



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 27 of 2013

**MAURICE M LISHENGAEXPARTE
APPLICANT**

AND

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....1ST
RESPONDENT**

**THE SECRETARY GENERAL FORD KENYA.....2ND
RESPONDENT**

**THE RETURNING OFFICER LURAMBI CONSTITUENCY.....3RD
RESPONDENT**

**NEW FORD KENYA PARTY.....4TH
RESPONDENT**

AND

**MANYALA KEYAINTERESTED
PARTY**

JUDGMENT

1. The Notice of Motion dated 29th January 2013 was dismissed on 31st January 2013. We now proffer our reasons.
2. The application in the Notice of Motion dated 29th January 2013 seeks the following orders:
 - (1) *That this application be certified urgent and be heard expeditiously owing to its demonstrated and extreme urgency.*
 - (2) *That leave be granted to the Exparte Applicant to seek by way of Judicial Review, for an order of prohibition do issue, prohibiting the 1st respondent or any person acting under their behest from accepting, recognising, receiving, or validating the purported nomination certificate purportedly issued to MANYALA KEYA as the nominee for the Lurambi Constituency MP post under the New Ford Kenya political party.*

(3) *That leave be granted to the ex parte applicants to seek by way of Judicial Review, for an order of certiorari do issue, to remove to this honourable court and to quash the 2nd respondent's decision made to issue the Interested party Manyala Keya with a nomination certificate for the Lurambi Constituency MP and sought to be implemented by the 3rd respondent and officers of the 1st respondent, or any person acting under their behest from accepting, recognising, reviewing, or validating the nomination certificate purportedly issued to Manyala Keya as the nominee for the Lurambi Constituency MP Post under the New Ford Kenya Political Party.*

(4) *That leave be granted to the ex parte applicant to seek by way of judicial review, for an order of mandamus do issue, compelling the 1st respondent to accept, recognising, and receive a valid and bona fide the nomination certificate issued to Maurice M Lushenga as the nominee for the Lurambi Constituency MP post under the New Ford Kenya Political party for the March 4th 2013 general elections.*

(5) *That leave so granted to operate as a stay of the implementation of the decision of the 4th Respondent to accord the Lurambi Constituency MP post under the New Ford Kenya Political party for the March 4th 2013 general elections to any other person except the applicant MAURICE M LUCHENGA until the substantive Notice of Motion is heard and determined.*

(6) *That the costs of the application be to the applicant in any event.*

3. It is the applicant's case, that he lodged a complaint being **Case No. 207 of 2013** on the ground that he was issued with a direct nomination certificate to contest the Lurambi Constituency National Assembly Seat by the New Ford Kenya Party. Thereafter New Ford Kenya proceeded to issue one Manyala Keya a certificate without revoking the initial nomination.

4. The applicant avers that his complaint was not heard by the IEBC Tribunal thereby denying the applicant access to justice.

5. The IEBC contends that the complaint was never lodged before the tribunal hence no decision was made on the matter. Counsel for the IEBC noted that the last complaint dealt with No. 206 and the tribunal completed its seating on 26th January 2013.

6. We are satisfied that the applicant did not file a complaint before the Tribunal and the last matter on the record of proceeding was No. 206. We also note that the affidavit of the complainant purportedly filed is sworn on 27th January 2013 which was after the Tribunal had completed its hearings.

7. We therefore found no merit in the Motion before us.

Dated and Delivered at Nairobi this 5th February 2013

D.S. MAJANJA

JUDGE

W. KORIR

JUDGE

G. V. ODUNGA

JUDGE