

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

ELECTION PETITION APPEAL NO.97 OF 2017

JACKLINE ATIENO ONGORO.....APPELLANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT (ODM).....1ST RESPONDENT

BASSIL OTIENO ODERO.....2NDRESPONDENT

JUDGMENT

It was clear to this court that the tribunal (Political Parties Dispute Tribunal) erred when, upon setting aside its judgment of 13th May 2017, it proceeded to grant orders in favour of the 2nd Respondent without hearing the merits of the complaint lodged by the Appellant in her initial complaint. The 2nd Respondent's application seeking to review the judgment of the tribunal was predicated upon his contention that he had not been served, and that the earlier judgment issued by the Political Parties Dispute Tribunal was issued without his knowledge. The Political Parties Dispute Tribunal upheld the 2nd Respondent's assertion that he was not served. This court having read the passage of the Ruling of the tribunal agrees with the finding in that regard. However, this court notes that the Political Parties Dispute Tribunal proceeded to grant orders in favour of the 2nd Respondent without the benefit of hearing both parties in accordance with the merits or otherwise of their respective cases. The Appellant has a case when she says that she was condemned unheard by the tribunal. This court sees no basis upon which the Political Parties Dispute Tribunal issued the orders in favour of the 2nd Respondent after setting aside its judgment.

In the premises therefore, the Appellant partially succeeds in her appeal as a result of which the orders made in Paragraph 21 of the Ruling dated 8th June 2017 is set aside and substituted by an order of this court requiring the tribunal to hear the complaint lodged by the Appellant on its merits. The parties shall appear before the Political Parties Dispute Tribunal on **15th June 2017 at 9.00 a.m.** for directions regarding the hearing, on merits, of the complaint that was lodged by the Appellant. The Political Parties Dispute Tribunal is directed to render its decision as soon as possible in any event not later than **4.00 p.m. on 16th June 2017**. There shall be no orders as to costs.

DATED AT NAIROBI THIS 14TH DAY OF JUNE 2017

L. KIMARU

JUDGE