



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.611 OF 2014

BETWEEN

KENNETH ODERO.....1ST PETITIONER
VICTOR MARENDE.....2ND PETITIONER
ERIC MWAMBA.....3RD PETITIONER

AND

THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (IEBC).....RESPONDENT

RULING

1. The Applicants, Kenneth Odero, Victor Marende and Eric Mwamba, filed the Application dated 11th December 2014 seeking a number of orders but at the hearing on 15th December, 2014, it was agreed that only prayer (d) thereof was available at the interlocutory stage. That prayer seeks orders that *“the IEBC to extend the period of nominations by three weeks to allow efficient navigation into the hearing logistics involved in the Senatorial race”* (sic) for Homa Bay County.
2. To put matters into perspective, on 3rd December 2014, the Independent Electoral and Boundaries Commission (IEBC) wrote to all registered political parties and directed them to *“finalise decisions on their nominees on or before 19th December 2014”* for the senatorial position in Homa Bay following the demise of Otieno Kajwang (deceased) then Senator for the said County.
3. The Orange Democratic Movement (ODM), a political party to which the Petitioners belong, thereafter issued an undated Press Statement indicating that its nominations would be held on “Monday 15th December 2014 at 10.00 a.m. at a venue to be announced by the National Election Board (NEB)”.
4. The above information is contained in annexures **“KO-1”** and **“KO-2”** attached to the 1st Petitioner’s Affidavit in support of the Petition and in his and the 2nd Petitioner’s Submissions, they stated that;

(i) The IEBC by not consulting and/or allowing public participation in the nomination process, flouted **Section 26** of the **IEBC Act**.

(ii) The IEBC by failing to consult political parties prior to the nomination exercise, flouted **Section 4(d)** of the **IEBC Act**.

(iii) That the people of Homa Bay County have been prejudiced and will be disenfranchised unless the above actions are undertaken within a reasonable period.

5. In response, Mr. Gachugi for the IEBC stated that the IEBC has acted within the time frames set by the Constitution including in **Article 101(4)(b)** of the **Constitution**.

6. Further, that no political party has protested about the timeframes given and the process of nomination is on-going and if the Petitioners have any genuine grievance, they should do so by filing complaints with their political party and/or the Registrar of Political Parties.

7. He also submitted that the Petition and the Application raise no constitutional question for interpretation and the Petitioners have failed to meet the test set out in **Anarita Karimi Njeru (1976 – 1980) 1 KLR 1272.**

8. That for the above reasons, the Application should be dismissed with costs.

9. On my part, it is obvious to me that the Respondent's Counsel's submission that the Petitioners have no *locus standi* is misplaced.

10. As members of a political party, the ODM, they are entitled to file a case stating that IEBC may be acting in contravention of the **IEBC Act** and the **Constitution**. They need not be officials of ODM to do so. In fact, I struck out ODM as a Petitioner because it was obvious that the Petitioners had no authority to act in its name but they are properly before the Court in their personal capacities as citizens out to ensure the compliance with the Constitution.

11. As to whether they have convinced this Court that IEBC has acted wrongly, I am certain that they have not done so. I say so because firstly, whereas it is true that IEBC is generally obligated to consult with political parties under both **Section 4(d)** and **Section 26** of the **IEBC Act**, the issue in contest is the nomination process leading to a by-election. In that regard by the letter dated 3rd December 2014, the IEBC stated that “*party nominations must be carried out as provided by the party Constitution, nomination rules and any other applicable laws.*” To that extent therefore, IEBC has no role to play at all in the nomination process and the date of nominations by ODM (i.e. 15th December 2014) was an internal party matter.

12. Secondly and as a corollary to the above, in the same letter, under the heading, “consultative meetings”, IEBC stated as follows;

***“We wish to inform you that the Commission together with the office of the Registrar of Political Parties will conduct training of agents and convene consultative meetings including the Political Parties Liaison Committee and meeting with security agents for purposes of the elections. We will communicate further details of the meetings.*”**

For more information please contact the Director Voter Registration and Electoral Operations at 20th Floor, anniversary Towers, and University Way, Nairobi (Tel.2769000) P.O. Box 45371-00100 Nairobi”

13. The import of the above statement is that **Section 4(d)** and **Section 26** of the **IEBC Act** have not been ignored by the IEBC but that both will be invoked at the appropriate time. I have seen no reason at all to find that the said consultations must take place before a purely internal political party affair. In fact, it is the political party that should consult its membership prior to nominations and not the IEBC.

14. Thirdly, I agree with the Respondent's counsel that if the Petitioners are unhappy with the way ODM is conducting its nominations, that is a matter to be raised and be resolved within mechanisms

known to “*the party Constitution, [its] nomination rules and other applicable laws*” as advised by IEBC.

15. Lastly, since I see no justification for grant of the single order now being sought, prayer (d) of the Application dated 11th December 2014 is dismissed.

16. As for costs, let the Petitioners bear the costs thereof as it is obvious that they had no lawful reason to bring IEBC into these proceedings.

17. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 15th DAY OF DECEMBER, 2014

ISAAC LENAOLA

JUDGE

In the presence:

Kariuki – Court clerk

1st Petitioner and 2nd Petitioner present

No appearance for Respondent

Order

Ruling Duly delivered.

ISAAC LENAOLA

JUDGE

1st Petitioner

We wish to withdraw the Petition.

ISAAC LENAOLA

JUDGE

2nd Petitioner

I agree.

ISAAC LENAOLA

JUDGE

Order

At the instance of the Petitioners, the Petition dated 10th December 2014 is marked as withdrawn. Since there is no response to it, let each Party bear its own costs.

ISAAC LENAOLA

JUDGE