



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 321 OF 2013

BETWEEN

ANTHONY SALAU 1ST PETITIONER

YVONNE TONKEI 2ND PETITIONER

AND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

ELIZABETH SOPIATO 2ND RESPONDENT

RHODA SEPELON 3RD RESPONDENT

JUDGMENT

1. The petitioners describe themselves as members of the United Republican Party (“URP”) and leaders of Kajiado County. Their complaint is as set out in the petition dated 21st June 2013. According to the petitioners, the party lists were tampered with by one Stephen Santamo Moiko, a URP Election Board Member, who caused to be nominated the 2nd and 3rd respondents who are his wife and sister respectively. They also aver that some of the people on the list are not members of the URP. The petition is also supported by the URP party through a supplementary affidavit sworn on its behalf by Capser Sitemba, its acting Executive Director, dated 25th June 2013.
2. The 2nd and 3rd respondents opposed the petition through their replying affidavits of 4th July 2013. They deny the claims that they are not duly registered members of the URP party and have annexed membership certificates from the party and letters from the Registrar of Political Parties confirming them as members of URP. They claim the petition is baseless. They also depone that none of the petitioners applied for nominations from the party.
3. We observe that the petitioners did not first file their complaints before the IEBC Disputes Resolution Committee (“the Committee”) but chose to approach this court to challenge decisions

of the Committee in respect of the complaints filed before it with regard to the particular nominations. They have relied on the complaint of Elizabeth Seney; **Complaint No. 250/2013 (Elizabeth Seney & Another v TNA)**. The Committee in that matter dismissed the petitioners' complaint as it found no evidence that the nominee Elizabeth Sopiato Santamo was 36 years as alleged hence not a youth. We also note that there were other similar cases challenging the nomination of the said Elizabeth Sopiato being **Complaint No. 93 of 2013 (Sospeter Juma Makokha v TNA)** and **No. 75 of 2013 (Stanley Nohabo Kepas v URP)**. In the former complaint, the Committee upheld its decision in **Complaint No. 431 of 2013** where it stated "*On the issue of the list containing sisters and in-laws, the Committee finds that neither the Constitution nor the Elections Act prohibits relatives from being nominated in the same County Assembly. Hence this is not a ground for the nullification of the list.... On the allegation that Elizabeth Sopiato is not a youth being 36 years, the same was not sufficiently proved and he who alleges must prove.*"

4. In **Complaint No. 75 of 2013**, the complainant, describing himself as the Chairman of URP party in Kajiado County, sought the removal of the 2nd respondent herein from the URP list on the grounds that she was neither a youth nor a URP member. The Committee however found that, "*The Complainant has raised issues relating to the process of preparing the Party List by the political parties. The Committee does not have jurisdiction over these issues, and refrains from hearing or making a determination on these matters.*"
5. Various complaints have been raised about the conduct of certain party members. These members are not parties to the present petition. We therefore decline to comment or make any findings as these parties, who would be directly affected by the decision, are not joined in these proceedings. Furthermore, we note that the persons who actually lodged complaints before the Committee are not the petitioners in this matter challenging the Committee's decision.
4. We also note that the complaints before us relating to alleged party fraud or tampering with lists are internal party complaints and as we have stated these are matters to be resolved within the party mechanism or by the Political Parties Tribunal established under **Section 39** of the **Political Parties Act**.
5. Consequently, the petition is dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 12th July 2013.

MUMBI NGUGI

D.S. MAJANJA

W. K. KORIR

JUDGE

JUDGE

JUDGE