law and pronounced itself in its judgment which I have extensively quoted above. I find therefore that there is no justification whatsoever for me to disturb the concurrent findings of the two Tribunals who handled this matter before it came to me on appeal. I therefore dismiss this appeal and uphold the decision of the PPDT contained in its judgment dated 29th April 2017 and in the decree extracted from the said judgment and dated 29th April 2017. For avoidance of doubt the orders of the PPDT which this court upholds reads thus:

i. The claimant has failed to demonstrate that the nomination exercise by the Orange Democratic Movement for Kajiado East Parliamentary Seat conducted on 18th April 2017 failed to comply with the provisions of the Articles 10, 38, 83 and 91 of the Constitution.

ii. The decision is that the judgment and consequential orders of the Orange Democratic Movement National Appeals Tribunal in NAT Appeal No. 11 of 2017 is upheld in its totality.

iii. In the interest of party unity, no orders will be made as to costs.

The only addition I wish to make on these orders and those of the NAT, in the interest of justice, is that due to strict timelines and considering that the process of nominations is in the danger of running out of time, the repeat nominations for the four polling stations, St. Monica, Solinke, Kitengela Primary School and Noonkopir, shall be conducted within the next 48 hours from today's date. Further given the nature of this appeal and aid in maintaining Party cohesion, I order that each party to this Appeal shall bear its own costs.

Orders shall issue accordingly.

Dated, signed and delivered this 10th day of May 2017.

S. N. MUTUKU

JUDGE

In the presence of:

Mr. Moses Owuor, advocate, instructed by MM Advocates LLP, for the Appellant

Ms Kwambuha, advocate, instructed by Makori & Rioba Advocates, for the Respondent