



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 103 of 2013

JACQUELINE NZIVA

MUNYAO.....PETITIONER/APPLICANT

VERSUS

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC).....1ST RESPONDENT**

**THE SECRETARY GENERAL, WIPER DEMOCRATIC MOVEMENT - KENYA.....2ND
RESPONDENT**

RULING

1. By a **Notice of Motion** application dated 12th February 2013 and filed in court on 13th February 2013 the Applicant seeks orders of Judicial Review to revoke the Certificate of nomination issued by the 1st Respondent to the 3rd Respondent and that the 1st Respondent be stopped from accepting the nomination of the 3rd Respondent and to remove the 3rd Respondent's name from the ballot paper.
2. The Applicant alleges that she was declared the nominee by the 2nd Respondent pursuant to nomination exercise carried out on 17th January 2013 wherein she garnered 2,142 votes against the 3rd Respondent's 1,835 votes.
3. For some reasons, however, the 3rd Respondent's papers were accepted by the IEBC. However, the party stood with the Applicant as their candidate. For some unknown reason the 3rd Respondent lodged a complaint with IEBC pursuant to a complaint which is not clear from the records. The IEBC confirmed the 3rd Respondent as the duly nominated aspirant for the seat.
4. The Applicant avers that she was not invited to the IEBC hearing. The Applicant now wants that decision to be reversed.
5. I have considered the application and the opposing affidavits and submissions. It is clear that the Applicant was the winner of the nomination exercise that was carried out. It is clear also that the 2nd Respondent – WIPER PARTY, nominated the Applicant and forwarded the Applicant's name for Ikombe Ward in Yatta Constituency. However, the proceedings which led the IEBC to reverse that decision are not within this court. Under Article 88 (4) (b) of the Constitution this court has limited jurisdiction over the IEBC and can only intervene on procedural justice but not on merit.

6. Again, the application before the court has not been served upon the 3rd Respondent. The 3rd Respondent, being the person whose name is with IEBC, has now acquired a right which cannot be taken away without giving the 3rd Respondent a chance to be heard. In this regard this court finds it difficult to interfere with the IEBC decision.

7. However, in light of the evidence on record, and for justice to be seen to be done, I order and direct the IEBC to have a second look into the matter in light of the foregoing and the record sent to the IEBC by the 2nd Respondent.

It is so ordered.

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

E. K. O. OGOLA
JUDGE

PRESENT:

Ndeto for the Petitioner/Applicant

Nyamodi for the 1st Respondent

Ashioya H/B Uvyu for the 3rd Respondent

Teresia – Court Clerk