



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 91 of 2013

JOHN WANYONYI WENYAA.....PETITIONER

VERSUS

NICHOLAS SIMIYU.....1ST RESPONDENT

BENJAMIN MWEMA.....2ND RESPONDENT

NEW FORD KENYA.....3RD RESPONDENT

INDEPENDENT ELECTROAL & BOUNDARIES COMMISSION.....4TH RESPONDENT

R U L I N G

1. The Complaint herein was filed in court together with a Notice of Motion dated 7th February 2013 seeking that a consent/decision entered into by the Independent Electoral & Boundaries Commission (IEBC) and Political Parties Disputes Tribunal Number 181 of 2013 be stayed and finally revoked.

2. The suit and application are based on the grounds set out herein among them that the Applicant was duly nominated as Member of Parliament aspirant for Kimilili Constituency on the ticket of Ford Kenya Party. It is alleged that due to acts of fraud by the Secretary General of the said party and the 1st Defendant, the IEBC Tribunal decided that the 1st Defendant be the aspirant for the party in that Constituency. This court is now asked to reverse that decision.

3. I will not write a long Ruling in this matter. This court acknowledges that the IEBC Tribunal and the Political Parties Disputes Tribunal are *quasi* judicial bodies which have specific mandate under the various authorizing Acts. This court respects their decisions when made in good faith. It is alleged by the Petitioner that there was no nomination carried out in Kimilili Constituency by the Party but the 1st Respondent was declared the winner nonetheless.

It is beyond the scope of this court to enquire into party nominations, but this court can review the decisions taken by Independent Tribunals under Article 165 (6) of the Constitution.

4. On their part Mr. Nyamogo for IEBC stated that the dispute arises from the political party's primaries to which the IEBC was not a party.

5. For the party there are two conflicting positions – one taken by the alleged Executive Officer of the Party, Captain Wafuba who supports the Petitioner, and the other taken by Mr. Mwema who states he is the Secretary General of the Party.

6. Having considered the application I am satisfied that no evidence has been placed before this court to enable this court interfere with the IEBC decision. Further, the alleged consent if it is indeed there cannot be set aside by this court, unless malice or bad faith is shown.

7. In my Ruling this is a matter where the court must decline to interfere with the independence of the IEBC in the decision which it has taken. The application is dismissed with no order as to costs.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2013

E. K. O. OGOLA
JUDGE

PRESENT:

Wanyanga for the Petitioner

Nyamodi for the IEBC

Isoe for the 1st Respondent

Teresia – Court Clerk