



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 313 OF 2013

HILDABEDA KHAYELE LUKULU..... 1ST PETITIONER

THADAYO MASIBO WADOYA2ND PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....RESPONDENT

JUDGMENT

1. The Respondent, the Independent Electoral and Boundaries Commission, set up a Committee known as the Disputes Resolution Committee (the Committee) to deal with disputes arising from nominations made by political parties to county assemblies in respect of the seats contemplated by Article 177(1) (b) and (c) of the Constitution. Hildabeda Khayeale Lukulu, the 1st Petitioner, and Thadayo Masibo Wadoya, the 2nd Petitioner, were dissatisfied with their party's nominations, to Bungoma County Assembly, in respect of the said seats. They filed complaints before the Respondent's Committee. The 1st Petitioner filed Complaint No. **IEBC/NDRC/ PL/234/2013- HILDABEDA LIKULU v ODM** and the 2nd Petitioner's Complaint was No. **IEBC/NDRC/ PL/107/2013- THADAYO WADOYA v ODM**. The Committee answered the 1st Petitioner thus: **"Benedetta Harsa is hereby removed from the ODM gender-top up list as both party and various complainants have adduced sufficient evidence to prove that she is not known to the parties. She is replaced by Ruth Mwenya who was following her in the gender top-up list in the ODM Bungoma original list submitted by the party."** The 2nd Petitioner, had alleged before the Committee that a nominee by the name Sammy Chemweji was not a youth nor disabled and hailed from a different county and was thus not eligible to be nominated by the party. The Committee dismissed the matter on the ground that the 2nd Petitioner had not adduced sufficient evidence to prove his allegations.
2. Before us, the petitioners through the Petition dated 19th June, 2013 seek, among other prayers the following orders:-
 - i. **That a declaration do issue that the Respondent's list of nominees to the Bungoma County**

Assembly as published in its website violated Articles 10, 90 and 177 of the Constitution; and
ii. **That a mandatory injunction do issue compelling the Respondent to adhere to the original list of nominees of members of the Bungoma County Assembly as confirmed by the Orange Democratic Movement (ODM) on 25th March, 2013.**

3. The Respondent opposed the Petition through an affidavit sworn on 4th July, 2013 by its Legal Officer, Mr. Moses Kipkogei. On the issues raised by the 1st Petitioner, the Respondent's reply is that it relied on the list submitted to it by ODM and in that list Ruth Mwenya had priority on the gender top up list as opposed to the Petitioner. As to the 2nd Petitioner's case, the Respondent averred that the 2nd Petitioner did not adduce any evidence to support his claim that Sammy Chemwenji was not eligible for nomination.

4. We have considered the material placed before us and find that:

(a) The composition of party lists and the ranking of the party members in such lists is an internal matter for the party. Once a list is submitted to the Respondent, the same can only be rejected for failing to comply with the Constitution and/or statute. There is no evidence that the Respondent did not act in accordance with the list submitted to it by ODM.

(b) If the declarations sought by the petitioners are granted, they will adversely affect persons who have not been made parties to this petition.

5. For the reasons aforesaid, we find that this petition has no merit. It is dismissed with no order as to costs.

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

MUMBI NGUGI,

D. S. MAJANJA,

W. K. KORIR,

JUDGE

JUDGE

JUDGE