



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WAKI, OUKO & GATEMBU, JJ.A

CIVIL APPEAL NO. 215 OF 2017

BETWEEN

JOHN ORWA.....APPELLANT

AND

ORANGE DEMOCRATIC MOVEMENT PARTY.....1ST RESPONDENT

NATIONAL ELECTIONS BOARD OF ODM PARTY.....2ND RESPONDENT

GEORGE OKINYI OMAMBA.....3RD RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION...INTERESTED PARTY

(Being an appeal from the Judgment and Decree (Musyoka, J) delivered at

Nairobi on 30th June, 2017.

JUDGMENT OF THE COURT

1. The appellant, John Orwa and the 3rd respondent, George Okinyi Omamba were contestants for nomination by the Orange Democratic Movement Party (ODM), the 1st respondent, for the position of Member of County Assembly, North Kanyamkago Ward Migori County in a nomination exercise held on 24th April, 2017.

2. The appellant contends that he won the nomination. He asserts that the respondents attempted to deny him his victory and that the 1st respondent declined to issue him with a nomination certificate. As a result he lodged a complaint with the 1st respondent's internal dispute resolution mechanism, namely Migori County ODM Elections Appeals Tribunal on 29th April, 2017. That tribunal ordered the 1st and 2nd

respondents to issue the appellant with the final nomination certificate for the position in question.

3. The appellant says that the 1st and 2nd respondents, failed to obey the order made by the Migori County ODM Elections Appeals Tribunal as a result of which he escalated the matter to the Political Parties Disputes Tribunal (PPDT) with a view to enforcing the order.

4. In a judgment delivered on 18th May, 2017, the PPDT ordered the 1st and 2nd respondents to issue the appellant with the final nomination certificate for the position in question. Subsequently, the 3rd respondent, who had hitherto not been privy to the proceedings, was joined as a party and a consent order recorded setting aside the judgment of the PPDT given on 18th May 2017. The PPDT heard the matter afresh and delivered judgment on 22nd June 2017 in which it ordered the recall of the nomination certificate in favour of the appellant and ordered the 1st and 2nd respondent to issue their nomination certificate to the 3rd respondent.

5. Aggrieved by the decision of the PPDT given on 22nd June 2017, the appellant lodged an appeal before the High Court which was dismissed in a judgement delivered on 30th June 2017 that is the subject of the present appeal.

6. We heard the appeal on 17th July, 2017. The parties were represented by learned counsel:- Mr. A. Ombwayo, for the appellant; Mr. S. Makori for the 1st and 2nd respondent and Mr. J. Oronga for the 3rd respondent. Counsel relied on the written submissions which they highlighted

7. Having considered the appeal, the submissions by learned counsel and the authorities cited before us, we are not persuaded, for reasons to be given by the Court on 29th September, 2017, that the appeal has any merit. We accordingly dismiss their appeal. Each party will bear its own cost.

Dated and delivered at Nairobi this 21st day of July, 2017. P. N. WAKI

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JUDGE OF APPEAL

W. OUKO

.....
JUDGE OF APPEAL

S. GATEMBU KAIRU, FCI Arb

.....
JUDGE OF APPEAL

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