



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 220 OF 2013

REPUBLIC.....APPLICANT

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....RESPONDENT

FEDERAL PARTY OF KENYA.....1ST INTERESTED PARTY

CAROLINE WACHU2ND INTERESTED PARTY

EX-PARTE

EVERLYNE NASIPWONDI

JUDGMENT

1. The Ex-parte Applicant, Everlyne Nasipwondi was a complainant in Complaint **No. IEBC/NDRC/ PL/207/2013–EVERLYNE NASIPWONDI** before the Disputes Resolution Committee (the Committee) set up by the Respondent, the Independent Electoral and Boundaries Commission to hear disputes arising from nominations to county assemblies by political parties in respect of the seats contemplated by Article 177(1)(b) and (c) of the Constitution. The dispute arose out of nominations by Federal Party of Kenya (FPK) to Bungoma County Assembly.
2. Before the Committee the Applicant had claimed that Caroline Wachu, the 2nd Interested Party who had been nominated by the FPK, was not a member of the party and was a resident of the Bungoma County. The 2nd Interested Party's response was that she was a member of the party and married in Bungoma. The Organizing Secretary of the 1st Interested Party confirmed that she was indeed a bona fide member of the party. In a ruling delivered on 7th June, 2013 the Committee found that the Applicant had not adduced any evidence to support her allegations and that the allegations had been rebutted by the interested parties. Her complaint was therefore dismissed.
3. The Applicant is now before us and in these proceedings she faults the Respondent for failing to hear her on merit and giving priority to the 2nd Interested Party, whose name was not on the party list published in the Daily Nation of 16th May, 2013.
4. The Respondent and the interested parties opposed the application and submitted that the Respondent acted in accordance with the law in reaching its decision that the 2nd Interested Party

was the proper nominee picked by the 1st Interested Party for its Gender Top Up slot in Bungoma County.

5. We have considered the depositions herein and find that:-
 - a. Judicial Review comes to the aid of a claimant where it is proved that the actions of a public body were illegal, unreasonable, irrational or procedurally unfair.
 - b. The Respondent has through the replying affidavit of its Legal Officer, Mr. Moses Kipkoge explained at length the procedure followed before it was concluded that the 2nd Interested Party was the proper nominee for the 1st Interested Party's slot in Bungoma County Assembly.
 - c. The Ruling of the Respondent is self-explanatory and we find nothing illegal, unreasonable and unfair about it. The Respondent also complied with the law in picking the 2nd Interested Party.
6. For the reasons afore-stated, we find that this application has no merit. The application is dismissed with 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