



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

PETITION NO. 326 OF 2013

MARCELLA KERUBO ONTIRI.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....1ST RESPONDENT

THE NATIONAL ALLIANCE.....2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

JUDGMENT

1. The petitioner, Marcella Kerubo Ontiri, was the complainant before the Disputes Resolution Committee (the Committee) in complaint No. **IEBC/NDRC/PL/21/2013- MERCELA KERUBO ONTIRI v TNA consolidated with IEBC/NDRC/PL/22/2013 ALEX OMONDI NYAIRO v TNA**. Acting on the powers donated to it by Article 88 (4) (e) of the Constitution the 1st Respondent, Independent Electoral and Boundaries Commission (IEBC), had established the Committee to hear disputes arising out of nominations to the county assemblies 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 relation to the party list for the 2nd Respondent, the National Alliance Party (TNA) in respect of Nakuru County Assembly.
2. The Committee dismissed the Petitioner's complaint on the ground that there is no provision in the law prohibiting a political party from nominating an individual who was a candidate in the party primaries as long as the nominee did not contest on another party. The 1st Respondent also observed that the Petitioner's name was not on the list submitted to it by the 2nd Respondent.
3. It is the Petitioner's case that she was in the Gender Top Up category of the original TNA list submitted to the 1st Respondent on 23rd January, 2013. When the 1st Respondent published the list of the nominees on 21st May, 2013 she realized that one Joseph Mangari had been allocated the County Assembly seat for the Marginalized Group. She also argued that two other nominees had contested in the party primaries and were thus not qualified to be nominated. The Petitioner further contended that another nominee belonged to the GNU Party but had been nominated to take up the 2nd Respondent's slot.
4. The 1st Respondent opposed the petition through a replying affidavit sworn on 4th July, 2013 by

- its Legal Officer, Mr. Moses Kipkogei. It is the 1st Respondent's case that the name of the petitioner was never submitted to it by the 2nd Respondent and all the slots were correctly filled by the people deserving those seats.
5. The 2nd Respondent opposed the petition by way of a statement of grounds of opposition dated 4th July, 2013. It is the 2nd Respondent's case that what is before this court is a dispute between a member and her party and the same ought to have been heard by the Political Parties Tribunal created by the Political Parties Act, 2011.
 6. We have considered the submissions herein and we find that:-
 - a. Any dispute between a member of a political party and a political party ought to be resolved using the internal dispute resolution mechanism of the party and where that fails, the matter can be referred to the Political Parties Disputes Tribunal created by Section 39 of the Political Parties Act, 2011.
 - b. The dispute that was place before the 1st Respondent was a dispute between a member of a political party and her political party (the 2nd Respondent) and it ought to have been referred to the Political Parties Disputes Tribunal by the Petitioner.
 - c. After considering the facts presented to it, the 1st Respondent made a finding to the effect that the name of the Petitioner was not in the list submitted to it by 2nd Respondent. This was a decision reached on the facts placed before the 1st Respondent and there is nothing placed before us to make us arrive at a different conclusion.
 - d. The Petitioner seeks orders which will affect third parties who are not before us.
 7. For the reasons aforesaid, we find that the petition lacks merit and we dismiss it 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