



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

**PETITION NO. 310 OF 2013**

JOHN NGURE GATHUGU.....1<sup>ST</sup> PETITIONER  
JAMES WAWERU GACHIBIRI .....2<sup>ND</sup> PETITIONER  
JOSEPHINE WANJIKU KAMAKU .....3<sup>RD</sup> PETITIONER  
BETH WAMBUI KARIMI .....4<sup>TH</sup> PETITIONER  
LOISE WAIRIMU NDEGE .....5<sup>TH</sup> PETITIONER  
ANN PRISCILLA WANGECHI MURAGE .....6<sup>TH</sup> PETITIONER  
MARGARET WAMBUI NGURE .....7<sup>TH</sup> PETITIONER  
JECINTA WANJIKU GICHIRU .....8<sup>TH</sup> PETITIONER  
LUCY WANGARI KIBERA .....9<sup>TH</sup> PETITIONER  
JANE WANGITHI MUTHEE .....10<sup>TH</sup> PETITIONER

**VERSUS**

**THE INDEPENDENT ELECTORAL**

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

**THE NATIONAL ALLIANCE PARTY .....INTERESTED PARTY**

**JUDGMENT**

1. In the petition dated 19<sup>th</sup> June, 2013 the ten petitioners before us seek, inter alia, the following orders:-
  - a. **A Declaration that the Respondent has not complied with Article 90 of the Constitution of Kenya 2010, Sections 34(4), 36(a) and (f) of the Elections Act, 2011 and Section 7(2) of the County Government Act in determining the final nomination list as per the ruling of 7<sup>th</sup>**

**June, 2013.**

- b. A Declaration that the Petitioners are the validly proposed and nominated by the Interested Party as members of Kirinyaga County Assembly.**
  - c. A permanent injunction be issued to restrain the Respondent from publishing the names of the final list or as per its ruling of 7<sup>th</sup> June, 2013 in the Kenya Gazette or any other publication.**
  - d. A mandatory injunction be issued compelling the Respondent to accept and gazette the names of the petitioners as the nominees to the Kirinyaga County Assembly.**
2. The 1<sup>st</sup> Petitioner was the applicant in **COMPLAINT NO. IEBC/NDRC/ PL/13/2013-JOHN NGURE GATHUNGU V TNA** before the Disputes Resolution Committee (the Committee) created by the Respondent, the Independent Electoral and Boundaries Commission, to hear disputes arising out of nominations made by political parties to the county assemblies in respect of the seats contemplated by Article 177 (1) (b) and (c) of the Constitution. This dispute was in respect of the TNA Party list for Kirinyaga County Assembly. After hearing the dispute, the Committee in a ruling delivered on 7<sup>th</sup> June, 2013 dismissed the Petitioner's complaint.
  3. From the papers filed in court, the issue before the Committee was whether the list submitted to the Respondent by the Interested Party, the National Alliance Party (TNA), was the same with the list in the Respondent's custody. It was also argued that the list with the Respondent was not the list the Interested Party intended to submit. The Committee found that there was no evidence adduced to show that the list submitted to it was not the one intended to be submitted by the party.
  4. The petitioners now want us to make the already reproduced declarations on the ground that the Respondent's ruling breached the Constitution and the Elections Act, 2011.
  5. The Respondent opposed the petition through an affidavit sworn by its Legal Officer Mr. Moses Kipkogei on 4<sup>th</sup> July, 2013. The Interested Party opposed the application by way of a statement of grounds of opposition dated 4<sup>th</sup> July, 2013. The Respondent's case is that there was no evidence placed before it to show that the list submitted to it by the Interested Party was the wrong list. The Interested Party argued that this is a dispute between a member of a political party and a political party and the same ought to have been heard by the Political Parties Disputes Tribunal created under the Political Parties Act, 2011.
  6. We have considered the arguments herein and find that :-
    - a. The dispute that was placed before the Respondent was a dispute between the Interested Party and its member (the 1<sup>st</sup> Petitioner) and the same ought to have been resolved using the internal party mechanism for solving disputes, failing which the same ought to have been dealt with by the Political Parties Disputes Tribunal.
    - b. The composition of a party list and the ranking therein is a matter for the party to deal with and the Respondent's role is limited to ensuring that the same complies with the Constitution and the law.
    - c. There is nothing before us to make us fault the finding of the Respondent that the list before it did not originate from the Interested Party or that it was not the correct list.
  7. For the reasons aforesaid, we find that this petition lacks merit and we dismiss it with no order as to costs.

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

**MUMBI NGUGI,**

**D. S. MAJANJA,**

**W. K. KORIR,**

**JUDGE**

**JUDGE**

**JUDGE**