



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Miscellaneous Application 55 of 2013**

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

**AND**

IN THE MATTER OF: THE CONSTITUTION OF KENYA ARTICLE 23 (3) (F)

**AND**

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW PROCEEDINGS AGAINST THE RESPONDENTS.

**AND**

IN THE MATTER OF: THE LAW REFORM ACT CHAPTER 26 – LAWS OF KENYA SECTIONS 8 AND 9

**AND**

IN THE MATTER OF: THE ELECTION ACT NO. 24 OF 2011 LAWS OF KENYA AND THE RULES MADE THEREUNDER

**AND**

IN THE MATTER OF: THE POLITICAL PARTIES ACT NO. 11 OF 2011 LAWS OF KENYA AND THE RULES MADE THEREUNDER

**AND**

IN THE MATTER OF: THE INDEPENDENT ELECTIONS & BOUNDARIES COMMISSION

**AND**

IN THE MATTER OF: THE UNITED REPUBLICAN PARTY (URP) NOMINATIONS FOR CANDIDATE FOR SENATE MEMBER, TRANS NZOIA COUNTY

**BETWEEN**

**REPUBLIC** .....  
**APPLICANT**

- VERSUS -

**INDEPENDENT ELECTIONS & BOUNDARIES COMMISSION ::::::::::RESPONDENT**

**R U L I N G**

1. The **Notice of Motion** before the court is dated **13<sup>th</sup> February 2013** and seeks the following orders:-
  - 1) The court be pleased to grant:-
    - a) An order of certiorari to remove into this Honourable Court and quash the decision delivered by the Respondent through the County Returning Officer Trans Nzoia County to accept/register and/or enlist EDWARD KATAMA NGEIYWA as the nominee of the United Republic Party for the position of Senate member for Trans Nzoia County and issue him with the relevant clearance certificate.
    - b) An order of mandamus compelling the Respondent to immediately receive and receipt the Applicant herein STANLEY KILIMO KORE as the nominee of URP for the position of Senate member for Trans Nzoia County and issue him with the relevant clearance certificate and ensure that the Applicant is on the March 4<sup>th</sup> General Election ballot.
    - c) An order of prohibition directed at the Respondent prohibiting it from issuing and/or gazetting any other candidate other than STANLEY KILIMO KORE on the URP party ticket to vie for the Trans Nzoia County Senate member seat on the URP Party Ticket.
    - d) Costs.
2. The Petitioner contends that he is a member of URP and was duly nominated to contest for the position of County Assembly Representative for Senate Member for Trans Nzoia County. The URP wrote a letter on 4<sup>th</sup> January 2013 to the IEBC confirming the nomination of the Applicant.
3. Unknown to the Applicant a Petition Number 2 of 2013 had been lodged at the Kitale High Court against his nomination by Edward Katama Ngeiywa who had participated in the UPR nominations and came second. In its Ruling on the matter the High Court temporarily restrained the IEBC from receiving any nomination papers issued by the URP Party to the 1<sup>st</sup> Respondent and/or to any other party other than Edward Katama Ngeiywa until *inter-partes* hearing on 11<sup>th</sup> February 2013.
4. The Applicant alleges that he was never privy to the said order and that he was never served with the order. Those orders were eventually withdrawn and by the time the Applicant became aware of them it was too late as IEBC had already accepted the nomination of Edward Katama Ngeiywa. The current application asks this court to reverse the order of IEBC.
5. I have considered the application and opposing submissions. The jurisdiction of this court over IEBC is restricted to looking at the process, and not the merit of IEBC decisions. In the particular case before the court there are two reasons militating against interference by this court in IEBC decision.
6. Firstly, IEBC is the innocent party in this matter. It has not made any decision which has been placed before the court for scrutiny. The alleged decision which “*confused*’ and ‘*misled*’ the Applicant was a High Court decision. The Applicant is not complaining of any IEBC decision which has caused him injury and which needs to be reviewed.
7. Secondly, Mr. Edward Katama Ngeiywa, the Party to be dispossessed of his nomination if this application were to succeed has not been joined to these proceedings and is unaware of the same. He is on the IEBC list and has acquired a right that cannot be taken away arbitrarily. See **Petition Number 45 of 2013 – PETER EDICK OMONDI ANYANGA – VS – IEBC.**

8. On the above grounds I dismiss the application with no orders as to costs.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 19<sup>TH</sup> DAY OF FEBRUARY 2013**

**E. K. O. OGOLA**  
**JUDGE**

**PRESENT:**

Ndegwa for the Applicant

M/s Mbugu Respondent

Teresia – Court Clerk