



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 489 OF 2017

ZEYNAB ALIYOW ISSACK.....COMPLAINANT

VERSUS

JUBILEE PARTY.....RESPONDENT

AND

SHEIKA HARITH ISACK.....INTERESTED PARTY

JUDGMENT

Summary of the case

1. The present complaint is founded on a Claim filed on 26 July 2017 as read together with a Further Affidavit sworn by the Complainant and filed on 28th July 2017. It relates to the conduct of the Respondent's nominations for party lists as required by Article 177 (1) (b) and (c) of the Constitution.
2. The Complainant applied to the Respondent for nomination for the position of Member of County Assembly, Marsabit County under the Marginalized Category. Her complaint is threefold. First, her name appeared in the list published by the IEBC in the ordinary gender list yet she applied under the special interest group in the minority category. Secondly, her gender is wrongly indicated as male. Fourthly, the digits of her National Identity Number have not been correctly entered and lastly, her ethnicity is Sakuye and not Boran.

The Response

3. In response to the Complaint, the Respondent has filed a Replying Affidavit sworn by its Director of Elections Mr. Peter Kahara and filed on 28

July 2017. In its response, the Respondent maintains that the nominations in issue were conducted in a fair and justifiable manner in accordance with the law, the party regulations and best practice and that the exclusion of the Claimant from the list was not un procedural. The 1st Respondent further avers that the Claimant did not pursue any internal dispute resolution process prior to this action and reserves its right to raise a preliminary objection.

4. With respect to the Respondent's allegation on IDRM, the record is clear that this Tribunal directed the parties to attempt to resolve this dispute in vain and in the circumstances, this Tribunal has jurisdiction to hear and determine this Complaint in consonance with the provisions of Section 40(1) and (2) of the Political Parties Act.

Issue for Determination and Analysis

5. From the record before us and having determined the preliminary objection by the Respondent, the main issue for determination is **Whether the Respondent contravened the law in the preparation of the party list submitted to the IEBC.**
6. The procedure for nomination to the county assembly on the basis of party lists is governed by the Constitution, the Elections Act 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.
7. While it is true that the preparation of the lists is the domain of political parties, the IEBC retains an oversight role over parties in the preparation of party lists to ensure compliance with the law and the party's own rules. As such, section 34 (6)A of the Elections Act provides that the Commission

may, after scrutinizing the list and forming the opinion that it does not conform with the requirements of the Constitution, the Elections Act or the Regulations, require the party to review and amend the list to ensure conformity with the law and the Commission's guidelines. It is thus clear that any list prepared and submitted by a party to the IEBC is not final and is indeed statutorily amenable to amendment by the IEBC to ensure compliance with the guidelines on nomination.

8. The Claimant alleges that she applied for nomination under the marginalised category but was listed under the ordinary gender category. The Claimant further seeks for rectification of her details as already stated. With respect to the Complainant's prayer for rectification and having perused her attached identification documents and application to the Respondent, we have considered the same and we do hereby allow the prayer for rectification of her details namely her sex, her identity number and her ethnicity.
9. With respect to her placement under the ordinary gender list as opposed to the marginalised category (ethnicity), we note that the Respondent's list has already made two provisions under this category. From the record before us, the Claimant has not demonstrated how the Respondent breached the law in arriving at the current nominees to the exclusion of the Complainant. As already stated, the Respondent exercises its discretion in the preparation of the list and such discretion can only be challenged when it is shown to be in breach of the law. This has not been done in the instant case and the Complainant's claim for an order removing her from the ordinary gender list to the marginalised list fails to this extent.

Orders

10. In light of the foregoing, we order as follows:

- a. That the Claim filed on 26 July 2017 partially succeeds in the following terms:-
- b. That the Claimant's sex; identification number; and ethnicity as indicated in the IEBC list be and is hereby rectified to read female instead of male; 24299508 instead of 2429508; and Sakuye instead of Boran respectively.
- c. Notification to issue to IEBC.
- d. We make no orders as to costs.

DATED at NAIROBI this 1ST DAY of AUGUST 2017

- 1. M. O. Lwanga (Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member).....**