



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 315 OF 2013**

**BETWEEN**

**PHILISTER AUMA MESO ..... 1<sup>ST</sup> PETITIONER**

**MWANDARO GRACE MBOJA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The petitioners in this matter contend that they are the rightful nominees on the Orange Democratic Movement Party (ODM) for special seats in the Kilifi County Assembly. They contend that they submitted their names to the ODM County officials but after the final list was published they realized, *“That their names among other many members of the ODM party in Kilifi County were short changed in the list.”*
  
2. They aver that the original list submitted by the party was tampered with the at last minute and that ODM failed to notice the error. It is their case that the list published by the IEBC on its website is different from the one that was approved by the delegates and ODM membership at the County level. Further that the list contravenes the Constitution and it should be declared null and void and that the Committee’s decision of upholding the nomination was unreasonable and unconstitutional.
  
3. In their petition dated 19<sup>th</sup> June 2013, the petitioners pray for the following Orders;
  - a. *That a declaration be issued that the respondent’s list of nominees to the Kilifi County Assembly*

- as published in its website violates Articles 10, 90 and 177 of the Constitution.
- b. That a declaration do issue that the list of nominees to the Kilifi County Assembly as published by the Respondent in its website is unconstitutional.
  - c. That a declaration be issued to declare that the original list of nominees to the Kilifi County Assembly as confirmed by the Orange Democratic Movement (ODM) vide its letters to the 25<sup>th</sup> March 2013 and supported by all elected leaders vide letters dated 16<sup>th</sup> March 2013 is the proper list of nominees to the Kilifi County Assembly by the ODM party.
  - d. That a mandatory injunction do issue compelling the Respondent to adhere to the original list of nominees of members of the Kilifi County Assembly as confirmed by the Orange Democratic Movement (ODM) on 25<sup>th</sup> March 2013.
4. The respondent opposes the petition and in its replying affidavit of Moses Kipkogei sworn on 4<sup>th</sup> July, 2013 avers that the petitioners were under a mistaken belief that one Grace Kwekwe Mwangome was not a nominee of the ODM party for the special seat nomination in Kilifi County. He depones that ODM submitted a party list on 30<sup>th</sup> January 2013 to IEBC which contained the impugned nominee under the marginalised category and which formed the basis of nominations.
5. In the decision in **Complaint No. 243/2013 (Philister Auma Meso v ODM)** filed by the 1<sup>st</sup> petitioner, the Committee noted that, ***“The issue of nomination is the preserve of the party as long as it is done within the law. Nomination criteria is not based on the constituency. The law was not breached in party nomination.”***
6. We are in agreement with the Committee that the issues raised by the petitioners concern how the party list was constituted which is within the purview of the individual political parties. This court will only intervene if it is shown that there was a breach of the Constitution or the petitioner’s rights in the process that led to the nomination and which the Committee overlooked or failed to take into account, which has not been proved in this case. In the circumstances, there is no error in Committee’s reasoning.
7. Furthermore, the petitioner has not joined Grace Kwekwe Mwangome, whose nomination is complained of, to these proceedings.
8. The petition is dismissed with no order as to costs.

**DATED and DELIVERED at NAIROBI this 12<sup>th</sup> July 2013.**

**MUMBI NGUGI**

**D.S. MAJANJA**

**W. K. KORIR**

**JUDGE**

**JUDGE**

**JUDGE**