

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTION & HUMAN RIGHTS DIVISION

PETITION NO. 232 OF 2013

SILVIA SILOLE NKAIWATEI.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....1ST RESPONDENT

EUNICE MUTHONI.....2ND RESPONDENT

JUDGMENT

1. The Petitioner, Silvia Silole Nkaiwatie, being aggrieved by the decision of the 1st Respondent, the Independent Electoral and Boundaries Commission (IEBC), in **COMPLAINT NO. IEBC/NDRC/ PL/13/2013- SILVIA SILOLE NKAIWATIE V TNA consolidated with IEBC/NDRC/PL/13/2013 CATHERINE KIMAREN V TNA**, seeks a declaration that she is entitled to the seat of youth representative for Narok County on the National Alliance Party (TNA). If such a declaration is granted, then the nomination of the 2nd Respondent Eunice Muthoni to the Narok County Assembly on a TNA ticket will become null and void.
2. It is the Petitioner's case that her name was on the TNA party list in the youth representative category. When the list was released by the 1st Respondent her name had been replaced by that of the 2nd Respondent. Consent was later entered between her and TNA before the 1st Respondent and the 2nd Respondent's name was replaced with her name. However, the 1st Respondent did not execute the consent. That is what has led the Petitioner to file the petition before us.
3. The Respondents opposed the petition. It is their case that the 2nd Respondent's name was picked on priority basis and no consent had been entered to replace the name of the 2nd Respondent with that of the Petitioner.
4. We have considered the submissions before us and find that:-
 - a. The dispute revolves around the TNA party list for nominations to Narok County Assembly. The 1st Respondent acted on the original list that was sent to it by TNA in compliance with Section 35 of the Elections Act, 2011. Any attempt by the party to amend the list in a situation where IEBC had not rejected the list or some names on the list would have been illegal. Matters touching on party lists are to be dealt with through the internal party mechanism for resolving disputes and the Political Parties Disputes Tribunal established under the Political Parties Act, 2011.
 - b. The 1st Respondent heard the Petitioner's complaint and based on the facts before it reached the decision that the Petitioner's name did not appear in the list submitted to it by her party. We find no reason for interfering with that decision.
5. For the reasons aforesaid, we find that this petition lacks merit and dismiss it with no order as to costs.

Dated, signed and delivered at Nairobi this 12th day of July, 2013

MUMBI NGUGI,

D. S. MAJANJA,

W. K. KORIR,

JUDGE

JUDGE

JUDGE