



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 47 of 2013

HON EDWIN O. YINDAPETITIONER

AND

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....RESPONDENT

JUDGMENT

1. We dismissed the petition herein with no order as to costs on 31st January 2013.
2. By a petition dated 30th January 2013, the petitioner seeks the following orders;
 - (a) *That a declaration be issued to declare that the respondent cannot lawfully receive and approve the nomination papers submitted by George Washington Mallan Omondi as a candidate for parliamentary seat of Alego Usonga on the ticket of United Democratic Front (UDF) or any other political party.*
 - (b) *That an order of permanent injunction be issued to restrain the respondent, its Constituency Electoral Coordinator Alego Usonga Constituency/returning officer, its officials, employees and agents from receiving nomination certificate and papers for George Washington Mallan Omondi on the ticket of the United Democratic Front (UDF) or any other political party.*
 - (c) *That a declaration be issued to declare that in view of his participation in ODM parliamentary nominations for Alego Usonga Constituency and Complaint against eh petitioner's nomination adjudicated and determined by the Respondent's tribunal on 28th January 2013 the respondent is legally barred from receiving and considering for approval the nomination papers submitted by Goerge Washington Mallan Omondi as a candidate of the United Democratic Forum (UDF) or any other political party.*
 - (d) *That the costs of this petition be borne by the respondent.*
3. Mr Yinda, the petitioner, the ODM candidate for the Alego Usonga Constituency, was issued with a direct nomination after the primaries conducted on 17th and 18th January 2013 were wrought with chaos. George Washington Omondi, lodged a complaint with the IEBC but the complaint was duly dismissed.
4. George Omondi thereafter sought and obtained a nomination from the United Democratic Forum (UDF) to contest the Alego Usonga Constituency Seat. In the circumstances, the petitioner seeks to bar George Omondi from contesting the election.

5. Although we heard Mr Wasumma for Mr George Omondi, the party directly affected, he was not made party to these proceedings. In the circumstances, we do not think it is proper to make adverse finding on this respect.

6. We are also of the view that, if the issue is one of Mr George Omondi's qualification to stand for election, it may be raised at an appropriate stage. In the circumstances, the petition is dismissed.

Dated and Delivered at Nairobi this 5th February 2013

D.S. MAJANJA

JUDGE

W. KORIR

JUDGE

G. V. ODUNGA

JUDGE