



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION NO. 327 OF 2013**

**FIDELIA J KIPTOO.....PETITIONER**

**VERSUS**

**THE INDEPENDENT ELECTORAL**

**AND BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**THE ORANGE DEMOCRATIC MOVEMENT.....INTERESTED PARTY**

**JUDGEMENT**

1. The Petitioner, Fidelia J Kiptoo, was the complainant before the Disputes Resolution Tribunal (the Committee) in **COMPLAINT NO. IEBC/NDRC/PL/171/2013- FIDELIA KIPTOO v ODM**. The Committee was created by the Independent Electoral and Boundaries Commission (IEBC), the 1<sup>st</sup> Respondent, to hear disputes arising out of nominations made by political parties in respect of the seats envisaged by Article 177(1)(b) and (c) of the Constitution. The Petitioner's complaint was in respect of nominations made by the Interested Party to the Makeni County Assembly.
2. The Committee held that the dispute was an internal party affair and there was no evidence adduced to show that the party had not followed due process.
3. The Petitioner being aggrieved by the decision of the 1<sup>st</sup> Respondent filed this petition seeking various declarations. It is the Petitioner's case that she was number one in the Gender Top Up category in the list submitted to the 1<sup>st</sup> Respondent on 19<sup>th</sup> January, 2013 by her party, the Orange Democratic Movement (ODM), the Interested Party. She argues that in the list published, a nominee by the name Peninah Wayua Musyoka who was in the marginalized category was shifted to replace her. It is the Petitioner's case that the action of the 1<sup>st</sup> Respondent was unconstitutional.
4. The 1<sup>st</sup> Respondent opposed the application through the replying affidavit sworn on 4<sup>th</sup> July, 2013 by its legal officer, Moses Kipkogei. It is the 1<sup>st</sup> Respondent's case that the name of Peninah Wanyua Musyoka was in the Gender Top Up category of the list submitted by ODM on 30<sup>th</sup> January, 2013 and the petition therefore lacks merit.
5. We have considered the submissions of the parties herein and find that:-
  - a. The 1<sup>st</sup> Respondent acted on the party list submitted to it by the Interested Party. Any dispute concerning that list ought to have been addressed using the internal party mechanism for resolving disputes, failure to which the matter should have been placed before the Political Parties Disputes

Tribunal created by the Political Parties Act.

- b. The 1<sup>st</sup> Respondent considered the issues placed before it before dismissing the Petitioner's complaint.
  - c. The Petitioner has not enjoined Peninah Wayua Musyoka who would be affected by any adverse decision in this matter.
6. For the foregoing reasons, we dismiss this petition with no order as to costs.

Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of July, 2013

<b>MUMBI NGUGI,</b>	<b>D. S. MAJANJA,</b>	<b>W. K. KORIR,</b>
<b>JUDGE</b>	<b>JUDGE</b>	<b>JUDGE</b>