



**REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 495 OF 2017**

GETRUDE INIMA MUSURUVE.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT PARTY.....RESPONDENT

JUDGMENT

1. The complainant's name initially had first priority on the Respondent's party list of persons with disability for nomination to the Senate. She apprehends that such movement of her name to a lower order of priority limits her chances of getting selected to represent special interests in the Senate. She was not supplied with the reasons for the decision to de-prioritize her name on the gender top up list. The Respondent did not defend this claim.

Analysis

2. We are aware of the challenges that the Respondent and the other political parties face in electing sufficient numbers of women to the country's legislative bodies in compliance with the two-thirds gender rule. Our view is that the fulfillment of that requirement demands that the Respondent must not only place women in their party lists, but must also place them in such order of priority as to guarantee their election.
3. We note that women such as the Claimant are not only marginalized on the basis of their gender but due to the inter-sectionality of identities are further marginalized on the basis of other overlapping or intersecting social identities such as disability. In the claim before us, by nominating the Claimants the

Respondent would be addressing both a gender and a disability issue if it restores the Claimant to her original rank on the party list.

4. Further, we are satisfied from the evidence on record that the decision to de-prioritize the Claimant's name from position 1 to 2 was arbitrary and unfair to her. Her high ranking at position six on the list of priority had created a legitimate expectation of a high probability of being picked into the County Assembly. Scaling down the Claimant's name without informing her of that decision violated the legitimate expectation created in her.
5. Concerning unilateral and arbitrary decisions by political parties, we held as follows in ***Complaint No 251 of 2017 Elijah Omondi v Orange Democratic Movement & another*** at para 9 and 10:

We note that Article 91 of the Constitution, which establishes political parties as agencies of the democratic process, requires political parties to abide by the principles of good governance and democracy. They must also promote the principles and objects of the Constitution including the national values and principles of governance. We agree with the Claimant and hold that the current Constitution engenders a culture of justification in which every decision by a political party must be justified. The culture of justification demands that a political party must supply an affected person with the reasons for the party's decision. It is only by supplying reasons that it can be ascertained whether or not the decision is reasonable and justifiable in an open and democratic society.

6. We have found no evidence that the Claimant was ever informed of any of the reasons for the Respondent's decision to place her at the bottom of the

list of persons with disability for nomination to the Senate. In **Complaint 170 of 2017 Harrison Mburu Gatumbi v Jubilee Party & 20 others** we held as follows:

The right to reasons is a constitutional right guaranteed in Article 47(2) and explicated by section 4(3) of the Fair Administrative Action Act, 2015. The Act requires that information on the nature of the administrative action together with prior and adequate reasons must be given to the person whose rights are affected. Reasons for decisions by political parties are not only a part of the principles of natural justice and fairness, but also enable an affected party member to know the possibility of and grounds for potential appeal to this Tribunal. Reasons also enable this Tribunal to have a better appreciation of the decision thus conduct a better appeal or review.

7. Accordingly, the justice of this case requires us to make the following orders:

a) The Respondent be and is hereby directed to restore the Claimant's name to her original position on the list of priority within 24 hours of the delivery of this judgment.

b) No order as to costs.

Dated at Nairobi this **3rd** day of August 2017

Kyalo Mbobu (Chairperson)

James Atema (Member)

Hassan Abdi (Member)

Dr. Adelaide Mbithi.....