



**REPUBLIC OF KENYA**

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

**Petition 39 of 2013**

**JANET NDAGO EKUMBO MBETE .....PETITIONER**

**AND**

**HON ATTORNEY GENERAL .....1<sup>ST</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .....2<sup>ND</sup>  
RESPONDENT**

**KENYA NATIONAL EXAMINATIONS COUNCIL.....3<sup>RD</sup> RESPONDENT**

**UNIVERSITY OF NAIROBI .....4<sup>TH</sup> RESPONDENT**

**AND**

**HON HASSAN ALI JOHO .....1<sup>ST</sup> INTERESTED PARTY**

**HAZEL KATANA .....2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

1. After hearing the petition on 31<sup>st</sup> January 2013, we dismissed it with no order as to costs.

2. By a petition dated 29<sup>th</sup> January 2013,

(a) *That a declaration be issued to declare that the Hon Hassan Ali Joho and Hazel Katana do not meet the basic academic qualification of holding a degree from a university recognised in Kenya to vie for the positions of Governor and Deputy Governor Seats of Mombasa County.*

(b) *That a declaration be issued to declare that the nomination of Hon Hassan Ali Joho and/or Hazel Katana to vie for the positions of Governor and Deputy Governor respectively for Mombasa County is null and void ab initio on account of the two candidates lacking valid qualification of a degree from a university recognised in Kenya.*

(c) *That a declaration be issued to declare that the nomination of Hon Hassan Ali Joho and Hazel Katana to contest for the positions of Governor and Deputy Governor seats of Mombasa County will violet the petitioner's rights under Article 38 of the Constitution to be respected by academically qualified persons.*

(d) *That the costs of this petition be borne by the respondents.*

3. In addition to the petition, the petitioner filed a Chamber Summons dated 29<sup>th</sup> January 2013 which sought the following reliefs;

(3) *That the Honourable Court be pleased to order the 3<sup>rd</sup> and 4<sup>th</sup> respondents whether jointly and or severally to furnish the applicant with certified true copies of the following information and/or documents.*

(i) *Certified copies of the examination result slips in relation to Hassan Ali Joho and Hazel Katana for the Kenya Certificate of Secondary Education (KCSE).*

(ii) *Certified copies of transcripts for Hassan Ali Joho for any degree course he may have enrolled for at the University of Nairobi.*

(iii) *Certified confirmation of the graduation of Hassan Ali Joho for any degree course he may have enrolled for at the University of Nairobi.*

(iv) *Certified confirmation of the degree constitution held by Hazel Katana.*

(4) *That the Court be pleased to give any directions and further orders necessary to secure the applicant's right to access to information secured by Article 35 of the Constitution of Kenya, 2010.*

4. We heard the parties and in our view, the petition lacks merit for several reasons. First, the petition is an attack on the educational qualifications of the interested parties. As parties are required by law to qualify for consideration to be nominated, the returning officer receiving the papers will be required to address himself or herself on the issues raised by the petitioners. Secondly, if any objection is lodged with IEBC, it constitutes a nomination dispute which IEBC is empowered to resolve under **Article 88(4)(e)** of the Constitution. Thirdly, the issue of qualification can always be raised even after elections as it does with the qualification of candidates.

5. In the circumstances, we found no merit in the petition and consequently rejected the Chamber Summons dated 29<sup>th</sup> January 2013 as it is anchored on the petition.

**Dated and Delivered at Nairobi** this 5<sup>th</sup> February 2013

**D.S. MAJANJA**

**JUDGE**

**W. KORIR**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**