



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 482 OF 2017

BISHAR ADAN MOHAMMED.....CLAIMANT

VERSUS

MAENDELEO CHAP CHAP.....1ST RESPONDENT

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....2ND 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 he applied for nomination for Member of County Assembly under the category of marginalized/minority group for Kajiado County. However, he avers that in the final list that was published by the Independent Electoral Boundaries Commission (IEBC) on 23rd July 2017, his name appeared for the category as applied for but under Garissa County. He is therefore before this Tribunal praying for rectification/amendment of the party's nomination list and for his name to appear on the marginalised party list for Kajiado County and to be ranked first in order of priority.
3. This Tribunal notes that the Respondent did not enter appearance in this matter. Service of the pleadings and hearing notice were effected on the Respondent as deponed by a Timon Kipkemei Rotich in the Affidavits of Service dated 26th and 27th July 2017.

Issue for Determination and Analysis

4. The complaint before us, being a dispute between a party member and a political party, is properly within the jurisdiction of the Tribunal as per section 40(1) of the Political Parties Act of 2011. With respect to section 40(2) of the same statute, the Claimant in this matter avers that despite his attempts to resolve the matter with his party, he has received no response. This Tribunal therefore finds that it is properly seized with jurisdiction and proceeds to determine the complaint on its merits.
5. One main issue therefore emerges for determination: ***Whether the Respondent complied with the Constitution of Kenya, the Elections Act and relevant Regulations, IEBC requirements and internal party rules and regulations in compilation of its nomination list***
6. The gist of the Complaint before us is that the Claimant applied for nomination under the category of marginalized/minority group for Kajiado County but in the final list his name was not put under the category he applied for but under Garissa County. The Claimant has adduced copies of his nomination application which clearly indicates that he resides within Ongata Rongai within Kajiado County and that he applied for nomination for the category of marginalized/minority group for Kajiado County.
7. Party lists are prepared at the discretion of the party so long as they comply with the constitutional and statutory guidelines on the same. Political parties must therefore develop rules and regulations to guide the process of preparation and compilation of their nomination lists.
8. From the record before this Tribunal, it is not clear why the Claimant would apply for nomination under one county and be nominated for another. It is also not clear why the Claimant would be nominated for a position in a county that he is not resident in and be required to adequately represent the party in its respective county assembly. Section 7 (2) of the County Government 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 Tribunal is therefore persuaded that the Claimant was erroneously placed under Garissa County and should have been placed under Kajiado County. The Claimant's claim thus succeeds to this extent.

9. However, with respect to ranking under Kajiado County, this Tribunal notes from the list published by IEBC on 23rd July 2017, that the party has nominated two other individuals under the category of Marginalized/Minority Group for Kajiado County. On this basis, the Claimant's ranking under Kajiado County can only be determined by the party in compliance with its rules and regulations and constitutional and statutory guidelines of fair representation.

Orders

10. In light of the reasons advanced above, this Tribunal orders as follows:
- a) THAT the Respondent is hereby ordered to put the name of the Claimant, Bishar Adan Mohammed, in the party's nomination list for Member of County Assembly, Marginalised/Minority Category, Kajiado County.**
 - b) THAT the Respondent is hereby directed to determine the order of ranking of nominees under the category in issue in accordance with the Constitution, relevant legislation and internal party rules and regulations and notice to issue to IEBC of the same'.**
 - c) No orders as to costs.**

DATED AT NAIROBI THIS 27TH DAY OF JULY 2017

Milly Lwanga (Presiding Member)

Desma Nungo (Member).....

Paul Ngotho (Member).....