



**Oketch v Orange Democratic Movement (Complaint 381 (NRB) of 2017)
[2017] KEPPDT 361 (KLR) (1 August 2017) (Judgment)**

Neutral citation: [2017] KEPPDT 361 (KLR)

**REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT 381 (NRB) OF 2017
M LWANGA O, D. NUNGO & P NGO THO, MEMBERS
AUGUST 1, 2017**

BETWEEN

MARGARET ADHIAMBO OKETCH COMPLAINANT

AND

ORANGE DEMOCRATIC MOVEMENT RESPONDENT

JUDGMENT

Summary of the case

1. The present complaint is founded on a Claim dated 23 July 2017 and a Further Affidavit filed on 26 July 2017. It relates to the conduct of the Respondent's nominations for party lists as required by Article 177 (1) (c) of *the Constitution*.
2. Following recommendation by the Siaya Disability Forum for Change and Development, the Complainant applied to the Respondent for nomination for the position of Member of County Assembly, Siaya County under the category of Persons with Disability. She alleges that whereas her name appeared in the Respondent's party list that was forwarded to IEBC, the IEBC did not list her name in its publication. She now wants us to compel the Respondent to include her name in the party list in the first priority.
3. The Complainant attempted to resolve this matter with the Respondent following directions by this Tribunal. However, the Complainant's grievances were not attended to by the Respondent and this Tribunal has jurisdiction to hear and determine this Complaint in consonance with the provisions of Section 40 of the *Political Parties Act*.
4. Whereas the Respondent sought and obtained leave to file a response to the Claim, none had been filed by the time of writing this decision. It is noteworthy that both parties appeared before us on 27 th July 2017 when the Tribunal directed that it would deliver its decision on 2 th July 2017 based on documents that would have been filed by 2pm on 28 th July 2017.



Issue for Determination and Analysis

5. From the record before us, 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 was recommended by a community based organisation known as Siaya County Disability Forum for Change and Development for consideration for nomination for Siaya County Gender Top Up List as a woman with disability. In this regard, she has annexed a letter dated 14 th March 2017 from the said community based organisation which letter is in our opinion a recommendation, not an automatic ticket to the Complainant to appear in the Respondent's party list.
9. It is also noteworthy that whereas the community based organisation's recommendation letter is dated 14 th March 2017, the Complainant applied for consideration for nomination on 5 th June 2017. The Complainant has, however, not exhibited any list to demonstrate that her name was in the Respondent's list that was submitted to the IEBC as alleged. Neither has the Complainant exhibited the IEBC printout with a view to not only showing us that her name was omitted from the list but also informing us of any nominees that were considered in her place.
10. Accordingly, the Claimant has not demonstrated that the Respondent's discretion in the preparation of the party list for Siaya County Assembly has not been exercised properly or that the list violates either the party's nomination rules or the constitutional dictates on fair representation.

Orders

11. In light of the foregoing, we order as follows:
 - a. That the Claim dated 23 rd July 2017 be and is hereby dismissed.
 - b. We make no orders as to costs.

DATED at NAIROBI this 1 ST DAY of AUGUST 2017

M. O. Lwanga (Presiding Member)

Desma Nungo (Member)

Paul Ngotho (Member).....

