

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Petition 70 of 2013

ANTHONY KIMEMIA GATHUMBIPETITIONER

AND

THE NATIONAL ALLIANCE PARTY (TNA).....1ST RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....2ND RESPONDENT

JOHNSON MAINA MWAI3RD RESPONDENT

JUDGMENT

1. The petitioner in this matter has moved the court for orders whose effect is that he be cleared to contest the Harambee County Assembly Ward Seat, Nairobi County on the National Alliance Party ticket. His case is that he won the party nomination that was carried out on 18th November 2012 and was issued with a certificate.

2. The petitioner later came to learn that a complaint had been presented against him by the 3rd respondent. From the material before us, the IEBC Committee in **NDRC Case No. 98 of 2013** in its decision stated, ***“the complaint is hereby allowed. A concession between the complainant and TNA was entered that Mr Maina wa Mwai be given the nomination and the name be included in the nomination list.”*** The petitioner’s complaint is that he presented evidence challenging the 3rd respondent’s case before the Committee that he was a member of another party but the case was concluded on the basis of a concession to which he was not privy rather than on the evidence.

3. Both the counsel for the party, Ms Milimu and counsel for the petitioner, Dr Khaminwa agree that there is no candidate for the said party for that slot due to an erroneous declaration that the 3rd respondent was its candidate yet the said person had moved to another party and had indeed been nominated. Mr Muhoro, counsel for the IEBC, left it to the Court to decide the matter.

4. As the petitioner was not privy to the concession upon which the decision was made and since he was directly we have no option but to set aside the decision of the NDRC. As we did not hear the 3rd respondent, we cannot grant the declarations sought, consequently we direct the IEBC Nomination Disputes Committee to rehear the matter taking into account the circumstances of the case.

Dated and Delivered at Nairobi this 6th February 2013.

D.S. MAJANJA

JUDGE

E. OGOLA

JUDGE

G. V. ODUNGA

JUDGE