

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 301 OF 2013

BETWEEN

CHEPOKUGHO LOKARKILIM PETITIONER

AND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

ELIZ CHELAKAM LOTAM 2ND RESPONDENT

JOHN LOKATO TODOPUS 3RD RESPONDENT

JUDGMENT

1. The petitioner's case contained in the petition dated 14th June 2013 is that the Orange Democratic Movement ("ODM") submitted the party list for West Pokot County Assembly to the IEBC on 30th January 2013 in which the petitioner was number one on the gender top-up category list. It is the petitioner's case that the 3rd respondent sneaked in the name of the 2nd respondent in the list submitted to ODM. That the 3rd respondent maliciously submitted his name for consideration under the marginalised list for ODM West Pokot County whereas he does not fall in the special category.
2. As the initial list submitted did not comply with the law, the IEBC called for another list which was received by the 1st respondent on 2nd March 2013 and in which the 2nd respondent appeared as number one and petitioner number three.
3. The IEBC Dispute Resolution Committee ("the Committee") heard and dismissed **Complaint No. 69 of 2013**. In its decision the Committee ruled that, "*The Tribunal finds no merit in the complaint. The allegations are bare allegations without proof. The onus is on the complaint to prove its case. Neither the allegation that the nominee challenged had defected to URP nor that the complainant was number 1 on the list and replaced arising from nepotism was proved. The complaint is dismissed.*"
4. We have considered the deposition and submissions. In our view, we decline to interfere with the Committee's decision as the matters really concern the constitution of the list by the party. The matter of who gets on the list is a matter for the party and since the IEBC acted on the list submitted to it by ODM after it called for a fresh list. We are unable to discern any error in decision taken by the Committee.
5. 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