



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW NO. 236 OF 2013**

**BETWEEN**

**SALAH MAALIM ALIYO ..... APPLICANT**

**AND**

**INDEPENDENT ELECTORAL AND**

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

**UNITED REPUBLICAN PARTY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SOKOREY MAALIM ISSAKOW ..... 1<sup>ST</sup> INTERESTED PARTY**

**IBRAHIM HARMA ISSAK ..... 2<sup>ND</sup> INTERESTED PARTY**

**FARHIYA RASHID KULI ..... 3<sup>RD</sup> INTERESTED PARTY**

**JUDGMENT**

1. The Applicant in the Notice of Motion dated 2<sup>nd</sup> July 2013 seeks to quash the decision of the IEBC Dispute Resolution Committee (“Committee”) of 7<sup>th</sup> June 2013 declaring the interested parties as nominees to the Mandera County Assembly on a United Republic Party ticket in his place. He contends that his name was on the party list submitted on 30<sup>th</sup> January 2013.
2. After the general elections, the petitioner avers that his name was excluded from the nominated members. He stated in his deposition that, “*the interests of minority groups, the Corner Tribe, are not represented in the County of Mandera. My application seeks that one of the Youth who are female being number 2 and 4 in the special category should be transferred to the gender top up list to create room for representation of marginalised groups in the specialised category.*”
3. The petitioner’s complaint to the Committee was dismissed and he challenges the decision on the grounds that his advocate was permitted to address the Committee for only 3 minutes hence this

was inadequate to address his grievance and that the Committee did not give reasons for its decision and that it acted without jurisdiction in approving a list with public officers and failing to ascertain that the gender top-up comprised female nominee only.

4. The Committee considered the applicant's **Complaint No. 272/2013** and held that the nomination list was in accordance with the law and dismissed it. We have considered the material before us and we find that the application lacks merit. First, the fact that the time given for submissions was too short is not a violation of the right to a fair hearing. This right must be assessed in the circumstances of each case and it must be recalled that the Committee has before it the written material which may obviate the need to engage in a lengthened oral hearing.
5. Second, the IEBC was bound to act upon the list submitted by the party to it within the statutory time provided under **section 35** of the *Elections Act, 2011*. What the petitioner seeks is a reconstitution of the list which in these circumstances is not permitted. The constitution of the list is a party matter.
6. Thirdly, the material regarding the employment status of one of the nominees by way of a letter dated 14<sup>th</sup> June 2013 was not available to the Committee and cannot constitute a ground for review.
7. For the forgoing reasons, we dismiss the application with no order as to costs.

**DATED and DELIVERED at NAIROBI this 12<sup>th</sup> July 2013**

**MUMBI NGUGI**

**JUDGE**

**D.S. MAJANJA**

**JUDGE**

**W. K. KORIR**

**JUDGE**