



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 309 OF 2013

BETWEEN

SAMUEL NJUGUNA NGARI PETITIONER

AND

CATHERINE WANJIKU KAMAU 1ST RESPONDENT

CATHERINE WAIRIMU MUGO 2ND RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 3RD RESPONDENT

THE NATIONAL ALLIANCE PARTY 4TH RESPONDENT

JUDGMENT

1. In the petition dated 14th June 2013, the petitioner complains that the 1st and 2nd respondents are not qualified for nomination to the Murang'a County Assembly contrary to **Article 77(1)** and **2** and **195(2)(a)** of the Constitution and **section 25(2)(a)** of the *Elections Act*. It is alleged that the 1st respondent is a head teacher and is employed by the Teachers Service Commission and that the 2nd respondent is not a member of The National Alliance Party ("TNA") having defected to National Rainbow Coalition. It is alleged that the 2nd respondent comes from the same ward with another nominated candidate therefore the seat ought to be allocated to another ward in the Constituency.
2. In the decision in respect of **Complaint No. 179/2013** and **No. 180/2013**, the IEBC Dispute Resolution Committee ("Committee") ordered as follows; Florence Wangechi a person with disability be swapped with Catherine Wanjiku Kamau and one Elizabeth Wambui Mwangi who contested the Wempa Ward in Maragwa be replaced with Agnes Ndunge Muturima. The

allegation against Catherine Mugo was dismissed for want of evidence.

3. The respondent opposed the petitioner's prayer that the 1st and 2nd respondents be replaced with Faith Njoki Macharia and Beth Wangui Kinyanjui as the two were not on the list submitted by TNA and that no basis has been shown for setting aside the decision.
4. In essence the petitioner's case before us is that the Committee failed to consider or ignored evidence placed before it. In our view and having considered all the evidence, we do not think we can interfere with the Committee's decision. This is an application for review and even though we may take a different view of the evidence, we do not think this is a ground for interference. The Committee was entitled to come to its own decision and the decision is not unreasonable, irrational and unsupported by the evidence.
5. The petition is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 12th July 2013

MUMBI NGUGI

JUDGE

D.S. MAJANJA

JUDGE

W.K. KORIR

JUDGE