

REPUBLIC OF KENYA

IN THE MATTER OF A COMPLAINT TO THE ELECTORAL CODE OF CONDUCT
COMMITTEE AT NAIROBI

COMPLAINT NO ECCC 3/2019

MC DAONALD MARIGACOMPLAINANT

- VS-

BERNARD OTIENO OKOTH 1ST RESPONDENT

ODM 2ND RESPONDENT

RULING OF THE ELECTORAL CODE OF CONDUCT ENFORCEMENT COMMITTEE

1. The first and second respondent filed a notice of preliminary objection dated 18th October 2019 stating that the Electoral Code of Conduct Committee is not competently constituted as to confer jurisdiction as per the Electoral Code of Conduct.
2. The Electoral Code of Conduct Committee considered the preliminary objection and made a determination dismissing the objection with orders to proceed to hear and determine the complaint.
3. Counsels for the first and the second respondents proceeded to raise additional objections on point of law with the argument that the complaint is defective for lack of adherence with the procedures governed by the rules of procedure for settlement of disputes 2011 with particular reference to regulations 8 that states the manner of initiating complaints.
4. They further disputed the introduction of witnesses by the complainant in a manner contrary to the provisions of regulations 15 of the Rules of procedure.

5. Counsels for the complainants argued that they were ready to swear their witnesses under oath and submit oral evidence.
6. Counsels for first and second respondents maintained that rule 8 and 15 requires that the complainant institute a proper written statement under oath.
7. The Committee has addressed its mind to the issued raised and observes that the rules of procedures of settlements of disputes, (Legal Notice No. 139 of 2012) provides-
 - I) R. 4 (1) (c) These rules shall apply to disputes or complaints arising from violation of the Code of Electoral Conduct.
 - II) R.8 (4) (f) The complaint shall state a concise statement under oath of the ultimate facts constituting his cause or causes of action
 - III) R.15 (2) A complaint under sub regulation (1) shall be accompanied by a statement of the complainant and his witnesses, all of which must be under oath, as well as other documents to support the complaint.
8. The committee notes that Sec. 15 (6) of the Code of Conduct provides that; the committee shall not be bound by the provisions of the criminal Procedure Code, (Cap 75) or the Evidence Act (Cap 80) in its proceedings.
9. Further, the rules under R 16 (2) empowers the committee to issue administrative guidelines for purposes of expeditious, efficient, lawful, reasonable, and procedurally fair settlement of disputes.
10. In facilitating expeditious procedures, S. 15 (6) and Regulation 16 (2) inform the commissions regulation of its own procedures. It is worth nothing that the Commissions mandate to address violations of the code of conduct cannot be strictly restricted to the procedures highlighted above, case in point violence, damage of property and actions causing bodily harm. Indeed as previously presented, the Commission in exercising its powers can institute investigations and issue applicable sanctions and penalties.

11. In making its determination, the Commission is aware of the provisions that provide for undue regard to technicality and judgements pronounced on the same but in this particular case reference is made to existing procedures already gazetted to guide in management of disputes and violations of the code.

12. Notwithstanding the Commission acknowledges the issues raised before us and in the interest of fair hearing and administration makes the following decisions;

- i. The complaint herein is dismissed for want of compliance with the Regulation 8 and 15 as relates to filing save that the complainant shall be at liberty to file a fresh complaint as per the provision of the law.
- ii. All parties are hereby warned to desist from any acts of violence.
- iii. There shall be no orders as to cost.

WAFULA W. CHEBUKATI 

CHAIRPERSON

PROF. ABDI YAKUB GULIYE 

MEMBER

BOYA MOLU 

MEMBER