



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 217 OF 2013

REPUBLIC.....APPLICANT

VERSUS

THE IEBC NOMINATION DISPUTE

RESOLUTION COMMITTEE..... RESPONDENT

DORIS NEKESA NANYOKIA.....INTERESTED PARTY

EX-PARTE JANE OCHIENG' MKHOLI

JUDGMENT

1. The Respondent, the Disputes Resolution Committee (the Committee), was set up by the Independent Electoral and Boundaries Committee (IEBC) to hear disputes arising from nominations by political parties to the county assemblies in respect of the seats contemplated by Article 177(1)(b) and (c) of the Constitution. The Ex-parte Applicant, Jane Ochieng Mukholi, was dissatisfied with the nomination of the Interested Party, Doris Nekesa Nanyokia, to the slot allocated to New Ford Kenya Party (NFKP) in Bungoma County. She therefore filed complaint No. **IEBC/NDRC/ PL/202/2013 – JANE MUKHOLI v NFK** before the Respondent. The Applicant's complaint was that she was in the list submitted to IEBC by NFK 45 days before the elections but the slot was given to the Interested Party. In a ruling delivered on 7th June, 2013 the Respondent dismissed the Applicant's application in the following words:- **“The complainant's prayer fails. In addition, the party's prayer for replacement of Doris Nekesa fails.”**
2. Now, the Applicant is before us seeking judicial review orders which will end up upstaging the

- decision of the Respondent. It is the Applicant's case that the Respondent abused its powers and acted illegally by nominating the Interested Party and yet she was not on the list submitted to it by NFK prior to the 4th March, 2013 General Election.
3. The Respondent opposed the application on the ground that its decision was legal, reasonable and procedurally fair and there are therefore no grounds established by the Applicant for granting of judicial review orders.
 4. We have considered the evidence before us and find that:-
 - a. The issue of NFK party list did not clearly come out in the submissions made before us and it is not clear whether both the Applicant and the Interested Party or any one of them was on the party list submitted in compliance with Section 35 of the Elections Act, 2011.
 - b. From the decision of the Respondent already reproduced in this judgment, no reason was given for the dismissal of the Applicant's complaint. There is a comment concerning the party but there is nothing in the summary of the arguments found in the Respondent's decision to explain why this comment was made.
 - c. It is therefore clear that the Applicant was treated unfairly since no reason was attributed to the dismissal of her complaint.
 5. For the reasons aforesaid we make orders as follows:-
 - a. This matter is returned to the Respondent to hear this dispute afresh and allocate the slot on priority basis for the Gender Top Up category for NFK Party in Bungoma County to the person whose name appears in the list submitted to it by the party in accordance with Section 35 of the Elections Act, 2011. This should be done within 14 days from today's date. The name of the nominee picked by the Respondent to be gazetted thereafter.
 - b. There will be 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