



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 92 of 2013

JOHN MBUGUA.....1ST
PETITIONER

STEPHEN OMODIA.....2ND
PETITIONER

VERSUS
THE HONOURABLE ATTORNEY
GENERAL.....1ST RESPONDENT

THE MINISTRY OF
JUSTICE.....2ND RESPONDENT

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC).....3RD
RESPONDENT

REGISTRAR OF POLITICAL
PARTIES.....4TH RESPONDENT

J U D G E M E N T

1. By a **Petition** dated **6th February 2013** the Petitioners petitioned this court for various orders among them:-

1) That the Petitioners be granted leave to commence the Petition as Paupers.

2) That the IEBC – 1st Respondent, be compelled to print the Petitioners names in the ballot for the position of Members of Parliament for Embakasi West and North Constituency as Independent candidates.

2. When the matter came up *ex-parte* before the court on 11th February 2013, I certified the application urgent and granted the Petitioners the leave to commence these proceedings as Paupers. Having done that, the Petitioners now seek to compel the IEBC to allow them to contest for the above positions as Independent candidates.

3. Only the 3rd Respondent has replied to the application and filed grounds of opposition dated 14th February 2013.

4. I have considered the Petition and the opposition to it. In my view the matters stated in the Petition and

application herein constitute a dispute under Article 88 (4) (e) of the Constitution of Kenya as read together with Section 74 of the Elections Act, No. 24 of 2011.

5. The Petitioners/Applicants have not brought evidence before this Court to demonstrate that they have invoked and exhausted the jurisdiction granted to the Commission under Article 88 (4) (e) of the Constitution of Kenya as read together with Section 74 of the Elections Act, No. 24 of 2011, to settle disputes relating to or arising out of nominations.

6. The present proceedings are therefore premature as the Petitioners/Applicants are seeking the intervention of this court without first invoking and exhausting the jurisdiction granted to the Commission under the Constitution and the Elections Act Number 24 of 2011.

7. In any event the Petitioners being independent candidates, are alleged to have failed to submit to the Commission the symbol they intended to use in the forthcoming General Elections, at least twenty one days before the nomination day as required under Section 32 (2) of the Elections Act, number 24 of 2011. The allegation has not been rebutted by the Petitioners.

8. From the foregoing, it is clear that this Petition must fail. I dismiss the Petition by the Petitioners dated 6th February 2013 and filed in court on 12th February 2013 with no orders as to costs.

This is the Judgement of the court.

DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY 2013

E. K. O. OGOLA
JUDGE

PRESENT:

Petitioner in person

M/s Thenji for the 3rd Respondent

Teresia – Court Clerk