

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR. CASE NO. 227 OF 2013

REPUBLICAPPLICANT

VERSUS

THE CHAIRMAN, INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....RESPONDENT

Ex-Parte

PATRICK LUMUMBA OWADE

JUDGMENT

1. The applicant, Patrick Lumumba Owade, is aggrieved that he was not considered for the ODM gender top up nominations for Nairobi County. He has now filed this application to challenge the decision of the respondent in his complaint, IEBC/NDRC/PL/271/2013, in which he had argued that the distribution of nomination seats in Nairobi County was unfair to ODM, and that he was omitted from the nomination list and the seat given to one Rosemary Masitsa who was not a member of ODM.
2. In his submissions before us, the applicant complained that he should have been considered for two slots which went to strangers, one Susan Karimi and Rose Lamba, and that it is not just women who should be considered for the gender top up seat.
3. In response, the IEBC stated that it had explained to the applicant that the gender top up list was to ensure compliance with the constitutional requirement for gender representation, and that if the gender top up seats were allocated to men, their number in the County Assembly would increase unconstitutionality.

Determination

4. From the pleadings before us, there appears to be no basis for the applicant's complaint. The issue of non-ODM members being nominated to the Nairobi County Assembly was addressed by the respondent in complaint number IEBC/NDRC/PL/222/2013- **Lilian A. Ngoge vs ODM**. The nominees who were found to be members of other parties were removed and replaced with ODM party members.
5. The alleged 'strangers' against whom the applicant seeks orders have not been made party to this petition, and it would be contrary to the rules of natural justice to make orders adverse to them in their absence. The court notes that the said Susan Karimi is not a party to this application, while the said Rose Masitsa, who is also not a party, was removed from the ODM nominations in the IEBC decision of 7th June 2013.

6. In any event, we agree with the view of the respondent that the gender top up was intended to address the constitutional requirement for gender balance in county assemblies to ensure that not more than two thirds of the County Assembly members would be of the same gender. This rule was not intended to apply to nominations to the County Assembly by a particular party as the applicant contends, but was intended to be with regard to the entire Assembly. The respondents state that there were 82 men elected while only 3 women were elected. Clearly, only women could be nominated to the County Assembly in the gender top up category.
7. We therefore find no reason to fault the decision of the respondent, and in the circumstances, this application is 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