

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 349 OF 2013

VERONICA WANGARI MAINA..... PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....1ST RESPONDENT

NAOMI WANGECHI GITONGA.....2ND RESPONDENT

THE NATIONAL ALLIANCE PARTY1ST INTERESTED PARTY

REPUBLICAN CONGRESS PARTY2ND INTERESTED PARTY

JUDGEMENT

1. The Petitioner, Veronica Wangari Maina, was the complainant in **COMPLAINT NO. IEBC/DRC/ PL/134/2013 – VERONICA W MAINA v TNA** before the Disputes Resolution Committee (the Committee) which had been established by the 1st Respondent, the Independent Electoral and Boundaries Commission, to hear disputes, arising from nominations by political parties to county assemblies, in respect of the seats contemplated by Article 177(1) (b) and (c) of the Constitution. Her complaint was that the order of priority was not followed in the nominations. In a ruling delivered on 7th June, 2013 the Committee dismissed her complaint on the ground that she had withdrawn the matter as she had already filed a case in the High Court.
2. The Petitioner being aggrieved by the decision of the 1st Respondent has now approached us through the amended petition dated 5th July, 2013 and prays that the appointment of the 2nd Respondent, Naomi Wangechi Gitonga, as the 1st Interested Party's nominee for Nyeri County Assembly be declared invalid and nullified and her name be substituted with that of the Petitioner.
3. Our understanding is that the Petitioner's complaints are:-
 - a. That her complaint was never heard by the 1st Respondent. Her counsel told us that the 1st Respondent observed that the Petitioner had filed a case in the High Court and she had opted to withdraw the complaint which she had lodged before the 1st Respondent.
 - b. The 2nd Respondent was a member of the 2nd Interested Party, the Republican Congress Party of Kenya, but had been given a slot belonging to the 1st Interested Party. It is the Petitioner's case that the 2nd Interested Party had not won any seat in Nyeri County and was therefore not entitled to a slot in respect of the seats contemplated by Article 177(1)(b) and (c) of the Constitution.
4. The 1st Respondent opposed the application through a replying affidavit sworn by its Legal Officer, Mr. Moses Kipkoge, on 5th July, 2013. It is the 1st Respondent's case that the Petitioner was not in the list submitted to it by the 1st Interested Party and the Petitioner was therefore not eligible for nomination. The 1st Respondent also argued that the 2nd Respondent was nominated for a slot belonging to the 2nd Interested Party and not the 1st Interested Party.

5. We have agonized about this matter since the main issue was raised in the Petitioner's supplementary affidavit sworn on 5th July, 2012 and this could be the reason Mr. Moses Kipkogei did not address the issue in his affidavit. We also note that the interested parties were brought into this matter too close to the hearing date and they may not have had the opportunity to respond to the allegations contained in the Petitioner's pleadings. We note that this matter was first filed at Nyeri High Court as Petition No. 6/2013. The matter was placed before our brother Justice J Wakiaga for the first time on 25th June, 2013. The certificate of urgency which caused the file to be placed before Justice Wakiaga is dated 21st June, 2013 and was filed on 24th June, 2013. The decision of the 1st Respondent is dated 7th June, 2013 and unless there are other proceedings filed by the Petitioner, which proceedings were not brought to our attention, then the Petitioner had no matter pending in the High Court at the time she appeared before the 1st Respondent. There was therefore no reason for denying the Petitioner audience and she was therefore denied an opportunity of presenting her case.
6. We therefore order the 1st Respondent to hear and determine the Petitioner's complaint within 14 days from today's date. The 1st Respondent will thereafter gazette the name of the selected nominee. There will be 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