



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 316 OF 2013

CHRISTINE MASIYOI LEMEIN.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....RESPONDENT

JUDGEMENT

1. The Petitioner, Christine Masiyoi Lemein, is aggrieved by the decision delivered on 7th June, 2013 by the Disputes Resolution Committee (the Committee) in **COMPLAINT NO. IEBC/NDRC/PL/73/2013-CHRISTINE MASIYOI LEMEIN V ODM**. The Committee was constituted by the Respondent, the Independent Electoral and Boundaries Commission (IEBC), to hear disputes arising from nominations by political parties to the county assemblies in respect to the seats envisaged by Article 177 (1) (b) and (c) of the Constitution.
2. The Committee dismissed the Petitioner's complaint on the ground that the priority rule provided by Article 90(2) of the Constitution had been complied with.
3. The Petitioner claims that the priority rule was not followed as those who were not on the original list agreed upon by members of the ODM party in Narok County were given priority over her. She also claims that the Committee relied on the list published on its website without taking into consideration her complaints or giving valid reasons.
4. The Respondent opposed the petition through a replying affidavit sworn on 4th July, 2013 by its Legal Officer, Mr. Moses Kipkoge. It is the Respondent's case that it relied on the original list submitted on 30th January, 2013 by ODM and gave the two slots allocated to the party in the gender top up category to Lucy Nesiamon Ololugojine and Lucia Teeka who were number one and two on the list.
5. Lucia Teeka though not named as a party appeared before us and supported the position of the Respondent.
6. We have considered the submissions made before us and we find that:-
 - a. The issue as to whether a person is entitled to be on the list presented by the party to the Respondent is an internal party matter and any dispute in respect of that list is to be resolved using the party mechanism for solving disputes, failing which the Political Parties Tribunal established under the Political Parties Act, 2011 can be involved.
 - b. ODM was entitled to two slots and the slots were allocated on priority basis. The Petitioner could

not have been nominated by the Respondent as her name was not in the original party list submitted by the party to the Respondent on 30th January, 2013 as required by Section 35 of the Elections Act, 2011.

- c. The Petitioner did not name the beneficiaries of the nominations (Lucy Nesiamon Ololugojine and Lucia Teeka) in her petition. They have therefore not been heard and we cannot issue orders against them.
7. In light of our findings, we find no fault with the Respondent's decision and we dismiss this petition with no order as to costs.

Dated, signed and delivered at Nairobi this 12th day of July, 2013

MUMBI NGUGI,

JUDGE

D. S. MAJANJA,

JUDGE

W. K. KORIR,

JUDGE