



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

**REPUBLIC**  
.....**APPLICAN**  
**T**

**VERSUS**

**THE INDEPENDENT ELECTORAL &**

**BOUNDARIES COMMISSION .....1<sup>st</sup>**  
**RESPONDENT**

**EBYAN ABDILLE FARAH ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WIPER DEMOCRATIC PARTY .....INTERESTED**  
**PARTY**

**Ex-Parte**

**QUEEN TERESIA TITUS**

**JUDGMENT**

1. The applicant, Queen Teresia Titus, is aggrieved by the decision of the 1<sup>st</sup> respondent to gazette the 2<sup>nd</sup> 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 1<sup>st</sup> 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 23<sup>rd</sup> April 2013, WDP submitted her name to the respondent, and sent a reminder on 3<sup>rd</sup> May 2013. She states that she was therefore surprised when she saw in the newspaper of 21<sup>st</sup> May 2013 that the 2<sup>nd</sup> respondent was the Interested Party's nominee for Garissa County.
5. The applicant submits therefore that the 1<sup>st</sup> respondent exceeded its powers by including the 2<sup>nd</sup> respondent in the list of nominees for the Interested Party in Garissa County. She asks the court to issue an order to prohibit the 1<sup>st</sup> respondent from gazetting the nominee, an order of Certiorari to quash its decision of 7<sup>th</sup> June 2013, and an order of Mandamus to compel the 1<sup>st</sup> respondent to gazette her as the nominee for the Interested Party for Garissa County.
6. On its part, the 1<sup>st</sup> respondent contends that it received a letter from the Interested Party on 22<sup>nd</sup> April 2013 nominating the 2<sup>nd</sup> respondent as the nominee for Garissa County. Subsequently, on 23<sup>rd</sup> 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 1<sup>st</sup> respondent argues further that it considered all the matters raised in this application in its decision of 7<sup>th</sup> June 2013, save for the affidavit of Mr. David Musila which was not before it.
8. The 2<sup>nd</sup> respondent supported the position taken by the 1<sup>st</sup> 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 22<sup>rd</sup> April 2012 (which presumably was meant to be April 2013) in which the Interested Party had submitted the name of the 2<sup>nd</sup> respondent to the 1<sup>st</sup> 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 1<sup>st</sup> respondent indicating when it was received.
10. In the letter of 23<sup>rd</sup> April 2012 (also presumed to be intended as 23<sup>rd</sup> 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 3<sup>rd</sup> July 2013 with regard to the letter dated 22<sup>rd</sup> 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 7<sup>th</sup> June 2013 was whether the nominee, the 2<sup>nd</sup> 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 1<sup>st</sup> respondent was that the nomination was justified.
12. In the letter dated 3<sup>rd</sup> May 2013 and received by the 1<sup>st</sup> respondent on the same date, which, from the contents, is a response to a letter sent by the 1<sup>st</sup> respondent to the Interested Party dated 29<sup>th</sup> April 2013, it appears that the party did indeed offer the requisite guidance to the 1<sup>st</sup> respondent with regard to its nominee for Garissa County. This contradicts the contention by the 1<sup>st</sup>

respondent that it nominated the 2<sup>nd</sup> respondent in the absence of direction by the party. There was therefore evidence, at the time the 1<sup>st</sup> respondent made its determination in the complaint placed before it by the applicant, that the Interested Party had disowned the letter of 22<sup>rd</sup> April 2013 and had reaffirmed its nomination of the applicant as its nominee for Garissa County.

13. It appears to us therefore that the 1<sup>st</sup> respondent, though it had the jurisdiction to nominate the 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 12<sup>th</sup> day of July 2013**

**MUMBI NGUGI**

**JUDGE**

**D. S. MAJANJA**

**JUDGE**

**WELDON KORIR**

**JUDGE**