



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 44 of 2013

NASSIR MOHAMED DOLALPETITIONER

AND

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

THE RETUNING OFFICER GARISSA TOWNSHIP CONSTITUENCY2ND
RESPONDENT

ORANGE DEMOCRATIC MOVEMENT (ODM).....3RD RESPONDENT

OMAR SHEIKH ALI4TH RESPONDENT

AND

HON HASSAN ALI JOHO1ST INTERESTED PARTY

HAZEL KATANA2ND INTERESTED PARTY

JUDGMENT

1. After hearing the petition on 31st January 2013, we made the following order, ***“The petition is allowed and the decision of IEBC dated 28th January 2013 in IEBC/NDRC/41/2013 be and is hereby set aside. The petition shall be at liberty to present nomination papers to the respective returning officer. There shall be no order as to costs.”*** We now proffer our decision.
2. The petition was issued with a direct nomination for the National Assembly seat for Garissa Township Constituency by the Orange Democratic Movement. The 4th respondent then filed a complaint with the IEBC alleging that no primaries were held and that he was not qualified to contest the position by virtue of being a citizen of the United States.
3. After hearing the matter, the Committee concluded that revoked nomination certificate on the round that the petitioner was a dual citizen.
4. Although, the IEBC was entitled to deal with the dispute before it, we are of the view that the issue of citizenship being a fundamental right under the Constitution could not be determined in the manner and on the basis of inclusion evidence.

5. Since the issue of citizenship goes to qualification of a candidate, it may be raised at the petition stage and in the light of the specific provisions of the Citizenship and Immigration Act, we set aside the decision of the IEBC.

Dated and Delivered at Nairobi this 5th February 2013

D.S. MAJANJA

JUDGE

W. KORIR

JUDGE

G. V. ODUNGA

JUDGE