



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: NAMBUYE, MUSINGA & GATEMBU, JJA)
CIVIL APPEAL NO.176 OF 2017

BETWEEN

PERPETUA MPONJIWA.....APPELLANT

VERSUS

ELIUS OKUMU OTIENO.....1ST RESPONDENT

THE ORANGE DEMOCRATIC MOVEMENT (ODM)

SPECIAL COUNTY APPEALS TRIBUNAL.....2ND RESPONDENT

MARY VICTORIA.....3RD RESPONDENT

THE RETURNING OFFICER KILELESHWA WARD.....4TH RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....5TH RESPONDENT

(Appeal from the Judgment and Ruling of the High Court of Kenya at Nairobi (Kimaru, J) Dated 16th May, 2017 & 30th May, 2017 in Election Petition No. 30 of 2017)

JUDGMENT OF THE COURT

The consolidated appeals were exhaustively argued before us by learned counsel on board for the respective parties on the 21st day of June, 2017. We have accordingly considered the record in totality, in the light of the rival submissions by the said respective learned counsel, and the authorities relied upon by either side in support of their respective submissions, and for the reasons that we shall give on the 28th July, 2017, we hereby make the following orders:

1. The Appeal be and is hereby allowed.

2. The Judgment of the **Hon. Mr. Justice Luka Kimaru, J** delivered on the 16th day of May, 2017 and as affirmed by him on the 31st day of May, 2017 be and is hereby set aside.

3. The nomination of **Elius Otieno Okumu**, the first respondent, as the Orange Democratic Movement Party's candidate for the position of County Assembly representative for Kileleshwa Ward, Nairobi County, pursuant to the order of **Kimaru, J.** of 16th May, 2017 and as affirmed on the 31st day of May, 2017 be and is hereby set aside.

4. The Democratic Movement party, the 2nd respondent, is hereby directed to conduct fresh nomination exercise for the position of County Assembly representative for Kileleshwa ward in accordance with the party's current Constitution, Election and Nomination Rules within 48 hours from 4.00pm today.

5. Each Party to bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE, 2017

R.N. NAMBUYE

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR.