



Case Number:	Election Petition Appeal 46 of 2017
Date Delivered:	09 Jun 2017
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Stephen Nyangau Riechi
Citation:	Emmanuel O. Achayo v Orange Democratic Movement & 4 others [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application be filed in the Court of Appeal for hearing and determination
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

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

**ELECTION PETITION APPEAL NUMBER 46 OF 2017**

**EMMANUEL O ACHAYO. ....APPELLANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY APPEALS TRIBUNAL (ODM).....2<sup>ND</sup> RESPONDENT**

**ABIGAIEL PERPETUA AWINO. ....3<sup>RD</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION. ....1<sup>ST</sup> INTERESTED PARTY**

**REGISTRAR OF POLITICAL PARTIES. ...2<sup>ND</sup> INTERESTED PARTY**

*(An Appeal from the Decision of the Political Parties Dispute Tribunal in Case No. 98 of 2017 delivered on 13<sup>th</sup> May, 2017 by M. Lwanga, D. Nungo, P. Ngotho and Dr. A Mbithi)*

**REPUBLIC OF KENYA**

**IN THE POLITICAL PARTIES DISPUTE TRIBUNAL**

**CASE NUMBER 98 OF 2017**

**ISSUE IN DISPUTE: UNLAWFUL AND IRREGULAR NOMINATION IN SIAYA COUNTY (GEM CENTRAL WARD) MCA NOMINATIONS**

**EMMANUEL O ACHAYO. ....COMPLAINANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY APPEALS TRIBUNAL (ODM). ....2<sup>ND</sup> RESPONDENT**

**ABIGAIEL PERPETUA AWINO. ....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

This is an application dated 7<sup>th</sup> June, 2017 by the Applicant Emmanuel O Achayo seeking citation for contempt of Judy Pareno and Robert Arunga being chairperson and Secretary respectively of the National Election Board of Orange Democratic Movement Party. The contempt arises from the decision and order of the Court of Appeal dated 6<sup>th</sup> June, 2017 which directed the 1<sup>st</sup> Respondent Orange

Democratic Movement Party to conduct fresh nominations for Gem Central Ward member of the County Assembly within 48 hours from 4 p.m. 6<sup>th</sup> June, 2017.

The applicant contends that the said Judy Pareno and Robert Arunga have failed to comply with the order and therefore in contempt of court.

The court indicated to counsel for the applicant, whether this being an application for contempt of the orders of the court of appeal, can this court handle the same. Mr. Kanjama in response urged the court that it has powers to handle contempt proceedings in respect of non-compliance of court of Appeal orders. He submitted that Section 4 of the Appellate Jurisdiction Act confer the powers both to the Court of Appeal and this High Court.

The contempt of court Act No. 46 of 2016 which is an act of Parliament to define and limit the powers of courts in pushing for contempt of court and related purposes came into force on 13<sup>th</sup> January, 2017. It defines Superior court to include; Supreme Court, Court of Appeal and Employment and Labour Relations court and the Land and Environment Court.

Section 5 of the Act provides that: -

***“5. Every superior court has power to: -***

***a) Punish for contempt of court on the face of the cases.***

***b) Punish for contempt of court.***

***c) Uphold the dignity and authority of subordinate court.”***

The Contempt Of Court Act which is the recent legislation providing for Contempt of Court, gives power to the superior courts to punish for contempt any person disobeying their orders. In the present application, the orders the basis of the application were delivered by the Court of Appeal. The court of appeal has powers to punish for contempt of their orders.

I, therefore find that this application should properly be filed and determined by the Court of Appeal because it is their orders that are being disobeyed and under the Contempt of Court Act, they have powers to do so. I consequently direct that the application be filed in the Court of appeal for hearing and determination.

**Dated, signed and delivered at Nairobi this 9<sup>th</sup> day of June, 2017.**

.....

**S N RIECHI**

**JUDGE**



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