



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT CASE NO. 96 OF 2017

ROBERT MUTIE LUVAI.....COMPLAINANT

VERSUS

ALI OSMAN DOLAI.....1<sup>ST</sup> RESPONDENT

WIPER DEMOCRATIC MOVEMENT

NATIONAL ELECTIONS BOARD.....2<sup>ND</sup> RESPONDENT

NATIONAL APPEALS TRIBUNAL.....3<sup>RD</sup> RESPONDENT

WIPER DEMOCRATIC MOVEMENT.....INTERESTED PARTY

RULING

Summary of the Complaint

1. By an Amended Claim dated 7<sup>th</sup> May 2017, the Complainant seeks Orders to set aside the Judgment and consequential Orders of the 1<sup>st</sup> Respondent's National Appeals Board (IDRM). The Claimant also seeks a Permanent Injunction restraining the 1<sup>st</sup> Respondent from awarding a final Nomination Certificate to the 1<sup>st</sup> Respondent or any third Party. The Complainant also seeks an Order that the initial verdict of IDRM be upheld and the 1<sup>st</sup> Respondent be ordered to issue the Complainant with a final Certificate of Nomination.
2. The Claimant was an aspirant for MCA, Komarock Ward out of a nomination exercise undertaken on 25<sup>th</sup> April, 2017. He avers that the nomination exercise was going on as scheduled until Police Officers attached to the polling station hurled tear

gas at the voters. The nominations could not proceed and were postponed twice, first to 29<sup>th</sup> April, 2017 and then to 30<sup>th</sup> April, 2017. Consequently, the Claimant was issued with Provisional Certificate having been informed by the Returning Officer that the 2<sup>nd</sup> Respondent had pulled out of the Exercises.

3. The Claimant was summoned by the IDRM on 4<sup>th</sup> May 2017 and informed of the 2<sup>nd</sup> Respondent's Appeal on the grounds that the Claimant had caused chaos and disrupted the Nomination Exercise. Accordingly, the Claimant's nomination was revoked by the IDRM decision and the Claimant is aggrieved on the ground that he was never afforded adequate time to respond to allegations.
4. The Respondents did not participate in these proceedings. The Affidavit of Service by Kelvin Balongo sworn on 8<sup>th</sup> May 2017 and filed on the same day indicate that he effected service on the 1<sup>st</sup> Respondent at their office situated in Lavington area. As for the 2<sup>nd</sup> Respondent, the Process Server avers that the 2<sup>nd</sup> Respondent's mobile phone was switched off. No effort has been shown in trying to effect service on the 2<sup>nd</sup> Respondent. The Claimant has also not attached the acknowledgement of service by the 1<sup>st</sup> Respondent. The Tribunal has taken note and is not satisfied with the service effected upon the 2<sup>nd</sup> Respondent and that the matter has proceeded in his absence.

#### **Issues for Determination**

5. The issue for determination is whether the Claimant should be issued with the final Nomination Certificate.

#### **Analysis**

6. The Claimant has in our view demonstrated that he was issued with the Provisional Certificate. However, he has not substantiated the subsequent averments. The impugned Decision of IDRM was not attached for our reference making it difficult

for us to interrogate the same. The Claimant refers to two Decisions of IDR, one affirming the Claimant's position and one revoking the Claimant's Nomination. We are unable give weight to the claimant's position it in the absence of any supporting evidence. There is nothing to show that the 2<sup>nd</sup> Respondent has been issued with the Nomination Certificate. The non participation by the Respondents did not make it any easier on us.

**Orders**

7. The upshot of our Decision is that the Amended Claim dated 7<sup>th</sup> May 2017 is dismissed with no order as to costs.

Orders accordingly.

**DATED and DELIVERED AT NAIROBI this 9<sup>TH</sup> DAY of MAY 2017**

1. M.O. LWANGA..... (PRESIDING MEMBER)
2. PAUL NGOTHO ..... (MEMBER)
3. DR. ADELAIDE MBITHI ..... (MEMBER)
4. DESMA NUNGO ..... (MEMBER)