



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
J.R CASE NO 197 OF 2013

REPUBLIC
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VERSUS

THE INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION1st
RESPONDENT

EBYAN ABDILLE FARAH 2ND RESPONDENT

AND

WIPER DEMOCRATIC PARTYINTERESTED
PARTY

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Ex-Parte

QUEEN TERESIA TITUS

JUDGMENT

1. The applicant, Queen Teresia Titus, is aggrieved by the decision of the 1st respondent to gazette the 2nd respondent, Ebyan Abdille Farah, as the nominee for Wiper Democratic Party (WDP) gender top up seat, Garissa County.
2. She alleges that the said Ebyan Abdille Farah is not eligible for nomination as a WDP nominee as she has never been a member of the party and is in fact a member of the New Democratic Party.
3. The applicant’s case is that she is a member of WDP; that she applied for nomination by the party for the Garissa County Assembly; that the 1st respondent ruled in its decision that WDP was entitled to one nomination slot, and it was requested to submit a name.

4. The applicant contends that by its letter dated 23rd April 2013, WDP submitted her name to the respondent, and sent a reminder on 3rd May 2013. She states that she was therefore surprised when she saw in the newspaper of 21st May 2013 that the 2nd respondent was the Interested Party's nominee for Garissa County.
5. The applicant submits therefore that the 1st respondent exceeded its powers by including the 2nd respondent in the list of nominees for the Interested Party in Garissa County. She asks the court to issue an order to prohibit the 1st respondent from gazetting the nominee, an order of Certiorari to quash its decision of 7th June 2013, and an order of Mandamus to compel the 1st respondent to gazette her as the nominee for the Interested Party for Garissa County.
6. On its part, the 1st respondent contends that it received a letter from the Interested Party on 22nd April 2013 nominating the 2nd respondent as the nominee for Garissa County. Subsequently, on 23rd April 2013, it received another letter from the Interested Party indicating that the Interested Party was nominating the applicant. Given the contradictory letters, and in the absence of clear directions from the party, it decided to use the name submitted first.
7. The 1st respondent argues further that it considered all the matters raised in this application in its decision of 7th June 2013, save for the affidavit of Mr. David Musila which was not before it.
8. The 2nd respondent supported the position taken by the 1st respondent. She submitted that she is a member of the Interested Party, and that the applicant does not come from the County of Garissa.

Determination

9. The court notes that indeed there was a letter, annexure **'MKI'** in the affidavit of Moses Kipkogei, ostensibly from the Interested Party, erroneously dated 22rd April 2012 (which presumably was meant to be April 2013) in which the Interested Party had submitted the name of the 2nd respondent to the 1st respondent. The letter is signed by the Party's National Chairman, and the Chairman of the Party's National Elections Board. This letter does not bear the stamp of the 1st respondent indicating when it was received.
10. In the letter of 23rd April 2012 (also presumed to be intended as 23rd April 2013) also annexed to the affidavit of Moses Kipkogei, the Interested Party, again through its National Chairman and the Chairman of the National Elections Board, submitted the name of the applicant as its nominee. The Interested Party has contended through the affidavits sworn by Senator David Musila, Mr. Mbova and Brigadier Robb on 3rd July 2013 with regard to the letter dated 22rd April 2012 (sic) that the letter did not emanate from its offices.
11. The issue raised by the applicant's complaint before the IEBC, complaint No. IEBC/DRC/PL/108/2013, as it appears in the decision of 7th June 2013 was whether the nominee, the 2nd respondent, is a member of the Interested Party, whether her nomination violates section 34(8) of the Elections Act, and whether the omission of the applicant was justified. The decision of the 1st respondent was that the nomination was justified.
12. In the letter dated 3rd May 2013 and received by the 1st respondent on the same date, which, from the contents, is a response to a letter sent by the 1st respondent to the Interested Party dated 29th April 2013, it appears that the party did indeed offer the requisite guidance to the 1st respondent with regard to its nominee for Garissa County. This contradicts the contention by the 1st respondent that it nominated the 2nd respondent in the absence of direction by the party. There was therefore evidence, at the time the 1st respondent made its determination in the complaint placed before it by the applicant, that the Interested Party had disowned the letter of 22rd April 2013 and

had reaffirmed its nomination of the applicant as its nominee for Garissa County.

13. It appears to us therefore that the 1st respondent, though it had the jurisdiction to nominate the 2nd respondent if indeed she had been validly nominated by the Interested Party, at the very least, failed to consider evidence that was before it with regard to the Interested Party's nominations for Garissa County.
14. In the circumstances, this application succeeds. It is remitted to the 1st respondent to reconsider the evidence presented to it by the applicant and the Interested Party with regard to the Interested Party's nominee for Garissa County. The 1st respondent shall render its decision within 14 days of today and thereafter gazette the nominee.
15. Each party shall bear its own costs in this matter.

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

MUMBI NGUGI

JUDGE

D. S. MAJANJA

JUDGE

WELDON KORIR

JUDGE