



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Petition 3 of 2013**

**EVERLYNE NAKHUNGU JUMA.....PETITIONER/APPLICANT**

**V E R S U S**

**FORD KENYA PARTY.....1<sup>ST</sup> RESPONDENT**

**I.E.B.C.....2<sup>ND</sup> RESPONDENT**

**MALAVA CONSTITUENCY.....3<sup>RD</sup> RESPONDENT**

**NKALOS SHIUMA.....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

In her Notice of Motion dated 5.2.2013, the petitioner/applicant is seeking an order to the effect that the 1<sup>st</sup> respondent be restrained by a conservatory order of injunction from gazetting the Interested Party, NKALOS SHIUMA as the duly nominated county representative for MANDA/SHIVANGA Ward. The applicant's contention is that she was issued with a nomination certificate to represent the ward and presented her nomination papers to the 2<sup>nd</sup> respondent. Her name was duly submitted to the 2<sup>nd</sup> respondent by her party, Ford Kenya. However, on 1.2.2013, the Interested Party was cleared to vie for the concerned Ward.

The 2<sup>nd</sup> respondent objected to the application on the grounds that the court lacks jurisdiction to determine the dispute, the petition contrives the Constitution and the application does not raise any sustainable cause of action. Counsel for the 2<sup>nd</sup> respondent submitted that the application has been overtaken by events as the 2<sup>nd</sup> respondent has already procured and awarded tenders for the printing of ballot papers.

On his part, the interested party contends that he was issued with a nomination certificate and his name forwarded to the 2<sup>nd</sup> respondent.

From the proceedings herein, it is clear that the 1<sup>st</sup> respondent, Ford Kenya Party issued two nomination certificates as follows:-

- 1. Certificate No.12300273 to EVERLYN NAKHUNGU JUMA**
- 2. Certificate No.12300798 to SHUMA NKALOS AKAM**

The two certificates indicate that they were issued on the same date, 18<sup>th</sup> January 2013 in Nairobi. The

applicant contends that she got information via a short message (SMS) that another list was to be sent from Nairobi and the Interested Party was to be the one to be cleared. Her further contention is that the party Headquarters recognize her as the one validly appointed to vie for the Ward but the 2<sup>nd</sup> respondent colluded with one Johnstone Barasa Makokha who is vying for the Butali/Chegula Ward in Malava Constituency to deny her the nomination.

From the pleadings herein, it is clear that there were no Ford Kenya Party elections for the Manda/Shivanga Ward in Malava Constituency. The party opted to give direct nominations. The applicant contends that she was the first one to be given the nomination. None of the parties has annexed the party list forwarded to the 2<sup>nd</sup> respondent for the entire Ford Kenya candidates for Malava Constituency. It is evident from the pleadings that the applicant's name was replaced with that of the Interested Party.

Since the applicant did not contest for the position, it is the party itself to decide the person it would like to vie for the position of the county representative in the Ward. It appears that the 2<sup>nd</sup> respondent was given the name of the Interested Party as he correct person for the Ward preferred by Ford Kenya. That being the case, the applicant ought to seek recourse from her party and if she believes that her nomination was correct and the Interested Party is an imposter, it is up to the party to nullify the nomination of the Interested Party and correct the situation as claimed by the applicant.

It seems by the time the applicant realized that the Interested Party had been cleared, time for lodging complaints to the 2<sup>nd</sup> respondent had already elapsed. The court has jurisdiction to entertain the current application as it is based on the applicant's constitutional rights to participate in political party affairs and participate in elections. However, the applicant needs to pursue her party first and find out why her name was dropped. Had the applicant undergone through an election party process and won against the Interested Party but denied the nomination certificate, it would have been easy for the court to reverse the situation and grant the application. The current situation is based on party discretion. The contentions by the applicant that one Johnstone Barasa Makokha, interfered with her candidature is not proved and she did not include him as a party.

In the end, I do find that the 1<sup>st</sup> respondent had the powers to nominate a person of its choice to represent the concerned Ward. Since the list forwarded to the 2<sup>nd</sup> respondent contained the names of the Interested Party and not that of the applicant, it follows that the 2<sup>nd</sup> respondent could only clear the Interested Party as the Ford Kenya party's preferred candidate. It is only Ford Kenya that can stop the Interested Party from being the Ward nominated representative as the party has the discretion to appoint the person of its choice. The applicant's remedy lies with her party.

The upshot is that the Notice of Motion dated 5<sup>th</sup> February 2013 is dismissed. The 1<sup>st</sup> respondent to bare the costs of the application

**DATED AT KAKAMEGA THIS 18<sup>th</sup> DAY FEBRUARY 2013**

**SAID J. CHITEMBWE**  
**J U D G E**