



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Application 39 of 2013

STEVE MUTUKU MUTUAAPPLICANT

AND

JAMES MUTISO MUTUA.....1ST RESPONDENT

THE NATIONAL ALLIANCE.....2ND RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....3RD RESPONDENT

JUDGMENT

1. On 1st February 2013, we dismissed the Notice of Motion filed on 1st February 2013 with no order as to costs. We now proffer our reasons for the decision.

2. The applicant who was a candidate for the position for the Member of the National Assembly for the Yatta Constituency TNA ticket seeks the following orders;

(a) *That this honourable Court be pleased to certify the application herein as of utmost urgency and the same be heard on priority basis.*

(b) *That this Honourable Court be pleased to stay and or nullify the ruling delivered by the 3rd respondent in favour of the 1st and 2nd respondent on the 28th January 2013 until the hearing and determination of this application.*

(c) *That the 3rd respondent, its agents and or servants be restrained by way of injunction from accepting the nomination papers issued by the 2nd respondent from the 1st respondent until the final determination of this application.*

(d) *That the nomination of the 1st respondent by the 2nd respondent and subsequent certificate of nomination issued to the 1st respondent be cancelled and or nullified and be issued to the complainant in respect to Yatta Constituency so that the wish of the Yatta electorate will be upheld.*

(e) *That in the alternative the 2nd respondent be ordered to compensate the complainant both*

special and general damages by him and his supporters to be assessed by this Honourable Court.

(f) *That the respondents be committed to meet the costs of the application.*

3. The gravamen of his complaint is that the party primary held on 17th and 18th January 2013 was marred by irregularities and fraud and the 1st respondent was controversially announced winner whereupon he was issued with the party certificate.

4. The applicant complained before the IEBC Tribunal. His complaint is that he could not call all his evidence. The Tribunal heard the case and dismissed it on the ground that there was insufficient evidence. The applicant wishes this Court to rehear the case and reconsider the evidence.

5. We concluded that the applicant's case is in the nature of an appeal. We have not detected any error in the Tribunal proceedings entitling us to interfere and we are satisfied that the applicant was given sufficient opportunity to present his case. In the circumstances, we dismissed the application.

Dated and Delivered at Nairobi this 5th February 2013

D.S. MAJANJA

JUDGE

W. KORIR

JUDGE

G. V. ODUNGA

JUDGE