



**REPUBLIC OF KENYA**

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

**Petition 62 of 2013**

**IN THE MATTER OF ARTICLE 23 AND ARTICLE 165 (30 (B), 89(10), 258 AND 259 OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF AN APPLICATION BY JULIUS CHACHA MABANGA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS**

**UNDER ARTICLE 47, 50, 90, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**JULIUS CHACHA**

**MABANGA ..... PETITIONER**

**AND**

**THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC).....1<sup>ST</sup>  
RESPONDENT**

**ORANGE DEMOCRATIC MOVEMENT.....2<sup>ND</sup>  
RESPONDENT**

**AND**

**MARK CHACHA .....INTERESTED  
PARTY**

**JUDGEMENT**

On 31<sup>st</sup> January 2013 we heard the Petition No 41 of 2013 involving the Parties herein and directed that dispute therein be heard afresh.

Pursuant to the same determination the petitioner herein filed the present petition alleging that he was not afforded a fair hearing by the Independent Electoral and Boundaries Commission Dispute Resolution Committee.

We have considered the record of the proceeding supplied by the Commission in its determination. The Committee stated *inter alia*: “the Committee stands by its decision”.

We are unable to apprehend what “decision” the Committee was referring to since in our decision we had set aside its earlier decision.

The Law as we understand it is that where an earliest decision is quashed or set aside and a re-hearing ordered the Tribunal is enjoined to conduct a fresh hearing and the quashed decision cannot be deferred to by the Tribunal in reaching its subsequent decision and ought not to influence the said subsequent decision. See **Peter Okeyo Ogila vs. Rachuonyo Farmers Co-Operative Union Ltd. Civil Appeal No. 79 of 1992.**

Taking into account the foregoing we are satisfied that the process by which the committee arrived at its decision is not free from error.

We accordingly allow the Petition and direct that the Committee conduct a proper hearing of the dispute de novo as provided by the law.

Having heard the matter we considered that the only matter for the committees to determine is who is the proper party nominee for the contested seat.

We make no order as to costs.

**Dated at Nairobi this 6<sup>th</sup> day of February 2013**

**D S MAJANJA**

**JUDGE**

**E OGOLA**

**JUDGE**

**G V ODUNGA**

**JUDGE**