



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 101 of 2013

IN THE MATTER OF ARTICLE 88 OF THE CONSTITUTION OF KENYA, 2010
AND

IN THE MATTER SECTION 13 OF THE ELECTIONS ACT NO.24 OF 2011

AND

IN THE MATTER OF SECTION 4 OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT NO. 9 of 2011

BETWEEN

ZADDOCK A. KISIENYA ::: PETITIONER

- VERSUS -

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION (IEBC) ::::::::::::::::::::::::::::::::::::::: 1ST RESPONDENT

AND

WILSON KIMUTAI, RETURNING OFFICER,

NAVAKHOLO CONSTITUENCY ::::::::::::::::::::::::::::::::::::::: 2ND RESPONDENT

RULING

1. By a **Chamber Summons** dated **12th February 2013** the Petitioner sought the following orders:-

1) That this Honourable Court do certify this application as urgent and service thereof of this application on the Respondents be dispensed with in the first instance and the application be heard *ex-parte*.

2) That the 1st Respondent’s committee’s decision dismissing the nomination of the Applicant as a County Assembly Representative nominee for Maendeleo Democratic Party (MDP) in SHINOYI/SHIKOMARI/ESUMEYA Ward of Navakholo Constituency be and is hereby temporary set

aside pending the hearing of this application *inter-partes*.

3) That the Respondent be and are hereby temporarily restrained from printing the County Assembly ballot papers in exclusion of the Applicant for Navakholo Constituency pending the hearing of this application *inter-partes*.

4) That the 1st Respondent's committee's decision dismissing the nomination of the Applicant as a County Assembly Representative nominee for Maendeleo Democratic Party (MDP) in SHINOYI/SHIKOMARI/ESUMEYA Ward of Navakholo Constituency be and is hereby set aside pending the hearing of this application *inter-partes*.

5) That the Respondent be and are hereby temporarily restrained from printing the County Assembly ballot papers in exclusion of the Applicant for Navakholo Constituency pending the hearing and determination of the Applicant's Petition.

6) That the Applicant's Petition be set down for hearing on priority basis due to the constraint of time.

7) That costs of this application be provided for by the Respondent.

2. The application is premised on grounds stated therein that:-

1) That the Respondents have unlawfully denied the Applicant clearance to vie for a County Assembly Representative nominee for Maendeleo Democratic Party (MDP) in SHINOYI/SHIKOMARI/ESUMEYA Ward of Navakholo Constituency in the national elections to be held on 4th March 2013.

2) That the Applicant's constitutional rights as a political party candidate and the rights of the electorate are likely to be violated if the Applicant's application is not allowed.

3) That the 1st Respondent is in the process of printing ballot papers for the County Assembly candidates in the 4th March 2013 election Applicant.

3. The application is supported by the Affidavit of the Petitioner dated 12th February 2013 with annexures thereto.

4. The application is opposed vide a replying affidavit sworn by **PRAXEDES TOROREY** dated and filed in court on 15th February 2013.

5. I have considered the application and the opposition to the same. The Applicant submits that he was nominated by Maendeleo Democratic Party (MDP) on 17th January 2013 to vie for the position of County Assembly Representative for SHINOYI/SHIKOMARI/ESUMEYA Ward in Navakholo Constituency. Between 29th and 31st January 2013 the applicant became ill and was admitted at a hospital in Kakamega. Upon discharge when the Applicant sought to present his nomination papers to the Returning Officer his nomination was rejected because he was late. All attempts to persuade the Returning Officer to accept the same was not successful and so he filed a complaint with the IEBC Dispute Resolution Committee which heard the complaint and delivered their decision on 7th February 2013 wherein they dismissed the complaint in the following terms:-

“The complaint is hereby dismissed on the grounds that the complainant presented his papers past the deadline.”

The Petitioner now wants this court to reverse that decision.

6. In my view, and I agree with the 1st Respondent submissions, the Petitioner's complaint cannot

be redressed by this court. This court has no appellate jurisdiction over the IEBC Dispute Resolution Committee decision. The Petitioner in my view seeks to appeal the IEBC decision to this court. The jurisdiction of this court relates to the process used by the IEBC but not to the merits of the IEBC decision.

7. The IEBC has own rules of procedure promulgated under Rule 99 of the Election (General) Regulations. This court cannot compel them to accept a nomination which has been presented outside the time allowed by those regulations. As the Applicant has not challenged the due process leading to that decision, but instead appears to challenge the merits thereof, this application fails and is hereby dismissed with costs to the 1st Respondent.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 18TH DAY OF FEBRUARY 2013

E. K. O. OGOLA
JUDGE

PRESENT:

Ashiruma for the Petitioner

N/A for the Respondents

Teresia – Court Clerk