



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 207 OF 2013

MARGARET WAMBUI KAMAU.....APPLICANT

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....RESPONDENT

JENNIFER KOINANTE KITARPEI.....INTERESTED PARTY

JUDGEMENT

1. Acting on directions given to it by the Respondent, the Independent Electoral and Boundaries Commission, the National Alliance Party (TNA) resubmitted a list under cover of a letter dated 30th April, 2013. In the resubmitted list the name of the Interested Party, Jeniffer Koinante Kitarpei had replaced that of the Applicant, Margaret Wambui Kamau.
2. The Applicant was aggrieved by the action of her party and filed **COMPLAINT NO. IEBC/NDRC/PL/52/2013–MARGARET W KAMAU v TNA** before the Respondent’s Disputes Resolution Committee. Her complaint was dismissed by the Committee in a ruling dated 7th June, 2013 and in doing so the Committee agreed with TNA’s argument that the Interested Party had been picked to represent a rare community.
3. The Applicant being dissatisfied with the Respondent’s decision has now filed these proceeding seeking an order of certiorari to quash the Committee’s decision and an order of mandamus to compel the Respondent to replace the name of the Interested Party with her name. Her main complaint is that the Respondent breached the provisions of Article 90 of the Constitution, sections 34-36 of the Elections Act, 2011 and Regulations 56-58 of the Elections (General) Regulations, 2012 (the Regulations).
4. The Respondent opposed the application through the replying affidavit sworn on 4th July, 2013 by its Legal Officer, Mr. Moses Kipkogei. Although TNA was not named as a party to these proceedings TNA party’s advocate Ms Milimu appeared at the hearing and opposed the application. TNA was a necessary party to these proceedings and we found Ms Milimu’s representation of the party justified.

5. The Respondent and TNA submitted that the Respondent did not breach any law in accepting and acting on the list resubmitted by TNA. They also argued that the inclusion of the name of the Interested Party in the resubmitted list was so that a super minority community known as the Yiaku could be represented in Laikipia County Assembly.
6. Upon considering the submissions herein we hold as follows:-
 - a. The Respondent is mandated by the law to ensure that the lists submitted to it by the parties comply with the provisions of the law. Where it finds that a list does not comply with the provisions of the Constitution and the law, it is mandated to return the list to a political party and ask the party to resubmit a new list in compliance with the guidelines given by the Respondent—see Regulation 55 of the Regulations.
 - b. The Respondent and TNA acted in accordance with the law in regard to the TNA list for Laikipia County Assembly.
7. For the foregoing reasons, we find no grounds for the grant of the orders sought. This application is therefore dismissed with no order as to costs.

Dated, signed and delivered at Nairobi this 12th day of July, 2013

**MUMBI NGUGI,
JUDGE**

**D. S. MAJANJA,
JUDGE**

**W. K. KORIR,
JUDGE**