



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 451 OF 2017

NELIUS WANJIRU WANJIKU.....CLAIMANT

VERSUS

JUBILEE PARTY.....RESPONDENT

JUDGMENT

Summary of the Case

1. The present complaint concerns the conduct of the Respondent's nominations for party lists in respect of county assemblies as required by Article 177 (1) (b) and (c) of the Constitution.
2. The Claimant avers that she applied for nomination under the Jubilee party for the position of Member of County Assembly in Murang'a County under the Gender Top Up category.
3. However, she avers that in the final list that was published by the Independent Electoral Boundaries Commission (IEBC) on 23rd July 2017, her name was missing and that the Respondent had failed to provide her with reasons for her exclusion from the list. Further, that five of the Respondent's nominees on the list as published, come from the same Constituency and two from the same polling station.

The Reply

4. Through a Replying Affidavit dated 28th July 2017, the Respondent submits that they acted in compliance with the law and goes on to detail the considerations they made.

Issues for determination

5. From a review of the material on the record, two issues emerge for determination:
 - a) ***Whether the Respondent complied with the law in the compilation of its nomination list;***
 - b) ***Whether the Tribunal can make any order with respect to this matter.***

Analysis

- a) ***Whether the Respondent complied with the law in the compilation of its nomination list;***
6. The gist of the Claimant's case is that she was omitted from the Respondent's final nomination list as published by IEBC. She further impugns the list on the basis that five of the Respondent's nominees came from the same constituency and two from the same polling station.
7. The procedure for nomination to the county assembly on the basis of party lists is governed by the Constitution, the Elections Act No. 24 of 2011 and the County Government Act 17 of 2012. The broad provisions on nominations are contained in Article 90 of the Constitution as read with the Elections Act, the County Government Act and the Elections (Party Primaries and Party List) Regulations of 2017. The IEBC is the body that is mandated by Article 90(2) of the Constitution to supervise the conduct of party list nominations.
8. Party nomination lists as submitted to IEBC are prepared at the discretion of the political party so long as they comply with the constitutional and statutory guidelines on fairness and equitable representation. Political parties must therefore develop rules and regulations to guide the process of preparation and compilation of their nomination lists.
9. The discretion of preparing the final nomination lists lies with the Respondent. The IEBC retains an oversight role to ensure compliance with the law and the party's own rules. Consequently, any list prepared and

submitted by a party to IEBC is not final and is indeed statutorily amenable to amendment by the IEBC to ensure fair representation and compliance with the guidelines on nomination.

10. This means that some nominees may be rejected by the IEBC and the Party may then be requested to submit another name. This process between the Respondent and IEBC has not been considered or referred to by the Claimant. It is also unclear as to whether there is any feedback mechanism between the Respondent and its membership, with respect to any changes within the party's nomination list as a result of this process between the party and IEBC.
11. On this basis, the Claimant has not demonstrated to this Tribunal that she was included in any list prior to the final list published by IEBC or that she was unfairly omitted from the list and that the criteria to be used by the Respondent in identification of its nominees was not applied in her case.
12. With respect to the under-representation of constituencies within Murang'a County, the Claimant submits that the Respondent's list has five nominees from Kigumo Constituency and two nominees from the same polling station. Section 7 (2) of the Elections Act requires parties nominating persons to the county assembly to ensure that the 'community and cultural diversity of the county is reflected in the county assembly' and that there is 'adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.' This is reiterated in Regulation 20 (2) of the Party List Regulations which requires that such lists ensure fair representation by taking into account the principles of Articles 81 and 100 of the Constitution.
13. A cursory look at the list as published by IEBC on 21st and 23rd of July 2017 indicates that the Respondent's Gender (Top Up) list has a total of 35 nominees for Murang'a County with five nominees from the same

constituency. With 7 constituencies within the County, five nominees from the same constituency out of a total of 35 nominees is not prohibited by the party guidelines. The Claimant has therefore not shown that the Respondent's list violates the party's nomination rules or the constitutional dictates on fair representation.

b) *Whether the Tribunal can make any order with respect to this matter.*

14. Whereas the Claimant has not supported her allegation that the Respondent failed to adhere to internal party guidelines and the law in preparation of its nomination list, a further key detail has not been met.

15. With respect to Section 40(2) of the same statute, any dispute with the party must first be addressed by the internal party structure or organ. It is only where one feels dissatisfied with this internal process that the Tribunal can assume jurisdiction.

16. The Claimant has not shown any clear attempts to canvass her dispute with the Respondent. We therefore find that the Claimant has not adduced sufficient evidence to dispute the 1st Respondent's party list and to justify the grant of the prayers as sought.

Orders

c) In light of the reasons advanced above, this Tribunal orders as follows:

a) **THAT** the Claim dated 24th July 2017 be and is hereby dismissed

b) No orders as to costs

DATED AT NAIROBI THIS 1ST DAY OF AUGUST 2017

Milly Lwanga (Presiding Member)

Desma Nungo (Member).....

Paul Ngotho (Member).....