

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION 238 OF 2013

BETWEEN

ESTHER NJOGU 1ST PETITIONER

HELLEN WAMBUI ANNAN 2ND PETITIONER

DAVID NDUNGU NDEGWA 3RD PETITIONER

AND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

THE NATIONAL ALLIANCE PARTY 2ND RESPONDENT

JUDGMENT

1. The petitioner's case contained in the petition dated 8th May 2013 challenges the National Alliance Party list for Nyandarua County Assembly on the ground that it is unconstitutional and that it purports to exclude and discriminate against Ndaragua, Olkalou and Ol'jororok Constituencies of Nyandarua County as opposed to Kipipiri and Kinangop Constituencies. The petitioner seeks consequential orders to annul the list and that TNA be ordered to adhere to a list of nominees confirmed by TNA on 16th March 2013.
2. Esther Njogu filed a complaint before the IEBC Dispute Resolution Committee ("the Committee") with eight other complaints. They alleged that seats were not properly distributed equitably among the constituencies that comprise Nyandarua County. They also impugned the qualifications of some of the nominees. Some of them were aggrieved by the fact that they had applied to be considered for the list and were not listed. In its decision arising from **Complaints No. 223/2013** and **322/2013**, the Committee dismissed the complaints in the following terms, "***The decision as to who gets on to the political party lists rests entirely with the political party and its members and it is not a function of the IEBC. By authority of National Gender and Equality Commission v The IEBC and Others, the IEBC does not have jurisdiction over resolution of disputes related to the processes of political parties in preparing their party lists for nominations to Parliament and the County Assembly. That jurisdiction is vested in the Political Parties Disputes Tribunal.***"
3. We agree with the respondents that how the slots were to be distributed was a party mater. Further, whether the party list reflects proportional distribution of available nomination slots among constituencies forming Nyandarua County is not decisive evidence of lack of diversity

within the county absent evidence to the contrary.

4. No error has been disclosed to impugn the Committee's decision 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