



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 239 OF 2013**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE INDEPENDENT ELECTORAL**

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

**MARGARET NENKAI YENKO.....INTERESTED PARTY**

**CATHERINE K.....EX-PARTE**

**JUDGMENT**

1. The Ex-parte Applicant Catherine Kimaren, being dissatisfied with the decision of the Respondent, the Independent Electoral and Boundaries Commission (IEBC) in **COMPLAINT NO. IEBC/NDRC/ PL/13/2013- SILVIA IOLE NKAINATIE V TNA** lodged these judicial review proceedings. According to the statutory statement dated 11<sup>th</sup> July, 2013 the Applicant faults the Respondent for allegedly acting ultra vires the powers donated to it by Section 34-37 of the Elections Act, 2011. It is the Applicant's case that the Respondent failed to take into account relevant matters in dismissing the complaint she had raised before its Disputes Resolution Committee (the Committee). The Respondent is also accused of acting unfairly and arbitrarily by omitting the Applicant's name for the TNA party's nominee list for Narok County Assembly.
2. The application is opposed by the Respondent and the Interested Party (Margaret Nenkai Yenke). Their case is that the Respondent acted legally, reasonably and fairly and the Applicant has not established any grounds for the grant of the orders sought.
3. We have considered the arguments made by the parties herein and we find as follows:-
  - a. The issue of preparation and submission of lists to IEBC is a party issue and any dispute arising therefrom should be dealt with using the party internal mechanism for resolving disputes. Any dispute unsolved by the party's internal mechanisms can be escalated to the Political Parties Tribunal created under the Political Parties Act, 2011.
  - b. The Respondent considered the material placed before it and reached a decision based on the evidence and facts placed before it. There is no evidence that the Respondent breached the law or acted unreasonably.
4. For the foregoing reasons, we find that the Applicant has not established any grounds for the grant of the orders sought. Her application is therefore dismissed with no orders 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**