



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 61 of 2013

ROBERT AKUMU ASEMBO ..... APPLICANT

AND

THE POLITICAL PARTIES TRIBUNAL.....1<sup>ST</sup> RESPONDENT

ORANGE DEMOCRATIC MOVEMENT .....2<sup>ND</sup> RESPONDENT

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....3<sup>RD</sup>  
RESPONDENT

LAMECK SIAGE .....INTERESTED PARTY

JUDGMENT

1. We have considered the application and depositions and heard the parties in support of and in opposition to the application.
2. We are satisfied that the applicant was not given a hearing at the *Political Parties Tribunal Case No. 5 of 2013*. Mr Robert Asembo who had been nominated by the Orange Democratic Movement to contest the position of member of National Assembly for Embakasi Central Constituency, Nairobi County was not a party to the dispute nor was he served with proceedings. The fact that the party which represented him was party to the case and was heard does not diminish Mr Asembo's right to be heard nor does it entitle counsel for the party to appropriate the right of Mr Asembo to represent himself.
3. The order issued on 30<sup>th</sup> January 2013 was in breach of the rules of natural justice. It cannot stand nor can the court shut its eyes to a violation of this fundamental right underpinned by **Articles 47** and **50** of the Constitution. The order given on 30<sup>th</sup> January 2013 is hereby quashed in its entirety.
4. The result is that every fruit of the poisonous tree must be plucked. It follows that we also quash the certificate issued by the returning officer – Embakasi Central Constituency contained in the certificate dated 31<sup>st</sup> January 2013.
5. We direct as follows;
  - 1) **The political parties Tribunal shall hear the parties to Dispute No. 5 of 2013 de novo in the presence of the applicant, Robert Asembo forthwith.**
  - 2) **The IEBC shall comply with the decision of the Political Parties Tribunal on the**

**proper nominee of the Orange Democratic Movement.**

**3) The Political Parties tribunal shall complete its determination by close of business on 4<sup>th</sup> February 2013.**

**4) The IEBC/Returning officer shall be entitled to receive the nomination papers for the Orange Democratic Movement candidate for Embakasi Central Constituency by the close of business on 5<sup>th</sup> February 2013.**

**5) There shall be no order as to costs.**

**Dated and Delivered at Nairobi this 1<sup>st</sup> February 2013**

**D.S. MAJANJA**

**JUDGE**

**W. KORIR**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**