



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR CASE NO. 223 OF 2013**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE INDEPENDENT ELECTORAL**

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

**EDITH WERE SHITANDI.....INTERESTED PARTY**

**EX-PARTE**

**PENINAH NANDAKO KILISWA**

**JUDGEMENT**

1. The Ex-parte Applicant, Peninah Nandako Kiliswa, was a complainant before the Disputes Resolution Committee (the Committee) which was created by the Respondent, the Independent Electoral and Boundaries Commission (IEBC) to hear disputes arising out of nominations that were made by political parties in respect of the seats contemplated by Article 177(1) (b) and (c) of the Constitution. Her complaint which related to Bungoma County was No. **IEBC/NDRC/PL/200/2013–PENINAH NANDAKO KILISWA v FORD-K**. Her argument before the Committee was that Ford Kenya’s Gender Top Up list contained names of persons who were not members of the party. She also complained that the Interested Party, Edith Were Shitandi, who was picked as the party’s nominee was not on the original list submitted to the Respondent. In a ruling delivered on 7<sup>th</sup> June, 2013 the Respondent dismissed the complaint on the ground that no evidence had been adduced to prove the allegations made.
2. Through this application the Applicant faults the proceedings and decision of the Respondent on two main grounds namely:-
  - a. The Respondent did not give written reasons for its decision; and
  - b. The Respondent failed to consider the evidence placed before it by the Applicant and as a consequence failed to accord the Applicant a fair and impartial hearing.
3. The Respondent and the Interested Party opposed the application. The Respondent in a replying affidavit sworn on 4<sup>th</sup> July, 2013 by its Legal Officer, Mr. Moses Kipkoge, averred that the

Interested Party was ranked higher than the Applicant in the list submitted to it by Ford-Kenya and she (the Interested Party) was therefore the right person to be nominated. The Interested Party's opposition to the application came through a replying affidavit sworn on 3<sup>rd</sup> July, 2013 by Ford-Kenya's Secretary General, Hon. Dr. David Eseli Simiyu. In the said affidavit Dr. Eseli averred that the Interested Party's name was on the list presented to the Respondent by the party. The Applicant was also accused of introducing new evidence before us.

4. We have considered the submissions made before us and we find that:-
  - a. The composition of party lists and the ranking of the names in such lists is an internal matter to be dealt with by the political parties.
  - b. The Respondent arrived at its decision after considering the evidence before it and gave its reasons for reaching that decision.
5. For the reasons aforesaid, we find that the Applicant has not established any grounds for the grant of the orders sought. We therefore dismiss her 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**