



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION
PETITION NO 149 OF 2013

DANIEL KIBET CHUMO1ST APPLICANT/PETITIONER

DAVID KIPKOSKEI A.S. 2ND APPLICANT/PETITIONER

(SUING ON BEHALF OF THE OGIEKO COMMUNITY WITHIN NAKURU COUNTY)

VERSUS

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION RESPONDENT

UNITED REPUBLICAN PARTY 1ST INTERESTED PARTY

PATRICIA CHEROTICH SAWE2ND INTERESTED PARTY

ABDI IBRAHIM 3RD INTERESTED PARTY

JUDGMENT

1. Patricia Cherotich Sawe, who appeared in this matter as an Interested Party, had lodged complaint No IEBC/DR/PL/263/2013 before the 1st respondent's Nominations Disputes Resolution Committee. Her complaint before the IEBC was that she had applied to the United Republican Party (URP) for nomination to the marginalised slot in the Uasin Gishu County Assembly, but her name had not been included in the list for nomination. She sought to have the nominee for the gender top up list for URP, one Rose Kisima, removed.
2. Ms. Sawe contended that she was from the Keiyo ethnic community and was aggrieved by the injustice done to members of the community as no one from the community had been nominated to the Uasin Gishu County Assembly.
3. When the IEBC heard the Interested Party's complaint, it dismissed it, noting that even if the said Rose Kisima was removed, the seat for the gender top-up nominee would go to the next person on the list, not to the complainant who was not on the list.
4. In her affidavit sworn on 4th July 2013, Ms Sawe states that she is a paid up member of URP and

that she applied for nomination as a county representative. She reiterates her complaint made earlier to the IEBC with regard to one Rose Kisima, and she also complains that the list forwarded by URP does not reflect the ethnic diversity of Uasin Gishu County.

5. She further contends that older members of society were left out in the elections and nominations to the Uasin Gichu County Assembly as only youth were elected or nominated.
6. The petitioners and the 1st Interested Party in this matter did not appear at the hearing and no submissions were filed on their behalf.

Determination

7. We have considered the matters raised before us by the 2nd Interested Party in this matter. We have also considered the impugned decision of the IEBC made on 7th June 2013. While we sympathise with the Interested Party's sense of grievance, we can find no basis for the complaint against the decision of the respondent made on 7th June 2013.
8. The submission of a list for nominees to County Assemblies is vested in political parties, which have an obligation to ensure diversity in the nominations.
9. As the IEBC found in its decision of 7th June 2013, the petitioner had sought nomination to the marginalized slot in Uasin Gishu County Assembly, but was not placed on the party list by her party. URP. The failure to reflect ethnic or other diversity in the list was a party issue which cannot be laid at the feet of the respondent.
10. This petition and the Interested Party's claim therein is therefore dismissed with no order as to costs.

Dated, Delivered and Signed at Nairobi this 12th day of July 2013

MUMBI NGUGI

D.S. MAJANJA

WELDON KORIR

JUDGE

JUDGE

JUDGE