

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 236 OF 2013

BETWEEN

ROSE WAIRIMU KAMAU 1ST PETITIONER

SALOME WAIRIMU KAGO 2ND PETITIONER

ELIZABETH MUTHONI WANJAU 3RD PETITIONER

MARY MUTHONI NJERU 4TH PETITIONER

AND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION RESPONDENT

JUDGMENT

1. The petitioners in the petition dated 8th May 2013 are aggrieved by the decision taken by the IEBC Dispute Resolution Committee (“the Committee”). They aver that they and 16 others were on the original party nomination list for The National Alliance (“TNA”) for the Nyeri County Assembly. They contend that they applied for the positions and were duly considered. It therefore came as a shock to them that the list sent to the IEBC was different from the one approved by delegates and TNA membership at county level.
2. The petitioners complain that some of the persons now nominated were not paid up members and the seats were misallocated and in fact some constituencies in the county like Mukurweini and Mathira constituencies do not have representatives on the said list.
3. The Committee considered **Complaint No. 79/2013, 80/2013, 99/2013 and 100/2013** and dismissed the same on the ground that the matters were already in the High Court. It is not clear how the matters were in the High Court. However, we have reviewed the depositions in support and in opposition to the petition. What is clear though is that TNA submitted two lists in February 2013 and resubmitted another list which provided the basis for the IEBC list of nominees.
4. We agree with the respondent that what the petitioner seeks is a reconstitution of list outside the time permitted by **section 35** of the ***Election Act, 2011*** for submission of such lists. Furthermore the issues raised by the petitioners are clearly within the mandate of the party to resolve as they concern how the lists are constituted. Furthermore, the failure to include persons from other Constituencies within the County is not of itself decisive of lack of diversity in the party list.
5. In the circumstances no purpose will be served by interfering with the decision of the Committee. The petition is therefore dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 12th July 2013.

MUMBI NGUGI

D.S. MAJANJA

W.K. KORIR

JUDGE

JUDGE

JUDGE