



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. ELECTION PETITION APPLICATION NO. 4 OF 2017**

**DUNCAN OCHIENG' OLUOCH.....1<sup>ST</sup> APPLICANT**

**HASSAN NYAMAI MUSA.....2<sup>ND</sup> APPLICANT**

**BENSON O. ONG'ONGE.....3<sup>RD</sup> APPLICANT**

**JULIAS ONYANGO ABOK.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT PARTY .....RESPONDENT**

**RULING**

1. This Notice of Motion is dated 19<sup>th</sup> May 2017 and was brought under **Sections 4(1)(a), 6(c), 28(1)** of the **Contempt of Court Act No. 46 of 2016**. The application came before the court under certificate of urgency on 23<sup>rd</sup> May, 2017. The court ordered the application to be served and listed for *inter partes* hearing on 24<sup>th</sup> May 2017.

2. I have carefully considered the Notice of Motion together with the affidavits and the annexures thereto. I note that there is a judgment rendered by the Political Parties Dispute Tribunal (hereinafter PPDT) in their Complaint No. 153 of 2017 on 16<sup>th</sup> May 2017. The Applicants aver that the party has failed to comply with the said judgment.

3. They therefore seek conservatory orders in terms of prayer number 2 and 3 of the application. They also pray that the court do uphold the decision of the PPDT and compel the Respondent to revoke and nullify the Nomination certificates issued to Fredrick Onyango Okeyo and Elizabeth Akinyi Manyala on 16<sup>th</sup> May 2017 and carry out fresh party primaries for the post of Member of County Assembly for Kayole South Ward. Last they also pray that the Respondent be cited for contempt and orders of committal be issued as deemed appropriate by the court.

4. The application was not challenged. The facts of the case which therefore stand undisputed are that the Applicants are members of Orange Democratic Movement Party (ODM), a political party within the meaning of the Political Parties Act, and the issues raised relate to party primaries.

5. **Section 40(2) of the Political Parties Act** stipulates that disputes between party members and the party are first to be referred to the Internal Dispute Resolution Mechanism of the party, in this case the Special County Appeals Tribunal (hereinafter the SCAT). Although under Section 40(1) (fa) a

dissatisfied party can approach the PPDT directly. An aggrieved party also has a right to file an appeal from the PPDT to the High Court.

6. On the issue in which the Applicants pray that the Respondent be cited for contempt, I note that in their own evidence they state that pursuant to a complaint filed before the SCAT following the nominations in the party primaries, the SCAT did nullify the nomination certificate which had been issued to one Elizabeth Manyala as nominee for County Assembly for Kayole South Ward, Embakasi Central Constituency. The National Election Board subsequently issued another nomination certificate to one Fredrick Okeyo.

7. To that extent therefore I find first, that the NEB did comply with the orders of the SCAT and the question of contempt does not arise. I find secondly, that this being a fresh process following the nullification of the first nomination certificate, the Applicants were required to begin by filing a fresh complaint before the SCAT.

8. More importantly however, is that before this court is not an appeal but an application by way of a Notice of Motion seeking as one of the prayers the enforcement of the orders of the PPDT. The powers that this court has over matters heard under **Section 40** of the **Political Parties Act** are appellate. It has no powers to enforce the orders of the Tribunal.

9. Under **Section 41(3)** of the Act the Tribunal has powers to enforce its decisions in the same manner a magistrate's court can enforce its decisions. Under **Section 10** of the **Magistrate's Courts Act (No. 26 of 2015)** a magistrate's court has powers to punish any person who is in willful disobedience of its judgment, decree, order or direction. This means that the Tribunal can punish the respondents if it finds that they have disobeyed its orders. This court can only deal with an appeal arising from the Tribunal's orders in the contempt proceedings.

10. The result is that the *ex parte* applicant is improperly before the court. The application is struck out for want of jurisdiction.

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>th</sup> DAY OF May 2017.**

**L. ACHODE**

**JUDGE**

In the presence of .....for the Applicants

In the presence of .....for the Respondent



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