



**REPUBLIC OF KENYA**

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

**Petition 45 of 2013**

**PETER EDICK OMONDI ANYANGO .....PETITIONER**

**AND**

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

**JUDGMENT**

1. On 31<sup>st</sup> January 2013, we dismissed the petition with no orders as to costs.
2. By a petition dated 30<sup>th</sup> January 2013, the petitioner seeks the following orders;
  - (a) *That a declaration be issued to declare that the Hon Omondi Anyanga is the duly nominated candidate of the Orange Democratic Movement (ODM) for Nyatike Constituency in Migori County.*
  - (b) *That an order of permanent injunction be issued to restrain the respondent its Constituency Electoral Coordinator Nyatike Constituency/Returning Officer, its officials, employees and agents from receiving nomination certificate for Tom Mboya Odege or any other person purporting to have a Nomination Certificate issued by the Orange Democratic Movement (ODM) party.*
  - (c) *That an order of permanent injunction be issued to restrain the respondent its Constituency Electoral Coordinator Nyatike Constituency/Returning Officer, its officials, employees and agents to conduct nomination for Nyatike Constituency in accordance with the list of candidates forwarded to its chairman to the Orange Democratic Movement officials vide a letter dated 21<sup>st</sup> January 2013 showing inter alia, that the petitioner Hon Peter Edick Omondi Anyanga is the duly nominated candidate for Nyatike Constituency.*
  - (d) *That the costs of this petition be borne by the respondents.*
3. The petitioner contends that he is the holder of a nomination certificate from ODM entitling him to contest the Nyatike Constituency National Assembly seat. However the list submitted by ODM contained another name besides that of the petitioner. He therefore avers that his right to contest cannot be taken away arbitrarily.
4. The ODM party concedes that the petitioner is the party's nominees and that the list submitted by the party on 21<sup>st</sup> January 2013 contained errors that the IEBC has refused to allow correction.
5. We dismissed the petition because Mr Tom Mboya Ndege, the party who is alleged to be on the

list was not joined to these proceedings nor served with court process. As he was on the list, he has acquired a right that cannot be taken away arbitrarily. In the circumstances it was not necessary to determine whether the list presented to the IEBC by the party can be amended.

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

**D.S. MAJANJA**

**JUDGE**

**W. KORIR**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**