



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JR. CASE NO 203 OF 2013

REPUBLIC
APPLICANT

VERSUS

INDEPENDENT ELECTORAL

&

BOUNDARIES COMMISSION1ST RESPONDENT

FATUMA MOHAMED ALI 2ND
RESPONDENT

NARC KENYA 3RD
RESPONDENT

Ex-ParteMUHUBO OMAR
AHMED

JUDGMENT

1. The applicant has brought this matter to challenge the nomination of the 2nd respondent, whom she alleges is an Administration Police Officer, as the gender top up nominee for Garissa County for NARC Kenya, the 3rd respondent. She contends that she was the only nominee submitted by the 3rd respondent to the 1st respondent on 30th April 2013.
2. According to the applicant, the 2nd respondent fraudulently and with intention to deceive uttered a false document, namely a letter dated 24th April 2013, purporting it to have been authored by the 3rd respondent, nominating herself as the nominee for the gender top up seat.
3. She states that the party protested to the 1st respondent through letters dated 6th and 21st May 2013

which the 1st respondent disregarded; that she filed a complaint, IEBC/DRC/PL/203/2013, but the 1st respondent also disregarded the allegations of fraud and dismissed her complaint.

4. The 1st respondent case is that it received a list dated 23rd January 2013 and a consolidated list dated 19th April 2013; that while considering the list, it received a letter from the 3rd respondent dated 24th April 2013 indicating that the applicant should be replaced by the 2nd respondent, but on 6th May 2013, it received another letter from the 3rd respondent indicating that it should nominate the applicant.
5. It contends that in light of the contradictory instructions from the Party, it included both the applicant and the 2nd respondent, and upon consideration, the 2nd respondent emerged best, hence her nomination.
6. The 3rd respondent, through its executive officer, Mr. Taabu Omia Wanga, supported the position of the applicant. Mr. Wanga stated that the party had sent its list dated 30th April 2013 to the 1st respondent on 2nd May 2013; that it had nominated the applicant as No. 6 in the gender top up list; that it had never nominated the 2nd respondent; and it asserts that the letter dated 24th April 2013 allegedly emanating from the party is a forgery. The 3rd respondent therefore asks the court to quash the decision of the 1st respondent made on 7th June 2013 in complaint No IEBC/DRC/PL/49/2013.

Determination

7. This matter raises serious issues against the 2nd respondent, and any determination of the matter would adversely affect her interests. However, the 2nd respondent did not participate in these proceedings as she was never served. In the affidavit of service sworn by Daniel Kanyiri Watu, an appointed court process server, on 28th June 2013, he states at paragraph 10 thereof that he was unable to trace and serve the 2nd respondent.
8. It is a cardinal principle of natural justice that no party shall be condemned unheard. To make a decision in this matter in the absence of the 2nd respondent may well result in her being condemned without having had a chance to present her side of the matter.
9. In the circumstances, this application must fail. It is hereby dismissed but with no order 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