



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**PETITION NO 318 OF 2013**

**ALICE CHEPKIRUI KERING**

.....PETITIONER

**VERSUS**

**THE INDEPENDENT ELECTORAL &**

**BOUNDARIES COMMISSION .....RESPONDENT**

**JUDGMENT**

1. The Petitioner, Alice Chepkirui Kering, is aggrieved by the decision of the respondent to uphold the ODM list of nominees to Nakuru County Assembly. She claims that the list of nominees does not conform to the list submitted to the IEBC by the party; that she was left out while she was number one on the gender top up list; that she was replaced by one Tabitha Gakii as the gender top up nominee for the County; and that her complaint to the respondent, No. IEBC/DRC/PL/20/2013 was dismissed.
2. The position taken by the respondent is that its decision to dismiss the petitioner's complaint was in order. It had received the Party List for ODM in respect of Nakuru County on 30<sup>th</sup> January 2013. The nominee whose removal the petitioner seeks, Tabitha Gakii, was the second on the list, while the first was a man. It therefore nominated her as the ODM gender top up nominee for Nakuru County.

**Determination**

3. The court has noted from the party list for ODM annexed to the affidavit of Moses Kipkogei that the nominee, Tabitha Gakii, was indeed number two on the ODM list. Consequently, there is no basis for faulting the decision of the IEBC with regard to its decision in IEBC/DRC/PL/20/2013.
4. More importantly, however, is that the nominee, Tabitha Gakii, has not been joined as a party to these proceedings. Any adverse decision that would be made against her would be made without her being heard, a breach of her right to a hearing.
5. In the circumstances, this petition must fail and is dismissed with no order as to costs.

**Dated, Delivered and Signed at Nairobi this 12<sup>th</sup> day of July 2013**

**MUMBI NGUGI**

**D. S. MAJANJA**

**WELDON KORIR**

**JUDGE**

**JUDGE**

**JUDGE**