



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELECTION PETITION APPEAL NUMBER 46 OF 2017

EMMANUEL O ACHAYO.APPELLANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

COUNTY APPEALS TRIBUNAL (ODM).....2ND RESPONDENT

ABIGAIEL PERPETUA AWINO.3RD RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.1ST INTERESTED PARTY

REGISTRAR OF POLITICAL PARTIES. ...2ND INTERESTED PARTY

(An Appeal from the Decision of the Political Parties Dispute Tribunal in Case No. 98 of 2017 delivered on 13th May, 2017 by M. Lwanga, D. Nungo, P. Ngotho and Dr. A Mbithi)

REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTE TRIBUNAL

CASE NUMBER 98 OF 2017

ISSUE IN DISPUTE: UNLAWFUL AND IRREGULAR NOMINATION IN SIAYA COUNTY (GEM CENTRAL WARD) MCA NOMINATIONS

EMMANUEL O ACHAYO.COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

COUNTY APPEALS TRIBUNAL (ODM).2ND RESPONDENT

ABIGAIEL PERPETUA AWINO.3RD RESPONDENT

RULING

This is an application dated 7th June, 2017 by the Applicant Emmanuel O Achayo seeking citation for contempt of Judy Pareno and Robert Arunga being chairperson and Secretary respectively of the National Election Board of Orange Democratic Movement Party. The contempt arises from the decision and order of the Court of Appeal dated 6th June, 2017 which directed the 1st Respondent Orange Democratic Movement Party to conduct fresh nominations for Gem Central Ward member of the County Assembly within 48 hours from 4 p.m. 6th June, 2017.

The applicant contends that the said Judy Pareno and Robert Arunga have failed to comply with the order and therefore in contempt of court.

The court indicated to counsel for the applicant, whether this being an application for contempt of the orders of the court of appeal, can this court handle the same. Mr. Kanjama in response urged the court that it has powers to handle contempt proceedings in respect of non-compliance of court of Appeal orders. He submitted that Section 4 of the Appellate Jurisdiction Act confer the powers both to the Court of Appeal and this High Court.

The contempt of court Act No. 46 of 2016 which is an act of Parliament to define and limit the powers of courts in pushing for contempt of court and related purposes came into force on 13th January, 2017. It defines Superior court to include; Supreme Court, Court of Appeal and Employment and Labour Relations court and the Land and Environment Court.

Section 5 of the Act provides that: -

“5. Every superior court has power to: -

a) Punish for contempt of court on the face of the cases.

b) Punish for contempt of court.

c) Uphold the dignity and authority of subordinate court.”

The Contempt Of Court Act which is the recent legislation providing for Contempt of Court, gives power to the superior courts to punish for contempt any person disobeying their orders. In the present application, the orders the basis of the application were delivered by the Court of Appeal. The court of appeal has powers to punish for contempt of their orders.

I, therefore find that this application should properly be filed and determined by the Court of Appeal because it is their orders that are being disobeyed and under the Contempt of Court Act, they have powers to do so. I consequently direct that the application be filed in the Court of appeal for hearing and determination.

Dated, signed and delivered at Nairobi this 9th day of June, 2017.

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S N RIECHI

JUDGE