



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR CASE NO. 160 OF 2013**

REPUBLIC.....APPLICANT

VERSUS

**THE INDEPENDENT ELECTORAL**

**AND BOUNDARIES COMMISSION.....RESPONDENT**

**ISSACK OSMAN SHEKH.....INTERESTED PARTY**

**JUDGEMENT**

1. The substantive prayer in the amended notice of motion dated 4<sup>th</sup> July, 2013 is for an order of mandamus compelling the Respondent, the Independent Electoral and Boundaries Commission to include the name of Issack Osman Shekh, the Applicant as representing the marginalized group in the list of the Interested Party, the National Alliance Party (TNA) for Laikipia County Assembly.
2. The Applicant had complained to the 1<sup>st</sup> Respondent's Disputes Resolution Committee in Complaint No. **IEBC/NDRC/ PL/256/2013-ISSACK OSMAN SHEIKH v TNA** that he ought to have been picked, from the list presented to the Respondent by TNA, to represent the marginalized. The Respondent dismissed the complaint on the ground that **"the Constitution precludes the County Assemblies from being tied to ethnic composition."** We presume the Respondent was referring to Article 90(2) (c) of the Constitution.
3. The Applicant being dissatisfied with the Respondent's decision now wants us to review the same.
4. The Respondent opposed the application but Ms Milimu for the Interested Party informed the court that she had not been served with the application and she was therefore not in a position to respond to it.
5. After considering the papers filed in this matter we find that:-
  - a. These are judicial review proceedings and the mandate of the court is confined to checking the Respondent's decision for any illegalities, unreasonableness or procedural improprieties i.e. non-compliance with the rules of natural justice. In judicial review the court looks at the procedure under which the decision was arrived at and not the merits of the decision.
  - b. The Applicant is asking us to find that he was the most deserving person to be nominated to represent the marginalized as the Interested Party's nominee to Laikipia County Assembly. If we

do so, we will be usurping the role of the Respondent and that would be contrary to established judicial review principles.

- c. We also note that the Respondent acted, as required by the Elections Act, on the list submitted to it by the Interested Party.
6. We therefore find no reason to fault the Respondent's decision and we dismiss this application with no order as to costs.

Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of July, 2013

**MUMBI NGUGI,**

**D. S. MAJANJA,**

**W. K. KORIR,**

**JUDGE**

**JUDGE**

**JUDGE**