



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OKWENGU, GATEMBU & MURGOR, JJ.A)**

**CIVIL APPEAL NO. 199 OF 2017**

**BETWEEN**

**FREDRICK ODHIAMBO OYUGI.....APPELLANT**

**AND**

**ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT**

**JANE WANGUI.....2<sup>ND</sup> RESPONDENT**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION....3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the High Court of Kenya at Nairobi delivered on 22<sup>nd</sup> June, 2017 (Kimaru, J))*

in

**ELECTION PETITION APPEAL NO. 113 OF 2017)**

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**JUDGMENT OF THE COURT**

1. Fredrick Odhiambo Oyugi, the appellant and Jane Wangui the 2<sup>nd</sup> respondent, aspire for the position of Member of the National Assembly representing Embakasi North Constituency Nairobi County. As members of the Orange Democratic Movement, the 1<sup>st</sup> respondent, they sought nomination by the Party for that position in a nomination exercise conducted on 30<sup>th</sup> April, 2017.
2. The appellant contends that he emerged the winner and was so declared by the 1<sup>st</sup> respondent's Returning Officer for the said constituency and was issued with a provisional nomination certificate on 30<sup>th</sup> April, 2017 followed by a final nomination certificate on 3<sup>rd</sup> May, 2017.
3. This has resulted in a dispute that has escalated from the Political parties Dispute Tribunal to the High Court and is now before us in an appeal lodged by the appellant against the judgment of the High Court.
4. We heard the appeal on 19<sup>th</sup> July, 2017 and having considered the appeal, the submissions and authorities cited, and due to the urgency in this matter, the IEBC being in the process of printing the ballot

papers for the General Elections scheduled to be held on 8<sup>th</sup> August, 2017, we give our decision under Rule 32(5) of the Court of Appeal Rules as follows:

(i) that prayers (a) and (b) of the appeal is allowed;

(ii) that the judgment of the High Court delivered on 22<sup>nd</sup> June, 2017 is hereby set aside and substituted with an order that the appellant's complaint dated 5<sup>th</sup> June, 2017 presented before the 3<sup>rd</sup> respondent be and is remitted back to the 3<sup>rd</sup> respondent for re-hearing and determination on merits within 48 hours from the date and time of delivery of the judgment of this Court;

(iii) that prayers nos. (c), (d) and (e) in the appellant's memorandum of appeal dated 27<sup>th</sup> June, 2017 are declined.

(iv) that each party shall bear their own costs in this appeal.

(v) that we reserve reasons for this decision to be delivered on 29<sup>th</sup> September, 2017.

Those shall be the orders of this Court.

**Dated and delivered at Nairobi this 21<sup>st</sup> day of July, 2017.**

**H. M. OKWENGU**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**