



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 212 OF 2013

REPUBLIC.....APPLICANT

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....1ST RESPONDENT

SCHOLASTIC MUENI RAYMOND.....2ND RESPONDENT

WIPER DEMOCRATIC MOVEMENT –KENYA.....3RD RESPONDENT

EX-PARTE

JAMES MULWA MAWIOO

JUDGEMENT

1. In these proceedings the Ex-parte Applicant, James Mulwa Mawioo, seeks orders of certiorari, prohibition and mandamus in relation to the nomination of the 2nd Respondent, Scholastic Mueni Raymond by the 1st Respondent, the Independent Electoral and Boundaries Commission to represent the 3rd Respondent, Wiper Democratic Movement–Kenya (WDM-K) in Makueni County Assembly.
2. According to the Applicant, he was No. 7 on the list presented to the 1st Respondent by the 3rd Respondent for nominations to Makueni County Assembly in respect of the seats envisaged by Article 177(1) (b) and (c) of the Constitution. He was slotted for nomination in the youth category. He claims that the 2nd Respondent was No. 13 on the list. Through a ruling delivered on 4th May, 2013 the 1st Respondent replaced his name with that of the 2nd Respondent. It is the Applicant's case that the 2nd Respondent is not a youth and she should not have been picked to replace him in the youth category.
3. The Applicant being dissatisfied with the 1st Respondent's decision of 4th of May, 2013 filed Complaint No. **IEBC/DRC/ PL/98/2013-JAMES MULWA MAWIOO v WIPER DEMOCRATIC MOVEMENT PARTY** before the 1st Respondent's Disputes Resolution Committee (the Committee). The Committee in its ruling of 7th June, 2013 observed that: **“On the case of Scholastic Mueni, the complainant has not brought evidence to show that**

- Scholastic Mueni is above 35 years old.”** The Committee found the Applicant’s claim unsubstantiated and dismissed his complaint.
4. Further, the Applicant in his pleadings and specifically paragraphs 16 and 17 of his verifying affidavit sworn on 19th June, 2013, faults the nomination of one Gideon Mwangi on the grounds that he was in the 3rd Respondent’s lists for the Senate and the County Assembly and this was unlawful.
 5. The 1st and 3rd respondents opposed the application. Through an affidavit sworn by Brigadier Henry Robb who is the Executive Officer of the 3rd Respondent, the 3rd Respondent argues that it was not allocated a seat for the youth by the 1st Respondent and the Applicant’s case is untenable. In the alternative, the 3rd Respondent confirmed that the Applicant was indeed No. 7 on its list and if this court holds that the 3rd Respondent was entitled to a slot in the youth category then that slot should go to the Applicant. The 1st Respondent asserted that the 2nd Respondent is indeed a youth. The 1st Respondent further submitted that it considered the evidence placed before it and concluded that the Applicant had not proved his case.
 6. We have considered material placed before us and find that:-
 - a. These are judicial review proceedings which are meant to check whether a tribunal like the 1st Respondent has acted legally, fairly, reasonably and in accordance with the rules of natural justice.
 - b. There is no evidence by way of an affidavit of service to show that the 2nd Respondent was notified of these proceedings.
 - c. The 1st Respondent considered the facts placed before it and reached a decision on the same. We may not agree with the decision but we find nothing illegal or unreasonable in the decision.
 - d. The 2nd Respondent was not aware of these proceedings and it would be unfair to make adverse orders against her without according her an opportunity of being heard.
 - e. On the issue of Gideon Mwangi, we find that the Applicant has not asked for any orders in respect of him and we cannot issue orders not prayed for. Secondly, the said Gideon Mwangi was not made a party to these proceedings and no adverse orders can issue against him since he has not been heard.
 7. In line with our findings we conclude that this application has no merit. The application is therefore dismissed with no orders 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