



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO 306 OF 2013

IBRAHIM MOHAMED OMAR1ST PETITIONER
HON. IBRAHIM ABDI SANEY2ND PETITIONER
HON. IBRAHIM ELMI3RD PETITIONER
HON. ADAN KEYNAN..... 4TH PETITIONER
HON FATUMA IBRAHIM..... 5TH PETITIONER

VERSUS

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION

DISPUTE RESOLUTION COMMITTEE.....1ST RESPONDENT
FATUMA MOHAMMED DAHIYE.....2ND RESPONDENT
SAADIA ALIM MOHAMED.....3RD RESPONDENT
SECRETARY GENERAL, ORANGE
DEMOCRATIC MOVEMENT PARTY.....4TH RESPONDENT
SPEAKER OF THE COUNTY ASSEMBLY OF WAJIR COUNTY..... 5TH RESPONDENT

JUDGMENT

1. This matter relates to complaint No IEBC/DRC/PL/313/2013 which had been lodged by the petitioners before the 1st respondent with regard to the ODM nominees for Wajir County. The basis of the petitioner’s complaint is that the nomination by the 1st respondent of the 2nd, 3rd and 4th respondents did not reflect the list agreed upon by the leaders from Wajir County, and that the three nominees are not members of the Orange Democratic Movement (ODM).
2. The issue that was before the 1st respondent and which was the subject of its decision of 7th June

2013 impugned in this proceedings was whether the ODM party list complied with the law. In the said decision, the 1st respondent found that no evidence had been presented to show that the list did not comply with the law, and it dismissed the complaint, holding that the list did comply with the law.

3. In presenting the case for the petitioners before us, Ms Kilonzo submitted that the list did not comply with the list agreed upon by the leaders in Wajir; that the proper list of nominees was the one contained in a letter dated 29th April 2013 which had been forwarded to the party and that the list that the party forwarded to the IEBC was not the list that had been agreed upon by the leaders in Wajir.
4. The petitioners therefore seek, inter alia, a declaration that the list submitted to the IEBC, which included the names of the 2nd, 3rd and 4th respondents, was not the list agreed upon by the leaders of Wajir; a declaration that the list negotiated and agreed upon by the leaders of Wajir County and presented to ODM is the correct list that ought to be used for nominations to Wajir County; an order of Certiorari to quash the IEBC decision of 7th June 2013; and an order of Mandamus directing it to elect members for the gender top-up nomination from the list presented by the leaders of Wajir County.
5. The position taken by the 1st respondent is that it had found no evidence that the list submitted by ODM did not comply with the law; that the responsibility for submitting lists in accordance with Article 90(2) of the Constitution lay on the political party, not on party branches; and that the party branches were not legal entities capable of submitting lists as required by the Constitution and section 34 and 35 of the Elections Act.
6. Ms Ibrahim for the 2nd – 4th respondents submitted that the party list was submitted to IEBC on 29th January 2013 in accordance with the law and that the petitioners, who are elected Members of Parliament, were seeking to introduce new parties after the elections to the party list.

Determination

7. We have considered the respective pleadings and submissions of the parties in this matter. The mandate to submit party lists for nomination to County Assemblies is vested by the Constitution at Article 90(2) and the Elections Act at section 34 on political parties. Such lists are required to be submitted before the elections in accordance with the provisions of Section 35 of the Elections Act. Only when the lists are exhausted is the 1st respondent empowered by Section 37(2) to call formally for another list within a stipulated period.
8. On the evidence before us, it is apparent that the 1st respondent took the matters that it is required by law to take into consideration into account in nominating the members of the Wajir County Assembly and arrived at the conclusion that the party list submitted by ODM was in accordance with the law. Such failure as there was on the part of the ODM party to submit the list agreed upon by leaders in Wajir County is an internal party matter which neither the 1st respondent nor this court has jurisdiction to enter into.
9. Consequently, this petition must fail. It is hereby 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