



THE REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 290 OF 2017

EUNICE JERONO KIMEIYWA.....CLAIMANT

VERSUS

WESLEY KIRUI SALAT.....1ST RESPONDENT

KENYA AFRICAN NATIONAL UNION.....2ND RESPONDENT

JUDGMENT

1. The present Complaint relates to the Respondent's nominations for Member of the County Assembly, Visoi Ward, Rongai Constituency, Nakuru County conducted on 24 April 2017. The Claimant contested the said seat.
2. The Claimant approached this Tribunal by way of a Petition dated 18 May 2017 asserting that despite being declared the winner on 24 April 2017, she has not been issued with the nomination certificate. It was her assertion that no valid winner was declared due to electoral malpractices instigated by the 1st Respondent.
3. Owing to these malpractices, the Claimant lodged a complaint with the 2nd Respondent's National Disputes Appeals Tribunal on 26th April 2017 seeking to have the manner in which the exercise was conducted examined by the party's National Elections Board for purposes of determining if the outcome was credible. In support of her case, she supplied a decision of the 2nd Respondent's National Disputes Appeals Tribunal (hereinafter IDRМ) which having considered her concerns nullified the nomination exercise and recommended that the National Elections Board, with the approval of the National Executive Council, declare the Claimant the nominee.
4. It was her assertion that the party had proceeded to issue her with an unsigned nomination certificate dated 12th May 2017, but also issued a nomination certificate to the 1st Respondent on 15th April 2017 in contravention of the IDRМ decision. This action was also in spite of a decision of the High Court in **Nairobi High Court Constitutional Petition No. 207 of 2017** where the High Court had declined to record consent between the 1st and 2nd Respondents to her exclusion.
5. She also relied on the affidavit of Stanley Kipkorir Kollum, the Returning Officer, dated 25 April 2017, for the assertion that the nomination exercise was marred with irregularities. She therefore prayed for the nomination certificate issued to the 1st Respondent to be nullified, for the 2nd Respondent to be directed to issue her with the nomination certificate and that notification issue to the Independent Electoral and Boundaries Commission (IEBC) accordingly.
6. In his response, the 1st Respondent asserted that the nomination exercise was free and fair, contrary to the assertions of the Claimant and the Returning Officer, and asserted that if indeed electoral malpractices of the nature alleged had occurred, they should have been reported to the police or other enforcement agencies.
7. He maintained that he had been declared the winner and had a legitimate expectation that the nomination certificate would be issued to him. However, the IDRМ proceedings were carried out to his exclusion and the declaration of the Claimant as the winner was without basis.
8. The 1st Respondent also took issue with the IDRМ decision, which he asserted did not comply with Article 21 (3) (b) of the 2nd Respondent's constitution, having been signed by the chair and only one member. The said rule required that such sitting would be properly constituted if attended by the chair and at least two other members.
9. In relation to Constitutional Petition 207 of 2017, the 1st Respondent asserted that the suit had been instituted by him upon his being notified of the IDRМ decision and being turned away ostensibly on the basis that this Tribunal was no longer receiving cases. It was the 1st Respondent's position that the Claimant had been served with the pleadings in Appeal No. 207 of 2017 but failed to respond.

10. The 1st Respondent took issue with the nomination certificate held by the Claimant on the basis that it was not signed. He asserted that he was the duly nominated candidate, the Claimant having come third in the process, and prayed that the Petition be dismissed.

11. The 2nd Respondent averred, by the affidavit of Edward Kivuvani, who is the Chairman of the 2nd Respondent's National Elections Board, that indeed there was a nomination dispute which was forwarded to the party and a decision rendered on 3rd May 2017. In respect of Constitutional Petition 207 of 2017, the 2nd Respondent's position was that the instructions to record a consent with the 1st Respondent had been issued to their advocates in error. The 2nd Respondent contended that the Claimant had not demonstrated how her rights had been violated and therefore sought a dismissal of the matter.

12. By a Supplementary Affidavit dated 23 May 2017, the Claimant reiterated the allegations contained in the Petition. In relation to the IDRМ decision, the Claimant maintained that the decision was valid, since Article 21 (3) (e) provided that once a decision of the National Elections Appeals Tribunal was issued, the same was final.

Issues for Determination

Upon hearing the submissions of the parties and from a review of the material on record, it appears to us that two issues arise for determination:

- a. Whether the Claimant was duly nominated for Member of the County Assembly, Visoi Ward, Rongai Constituency; and
- b. Whether the IDRМ decision dated 3 May 2017 was valid.

Analysis

a. Whether the Claimant was duly nominated for Member of the County Assembly, Visoi Ward, Rongai Constituency

13. The Claimant asserts that she won the nomination exercise and that the IDRМ decision supports her win. However, the affidavit of the Returning Officer, Stanley Kipkorir Kollum, does not indicate she was ever declared winner.

14. The Claimant also adduced an unsigned nomination certificate dated 12 May 2017. The 1st Respondent, on the other hand, has adduced the final nomination certificate dated 15 May 2017 and which is duly signed.

15. The Claimant never controverted the Respondent's assertion that she came third in the nomination exercise. Moreover, her main contention is that the nomination process was flawed, which she has failed to prove. However if it be the case, which is not shown, that the process was flawed, she cannot seek to be declared the winner of a flawed process. We therefore find that the Claimant had not satisfied this Tribunal that she was the duly nominated candidate for Member of the County Assembly, Visoi Ward, Rongai Constituency.

b. Whether the IDRМ decision dated 3 May 2017 was valid

16. The validity of the IDRМ process was also impugned for not complying with Article 21 (3) (b), which sets out the quorum of such IDRМ as the Chairperson and at least two members. Moreover, it was asserted that the said decision was not written on paper containing the party logo or letterhead of the 2nd Respondent, and as such, it could not be a formal decision of the party. It is clear that the IDRМ decision was only signed by two members, and therefore does not accord with the party constitution. It therefore cannot be upheld.

Orders

17. In light of the foregoing, we find that the Claimant has not satisfied the Tribunal that she merits the prayers sought. The Petition dated 18 May 2017 is therefore dismissed.

18. That each party bears its own costs.

Dated at NAIROBI this 25TH DAY OF MAY 2017

1. M. O. Lwanga(Presiding Member)

2. Desma Nungo.....(Member)

3. Paul Ngotho(Member)

4. Dr. Adelaide Mbithi(Member)