



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW NO. 200 OF 2013

BETWEEN

WIPER DEMOCRATIC MOVEMENT-KENYA APPLICANT

AND

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

LIZA MBINYA ZAKARIA 2ND RESPONDENT

AND

ANASTASIA WANZA MBOVA 1ST INTERESTED PARTY

BUNYIGE ANNA OTAITO 2ND INTERESTED PARTY

SELINA NABWA MWITA 3RD INTERESTED PARTY

JUDGMENT

1. The Wiper Democratic Party, the applicant has brought the Notice of Motion dated 24th June 2013 seeking to quash the decision of the IEBC Nomination Dispute Resolution Committee (“the Committee”) where it declared Liza Mbinya Zakaria and Selina Nagwa Mvita as the applicant’s nominees for Makueni County and Migori County respectively. It seeks to compel the publication of Anastasia Wanza Mbova and Bunyige Anna Otaigo as the Wiper nominee for Makueni and Migori County respectively.
2. The applicant avers that the names published do not accord with the wishes and resolution of the party communicated to the IEBC through several letters. It is the applicant’s position that the Committee unilaterally and without colour of right altered the applicant’s lists.
3. In its ruling dated 7th June 2013, the Committee made the following findings as regards the two counties: With regard to Makueni County, it was noted that, **“After hearing and deliberating on**

all the complaints submitted the Committee hereby dismisses all the complaints relating to nominations in Makueni County.” Whereas on Migori County, the Committee noted, *“That Jane Gati Marwa nominated to represent ODM in the Gender Top Up list is hereby replaced with Stella Akinyi Ombonya ID No. 8997616. There is sufficient evidence to prove that Jane Gati is a public officer working for TSC.”*

4. As regards Selina Nabwa Mwita, we have considered that the letter dated 21st April 2013 is a resignation letter. In the circumstances, we think that the proper approach is to direct the IEBC to investigate the matter within 7 days and give the party an opportunity to make a fresh nomination.
5. Mr Muhoro, counsel for IEBC contended that only one name had been submitted to the IEBC so there was no one to nominate and further that the letter regarding the alleged immigration does not say anything about emigration. With regard to Makueni, counsel stated that the reason for removal of the Wiper nominee was because the nominee’s husband was an elected member and that that was not a reason for removal of the nominee. We agree that the fact of an elected member’s spouse being a nominee was not a valid reason to remove the nominee. We therefore reverse the decision in this respect.
6. In the circumstances, we make the following orders;
 1. **We direct the IEBC to investigate the circumstances of the resignation of SELINA NAGWA MWITA within 14 days and if it so finds to give WIPER an opportunity to nominate a member.**
 2. **The decision to remove LIZA MBINYA ZAKARIA is hereby quashed.**

DATED and DELIVERED at NAIROBI this 12th July 2013

MUMBI NGUGI

D.S. MAJANJA

W. K. KORIR

JUDGE

JUDGE

JUDGE