



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION OF 314 OF 2013

MWANAIKI KISA MATATA1ST PETITIONER

EVA MASEGHE2ND
PETITIONER

JOYCE MWAZOKA 3RD PETITIONER

EMILY MBASHU 4TH PETITIONER

VERSUS

INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSIONRESPONDENT

JUDGEMENT

1. In the petition dated 19th June, 2013, the petitioners seek orders as follows:
 - a. That a declaration be issued that the respondent’s list of nominees to the Taita Taveta County Assembly as published in its website violates Article 10, 90 and 177 of the Constitution.
 - b. That a declaration do issue that the list of nominees to the Taita Taveta 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 Taita Taveta County Assembly as confirmed by the Orange Democratic Movement (ODM) vide its letters to the 25th march 2013 and supported by all elected leaders vide letters dated 16th March 2013 is the proper list of nominees to the Taita Taveta County Assembly by the ODM party.
 - d. That a mandatory injunction issued compelling the Respondent to compel the Respondent (sic) to

adhere to the original list of nominees of members of the Taita Taveta County Assembly as confirmed by the Orange Democratic Movement (ODM) on 25th march 2013.

- e. That costs of this Petition be borne by the Respondent.

2. The petitioners state that they are all members of the Orange Democratic Movement (ODM) and that they duly applied and paid for nomination as members to the Taita Taveta County Assembly. They state further that a list was submitted to the IEBC in accordance with Articles 90 and 177 of the Constitution, but that they later came to realize that the list that had been agreed upon was altered before submission to the IEBC. They ask that the list proposed by ODM by way of a letter dated 25th March 2013 be followed to the letter.

3. The petitioners submit further that they presented their complaint to the respondent vide complaint Nos. IEBC/DRC/PL/24, 220 and 224 of 2013, all of which were dismissed on the basis that they pertained to internal party issues.

3. In its response to this petition, the respondent stated that the party had supplied a list dated 30th January 2013, and it is the names on this list which is in the list of nominees.

4. The court notes from the annexures to the affidavit of Moses Kipkogei sworn on 4th July 2013 that the ODM had submitted a list of nominees for Taita Taveta County by way of a letter dated 29th January 2013. Under the provisions of Article 90 and 177 of the Constitution, as well as Sections 34 – 37 of the Elections Act, it is the party which has the mandate to prepare and submit the list of nominees to the respondent. In the circumstances, the decision of the IEBC on the petitioners' complaints was in accordance with the law.

5. More importantly, the court notes that the nominees to the Taita Taveta County Assembly are not named as parties to this petition, and were consequently not heard. Even were the court minded to find for the petitioners, it would have been unable to do so as the result would have been to affect parties who have not had an opportunity to present their case.

6. For the above reasons, this petition is dismissed with no orders as to costs

Dated, Delivered and Signed at Nairobi this 12th day of July 2013

MUMBI NGUGI

JUDGE

D. S. MAJANJA

JUDGE

WELDON KORIR

JUDGE