



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT NAIROBI
PETITION NO 323 OF 2013

JOHN NJOROGE.....1ST PETITIONER

MAINA WAWERU2ND PETITIONER

VERSE

THE INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION1ST RESPONDENT

THE NATIONAL ALLIANCE PARTY (TNA)2ND RESPONDENT

JUDGMENT

1. The petitioners, who had filed complaints nos. IEBC/DRC/ PL/430 and 119 of 2013, are aggrieved by the decision of the respondent dismissing the complaints. In the application dated 1st July 2013, the petitioners contend that the respondent failed to supervise the Interested Party, The National Alliance, in its nomination of persons for the gender top –up seats for Nairobi County; that the TNA’s constitution provides at Rule 67 the manner of nomination, which was not followed in this case; that even though this was pointed out to the respondent, it maintained the list of the 2nd – 5th Interested parties who were on the list submitted by TNA.
2. The position of the 1st respondent is that the petitioners’ complaints before it raised omnibus matters, all related to the 1st Interested Party’s internal party issues. It submitted that it could not enter into those issues, and that it is not clear what relief the petitioners are seeking in this matter.
3. The 2nd respondent supported the position taken by the 1st respondent and contended that the application seeks to open up party lists and is basically a political party dispute that falls for determination under section 40 of the Political Parties Act by the Political Parties Tribunal.

Determination

4. In the application dated 1st July 2013, the applicants seek orders of prohibition to stop the 1st respondent from gazetting the TNA nominees for Nairobi County as the list was made arbitrarily; an order of Mandamus to compel the respondent from gazetting and publishing the TNA party list with the names of the nominees who were not duly vetted and chosen as nominees by the applicants; and that the said orders operate as a stay.
5. As we understand it, the applicants, who are officials of the TNA, are aggrieved that their party

did not take on board the recommendations of the County Nomination Advisory Board, Nairobi County, with regard to who should be nominated to the County Assembly. They are aggrieved by what they perceive as the failure by the 1st respondent to supervise the compilation of the TNA party list.

6. From the detailed decision of the IEBC dated 7th June 2013, the complaint by the applicants in this matter was IEBC/NDRC/PL/115/2013. The issue placed before the respondent was that TNA did not follow its nomination rules and procedures, and that the list submitted by the Party to IEBC was not the one forwarded to the IEBC by TNA Nairobi County.
7. In its decision dismissing the complaint, the 1st respondent stated that it relied on the list submitted by the party.
8. After considering the matters raised by the parties to this matter and reading the decision of the 1st respondent impugned in this petition, we are unable to find any fault with this decision of the 1st respondent. Its obligation under the Constitution and the Elections Act was to nominate those to take up the special interest seats or the gender top up seats on the basis of party lists submitted by parties, not by branches of parties. This dispute, as correctly argued by the respondents, pertains to internal TNA matters, which neither the 1st respondent nor the court can enter into.
9. The petition is therefore 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