



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NYERI

ELECTION PETITION NO. 2 OF 2013

IN THE MATTER OF ELECTIONS ACT, 2011 AND THE ELECTIONS

(PARLIAMENTARY AND COUNTY ELECTIONS PETITION RULES 2013

AND

**IN THE MATTER OF MEMBERS NOMINATED TO THE NYERI COUNTY ASSEMBLY AND
GAZETTE NOTICE NO. 15096 PUBLISHED IN THE**

KENYA GAZETTE DATED 29TH NOVEMBER, 2013

BETWEEN

NAOMI WANGECHI GITONGA.....1ST PETITIONER
HANNA WARUKIRA KABUI.....2ND PETITIONER
ANN NYAMBURA WANG'OMBE.....3RD PETITIONER
LEAH MUMBI NJOROGE.....4TH PETITIONER

VERSUS

INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION (IEBC).....1ST RESPONDENT
THE NATIONAL ALLIANCE PARTY.....2ND RESPONDENT
KEZIAH WARUINU MWANGI.....3RD RESPONDENT
LUCY NYAGUTHII4TH RESPONDENT
SALOME WAIRIMU KAGO.....5TH RESPONDENT
JECINTA WAMBUI WAMAE.....6TH RESPONDENT
MARY WAIRIMU MURAGURI.....7TH RESPONDENT

JOSEPH KANYI KINGORI.....	8 TH RESPONDENT
REGINA WANJIRU MACHARIA.....	9 TH RESPONDENT
JOSEPHINE MUTHONI MUREITHI.....	10 TH RESPONDENT
ELIZABETH WANGUI NJEE.....	11 TH RESPONDENT
LUCY MUGURE WANYITU.....	12 TH RESPONDENT
NANCY WANJIKU GACHOCHIO.....	13 TH RESPONDENT
SALIMA ULEDI.....	14 TH RESPONDENT
ANASTACIA WANJIRU NJUKIA.....	15 TH RESPONDENT

JUDGMENT

It is appropriate that this Court sets out the reliefs and orders sought by the Petitioners herein contained in their petition, and the responses filed by the Respondents.

The Petitioners herein are represented by Mr. Kibe Mungai Advocate, Ms. Ameyo Advocate appears for the first Respondent. Mr. Omboga Advocate appears for the second Respondent. The 3rd – 6th and 10th – 15th Respondents are represented by Mr. Ndungu Advocate. The 7th, 8th and 9th Respondents are represented by Mr. Ngunjiri Advocate.

The Petitioners' prayers are thus:-

(a) That a declaration be issued to declare that the Court of Appeal in its judgment dated and delivered on 8th November, 2013, in the case of

Rose Wairimu Kamau & 3 others

Versus

IEBC

Civil Appeal No. 169 of 2013 (to be referred to in this petition as the **Rose Wairimu Kamau** case) quashed the nomination of the National Alliance Party representatives (TNA) to the Nyeri County Assembly nominated vide gazette Notice No. 9794 published in the Kenya Gazette of 17th July 2013.

(b) That a declaration be issued that gazette of 17th July 2013 was quashed by the judgment of the Court of Appeal in the **Rose Wairimu Kamau** case, to the extent that it applies to the representatives of TNA Party in the Nyeri County Assembly.

- That a declaration be issued to declare the Kenya Gazette Notice No. 15096 published in the Kenya Gazette of 29th November 2013, is null and void to the extent that it purports to amend gazette Notice No. 9794 so as to replace the petitioners herein with the 3rd – 6th Respondents as representatives of the second Respondent in the Nyeri County Assembly.

(d) That a declaration be issued to declare that under Articles 90 and 177 of the Constitution, the 3rd – 6th Respondents have not been validly nominated and/or elected as members of the Nyeri County Assembly.

(e) That a declaration be issued to declare that the 2nd Respondent has violated Articles 90 and 177 of the constitution and sections 34 – 37 of the Elections Act 2011, in purporting to nominate the 3rd – 6th

Respondents pursuant to the Court of Appeal decision dated and delivered on 8th November 2013 in the **Rose Wairimu Kamau** case.

(f) That a declaration be issued to declare that as a consequence of the judgment of the Court of Appeal dated 8/11/13, the 7th – 15th Respondents are not members of the Nyeri County Assembly.

(g) That a declaration be issued to declare that by dent of the Court of Appeal judgment, the 1st Respondent had no power to amend gazette Notice No. 9794 published in the Kenya Gazette of 17th July 2013, to the extent that it applied to nominees of the 2nd Respondent in the Nyeri County Assembly.

(h) That the Court be pleased to issue, an order quashing and/or invalidating Gazette Notice No. 15096, published in the Kenya Gazette of 29/11/13, to the extent that it specifies that 3rd – 6th Respondents are validly nominated or elected as members of the Nyeri County Assembly when the list submitted by the second Respondent pursuant to the Court of Appeal decision.

(I) That the Court be pleased to issue an order quashing and/or invalidating Gazette Notice No. 9794 of 17/7/13 to the extent that it specified that the 7th – 15th Respondents are validly nominated or elected as members of the Nyeri County Assembly on the ticket of the 2nd Respondent.

(j) That pursuant to the judgment in the Rose Wairimu Kamau case the Court be pleased to order the second Respondent to nominate its thirteen nominees to the Nyeri County Assembly in accordance with the TNA constitution and Nominations Rules and applicable provisions of the Constitution and the Elections Act 2011.

(k) Any other relief and redress this Honourable Court may deem just and/or expedient to grant.

(l) The costs of the Petition be borne by the Respondents either jointly and or severally as the Court deems just.

In their affidavit in support of the 1st Respondents' response to the Petition, Moses Kipkogei who was also the respondent's witness, deponed that the decision in the Petition **number 147 of 2013 National Gender and Equality Commission V IEBC and others** does not support the petitioner's averment that the Court ordered political parties to submit new lists of nominees. It is deponed that the fourth Petitioners name does not appear in the IEBC's first submission of Political Parties List and the IEBC amended allocation of Nominees to County Assembly Special Seats and Gazette Notice No. 9794 of 2013.

The deponent further depones that the Court of Appeal's decision has been interpreted erroneously by the Petitioners and the Party list submitted was proper.

IEBC is said to have complied by gazetting the duly validly nominated persons as directed and the Court of Appeal decision was properly executed vide gazette Notice No. 15096.

In their response to the Petition dated 14th February, 2014, the first Respondent challenged the Petition, arguing that it be dismissed and it be determined that 3rd to 15th Respondents be considered as lawfully nominated and gazetted through a valid process.

The second Respondents answer to the Petition dated 20th May 2014, is to the effect that TNA complied with the Court of Appeal decision in Appeal No. 169 of 2013 by forwarding the members list to IEBC containing names of Respondents Nos 3 to 15. It is further averred that TNA was not obliged to retain the petitioners in the Party list and the list submitted was not discriminatory and those nominated are legally serving as members of the Nyeri County Assembly.

The 3rd – 6th and 10th – 15th Respondents in their answer raised the issue of jurisdiction of this Court. They also submit that TNA and IEBC complied with the orders of the Court of Appeal in the case of **Rose Wairimu Kamau**

and that they are properly nominated and they need not have gone through a fresh process of nomination. They are satisfied with the gazette notice of 29/11/13 No. 15096.

They say not everybody can be nominated.

The 7th 8th and 9th Respondents also question the jurisdiction of the Court. They also argue that their nomination has never been challenged. They rely on correspondent of IEBC to the speaker, telling him that their nomination had not been affected. They want the petition dismissed.

The Petitioners herein filed their affidavits in support of the petition and relied on the affidavit of the first petitioner, **NAOMI WANGECHI GITONGA**. The third petitioner was called as witness.

What the Court gathers from the petition, accompanying documents and is that the petitioners who are TNA members (the witness for the 2nd Respondent admitted as much) were nominated to the Nyeri County Assembly, and so were the 7th – 15th Respondents, as representatives. The nomination was actualized through gazette notice No. 9794 of 2013. Their start at the Assembly was cut short by the decision of the Court of Appeal in the case of

Rose Wairimu Kamau and 3 others

V

IEBC

Civil Appeal No. 169 of 2013

The 2nd Respondent subsequently submitted a list to the IEBC to comply with orders given by the Court of Appeal. IEBC proceeded to amend the earlier gazette Notice of 17th July 2013, with the one No. 15096 of 29/11/13, effectively ending the membership of the Petitioners to the Assembly.

The Petitioners are not happy that TNA did not do procedural selection to make up the list submitted to IEBC. They further hold that the 3rd – 6th Respondents did not therefore compete for the positions as they were previously not Assembly members.

The petitioners are aggrieved that the first Respondent did not do a Gazettement in line with the persons who had been listed by TNA and ended up merely amending the earlier gazette of 17/7/13 and thereby deleting the Petitioners names and replacing with those of 3rd to 6th Respondents. The 14th Respondent was not gazetted and nor were the 7th 8th and 9th Respondents. The Petitioners do not understand how TNA came up with the list of nominees. The witness says some elected members of the County Assembly (2) were included in that list. The witness was challenged on the fact that she did not include the latter point in her petition.

The Petitioner says the Court of Appeal decision did not spare any of them, when the nomination to the Assembly was set aside and her quarrel is that TNA did not in their selection ensure that the Regional balance envisaged by the Court of Appeal was realized because some large area like Kieni Constituency was disadvantaged.

The Petitioners expectations were that TNA would have complied with the Party Rules in the process of preparing the list, starting from applications, scrutinizing documentation of applicants before making the selection and the party should have told them about the implications of the Court of Appeal judgment.

The Petitioner was challenged on a number of issues and I will identify them.

- Did the Court of Appeal direct that Gazette Notice 9794 be quashed.
- Was that gazette Notice a composite notice and one for Nyeri County.
- Was the witness and Petitioners invited to attend the Court of Appeal case – they were.

- Did TNA prepare a list and IEBC gazette the prioritized names within the stipulated time.
- Should the Petitioners have been victimized in the name of regional balance.
- She does not know how the 3rd – 6th Respondents were nominated or the rest of them.
- If TNA felt that time given by Court of Appeal was short they would have sought an extension.
- Was the party's influence in a specific area a criteria for more selections from such area?
- If the Petitioner's names were included in the party list, whose mandate was it to prioritize the name – who is less deserving on the list.
- Only members in the Gender top – up – list were served through the newspaper advert to attend the Court of Appeal case, those excluding the 7th, 8th and 9th Respondents.

On re-examination the Petitioner says she was not served with any documents relating to the Court of Appeal case. The Court of Appeal did not dictate who was to be dropped in the nominations, to meet the regional balance. She says the Court of Appeal did not ask TNA to disregard its Rules in conducting the nominations.

The Secretary General TNA testified for the second Respondent. He says he totally agreed with the Court of Appeal decision in the case of **Rose Wairimu Kamau** and says TNA had prepared the list hurriedly and ignored the regional balance requirement. This time round he consulted the members of the party including officials, elected representatives and those who had been affected by the Court of Appeal decision. They then came up with the list within the stipulated time and IEBC complied on their part. He is satisfied that they set the priorities in the list and those nominated qualified for it. They did the distribution equitably and not for equally purposes and that as a party they took into account their political considerations in doing the distribution of slots.

The witness says the complete procedure before nominations, according to their Rules would mean that people apply to the party, names go to the Board, the National office compiles names and return to the Board for verification who return it to Headquarters after confirming activities.

The National oversight Board was to go through the names and do a verification then the Secretary General submits the names to IEBC. He says the elaborate process would require at least 2 months.

He further says that the Court of Appeal ruling placed TNA between a rock and a hard place and they had to come out with a list, due to the time constraints and they felt that technically the Court had ousted the operation of the Rules, by giving time lines.

In answer to questions by counsels representing the co-respondents, the witness acknowledges that he complied with the requirements of the Court of Appeal decision. He reiterates that there was no complaint against person nominated in the marginalized list.

He says Article 28 of the nomination Rules gives the procedure of nominating candidates but in the instant case the nominations were prompted by the Court decision and Court orders have to be obeyed.

On answering questions from Mr. Kibe, the Secretary General TNA says he is aware of legislation covering conduct of nominations for County Representatives, the constitutional provisions, Election Act and Rules and the TNA constitution and Rules.

The witness understood the judgment of Court of Appeal to mean that the party list had been set aside and all names under the Gender top up and marginalized categories were thus set aside. He submitted a list containing both groups. He says the Court did not allow them to disregard the law and rules.

He applied a few clauses of Article 29 (clause 1 and 2) of the Constitution as well as 5, 6, and 7. A panel was formed but applications were not received.

The nominated members whose nomination had been set aside were invited were also invited for consultation, to suggest who should be included in the list and who should be dropped.

The witness was asked why he did not include in his response that they did consultations.

They did not opt to go back to Court and have the timeliness varied. The witness does not agree that the subordinate Court set aside the Court of Appeal decision. The witness further states that they acted equitably and the fact that he used the word equality was a typographical error. He says that if the constitution and the Rules are followed it would ensure justice for all. He wants the Petitioners to subject their interests for the greater good so that litigation comes to an end.

The 1st Respondents witness is a Senior Legal Officer with IEBC. He says that Respondent complied with the Court of Appeal order and amended the earlier gazette of 17/7/13. They did a corrigenda in Gazette Notice No. 15096, reflecting the changes as they had picked the members by priority as is required by, the law. What they did not change was those in the marginalized list and the 14th Respondent. They were satisfied with the list TNA submitted.

The witness in answer to questions raised by learned counsels for the co – respondents, reiterates that they complied with the requirements of the law, in particular sections 34, 35 and 36 of the Elections Act and the intentions of IEBC can be discerned from the corrigenda. The marginalized were not affected.

In answer to questions by Petitioner's lawyer, the witness says theirs is to designate the names, the party sets the priorities in the list. He says if there were person dissatisfied they would have resolved with IEBC or the Political Parties Tribunal. He was taken through the earlier lists submitted and resubmitted for the 17/7/13 nominations.

The Court of Appeal set aside the Party list which then ceased to exist and TNA was to give another list which would be used for the remainder of the term of Parliament, and new list necessitated the corrigenda. The name of 14th Respondent had been set aside but it was still in the gazette.

TNA did not tell IEBC how to do the gazette. IEBC was satisfied that TNA had complied with the law, they relied on the certification given them, they did not ascertain compliance with the law. The witness says IEBC was to get the list and gazette and do no more.

The witness for the 7th 8th and 9th Respondents is the 9th Respondent. He was in the nominations gazetted on 17/7/13 and he says he never ceased being one and they have continued discharging their duties. He urges that if there were to have been an election petition against them it ought to have been filed within 28 days of 17/7/13. These Respondents were never invited to attend any Court case prior to this one and not in Court of Appeal.

In the instant case, when TNA sent a list to IEBC their names were included.

Their gazette never ceased and they want the petition dismissed. He submits on the issue of jurisdiction, that the Court lacks it.

On answering questions from counsels for the co-respondents, the witness reiterates that the Court of Appeal decision did not affect their status at all, only the 3rd to 6th Respondents were sworn in at the Assembly.

On answering question from Mr. Kibe he agrees that the Court of Appeal judgment did not separate Gender Top up and marginalized group lists. He agrees that their names were submitted to IEBC after the judgment and he believes that TNA was only confirming his nominations. He continued serving on the first oath he took. He was never degazetted with the other Respondents.

The 12th Respondent testified on behalf of the 3rd – 6th and 10th – 15th Respondents. She reiterates that she was in the nominations gazetted on 17/7/13 and after the Court of Appeal set aside the Party list, she was nominated again. A gazette Notice was done and she was there. There were four new nominees (3rd – 6th).

She says it was the party which prioritized who it wanted to be in the house. Only the new entrants were sworn by the speaker. The witness is of the view that the Court of Appeal would be best placed to interpret what a proper list was. She says nominations had taken about 3 months yet the Court now gave only 15 days for it. She is tired of litigation and wants it to be put to rest and those nominated to continue serving.

It was this witness who annexed the newspaper advert which invited a number of people into the Court of Appeal case. She says all of the 13 nominated members went to their Headquarters for consultations. They wrote names of those they wanted to continue serving.

She was satisfied with the list submitted and with the Gazettement. She is not aware of any appeal against the Court of Appeal decision. She is the deputy majority leader in the assembly. She was affected when the nomination was set aside. She agrees that 7th, 8th, 9th and 14th respondent did not appear in the gazette amendment. It was upon IEBC to correct any typographical errors. She says she was not served with any documents in the court of appeal case. The advert in the newspaper was just a notice. She operates on the strength of the oath she took on 23/7/13. The new list had a new ranking. She agrees that the TNA rules were not followed in the process after the court of appeal and it was not the court which told TNA not to follow rules. She does not know how the 3rd – 6th respondents were nominated. The nominees were notified of the court of appeal case and reason was that their interest were at stake. Their speaker sought advice from IEBC and was told that there was not need to swear them. The learned counsels for the respondents put in their written submissions. Counsel for the petitioner made oral submissions. Mr. Kibe invites the court to find that on the basis that the court of appeal decision set aside the Nyeri county assembly nomination, the nomination was nullified and that is why another list had to be compiled by TNA and gazetted by IEBC. His understanding is that the Kenya gazette gazetting the nominees was quashed. He reiterates that TNA did not comply with the law and rules in compiling the list and says that 2nd respondents admitted that it was so; were they pushed to disregard the law, there is no evidence supporting that. He relies on an authority that:

“ a court of law cannot condone or endorse an illegality” The party could have sought extension of time. Mr. Kibe Mungai says a corrigendum contains corrections of errors and cannot be legal instrument contemplated order section 87 of the regulations. Counsel still holds that 3rd – 6th respondents are not nominated in accordance with the law and that even the marginalized category's nomination had been set aside. Those not sworn are not validly in the house. The first respondent still submits that IEBC complied with the court of appeal order of 8/11/13. Further they state that there is reason why the 7th – 9th and 14th respondents were not in the gazette notice 15096 of 29th November 2013. They hold into the explanation of why the corrigendum was used to delete some names and insert others. It is agreed that the witness to the petition case is not honest as she did not at first admit her participation in the court of appeal case and there was no admission that she was part of the group that went to TNA headquarters to seek a solution. They submit that the petitioners were not entitled to any relief. Submissions by the 2nd respondent just reiterates that they acted in accordance with the Court Of Appeal decision and complied in making a list after consultations, despite the time lines given. He reiterates that the corrigendum was the way of complying with the orders after the party list had been submitted. Counsel for the 7th, 8th and 9th respondents argues that gazette notice 9794 of 17/7/13 is still valid. He says the status of these respondents cannot be effected by the court of appeal decision which never referred to them. He further states that there was no reason to swear them afresh because their seats had never gone vacant. The speaker of the assembly was never notified of nominations and he could not have sworn people twice. He finally submits that TNA would not have complied with the nominations in the given time frame. He wants the petition dismissed. Counsel for the 3rd – 6th and 10th – 15th respondents submits that the court of appeal decision was fully complied with by IEBC and TNA. Further that the final list forwarded to IEBC had complied with and enforced the court of appeal judgment with regard to the issue of regional balance.

In as much as the file and evidence and all pleadings may appear voluminous, the issues are clear to all the parties. In view of the fact that I have covered what each of the parties said of their case, and the issues that arose out of cross examinations, I will go straight to analyse the reliefs sought and decide if in the circumstances of the entire evidence they should be allowed, or on. The respondents side, whether the

petition should be dismissed. We have to move from the premise that it is agreed that the court of appeal in the case of **Rose Wairimu Kamau** set aside the nomination of the Nyeri county assembly and threw the ball at TNA to compile a list of nominees and present it to IEBC for gazette. It is evident that to a large extent and to the ability of the players, the orders were complied with. The previously nominated assembly members realised that their position had been changed, they were no longer nominated and they sought a way out. As at that point, legally, they were job seeking. In as much as they still TNA members they were TNA would still have names or made a fresh list altogether. The petitioners and respondents landed their names in the list. How they got there is one of the issues in this petition.

The 2nd respondent Marshalled all party operatives, elected members, the now de-nominated members to get a solution. The members whose nomination had been set aside were assisting in getting the solution, despite their interest. The party asked them how they could choose each other to regain the seats or be locked out. The 2nd respondent did not explain of what help that was but it was an unjust option where one can be given an opportunity to lock the door on another. TNA says it held consultations. Of course it is not supported by evidence and if a few people could have come up with the list, or if TNA decided to use the old list as the 2nd respondent said they did, and probably juggle names to give it a priority status, but they came up with a list. It is this list which gave rise to the issue of why they could not comply with the law and rules relating to nominations. The explanation is that time was limited. Was there any semblance of compliance apart from handing in a list. The petitioner are aggrieved that the nominations are a competition and for one to compete well, the rules were set and the parties have to organize how they should conduct the same. Application vetting, verifications. During the national nominations, at least 3 months was utilised. The IEBC now had 13 people to produce within 15 days, and probably a higher number to ensure prioritization in the event of losing a member. Did they attempt anything legal at all? The court of appeal did not tell them how to do the nominations. It is clear that the method used was not legal at all. Those interested in the nominations were not given an opportunity to compete. The field should have been open for all and that is why the advertisement of the situation at the time was very crucial. TNA was aware that the nomination included the marginalized group which was disadvantaged because they had never been invited to go to the court of appeal like the others. The witness for the 7th, 8th and 9th respondents appears not to have known what was happening even after the court of appeal case, although the witness for the 3rd – 6th and 10th – 15th respondents said that all who had previously been nominated went to Nairobi for the consultations. TNA knew that 7th – 9th respondents were part of the scenario and indeed forwarded their names to IEBC. IEBC did not gazette the names of the marginalized, because to them the gazette notice of 9794 was still valid and the position of these respondents was not affected.

The issue of whether the speaker of the Nyeri County Assembly was formally informed about the setting aside of all nominated members of his Assembly is neither here or there.

The witness who is 12th respondent says the speaker even consulted IEBC over who to swear and who not to swear.

After the party list and gazette, the way forward ought to have been self explanatory. There is the TNA list, drawn without following procedure because the rules had in a way been ousted by the court of appeal decision, what did IEBC as the electoral body do. They had a court order in hand and It did not matter how the list came, no oversight. The IEBC proceeded not to gazette the list as it was. They would have had an option of revoking the other gazette notice 9794, composite though it was to the extent that touched Nyeri county Assembly. They proceeded to do a corrigendum and delete some names and insert others. The complaint is that without an advert or application albeit from regions affected even the 12th respondent does not know how the 3rd – 6th respondents got into the nomination. IEBC ended up deleting some names, inserting others, and again re-inserting some deleted names. The logic of it is not clear especially if we were to go by the blades law dictionary's definition of what a corrigendum is, in the 8th edition, it says a corrigendum is:

“An error in a printed work discovered after the work has gone to press.” This is not the explanation the witness of the 1st respondent made the court believe it was. A corrigendum therefore was not the way to go. The IEBC was expected to gazette nominees and this would have been easier than deleting and

inserting and omitting others. IEBC was not justified to ignore TNA'S list of those from the marginalized group. The IEBC meant well but it did not do the proper thing as a result of which we have a gazette Notice 9794, we are not told what typographical error was being corrected and the corrigenda. Those who had been gazetted on 17/7/13 had their nominations set aside and there was no indications that they were being re – endorsed as the close nominees. It is against that background of events that this court has to make a decision on whether the law relied on by the all the parties in the following legislations.

1. The Constitution.
2. The Elections Act.
3. The Elections (Parliamentary And County Elections) Petition Rule.
4. The TNA Nominations Rules And Constitution.
5. The Political Parties Act.

And any other law and regulations has sufficiently been complied with, for justice to be seen to have been done in the nominations of the position which had been left vacant. It was not a matter of tossing a coin of the fact that some nominees will have to lose and others to gain. The footing was equal, all and more were to be in the race. The court of appeal did not limit the list to contain those who were there before only. Even 3rd – 6th respondents were free to participate but in a manner that did not leave some aggrieved of transparent. Having said all that we get back to the prayers in the petition. Should they or should they not be granted.

Yes, prayer (a) of the petition makes sense but the court of appeal gave its directions on the same, any declaration on that will not serve much purpose. On prayer (b) I have already given this court's observations on that Kenya gazette notice. I have given my observations on gazette notice No. 15096. On item (d) following the observations of the court, the 3rd to 6th respondents have not been validly nominated under articles 90 and 177 of the constitution, TNA did not follow the law. This court does not need to declare that 7th – 15th respondents are not members of the Nyeri county Assembly by virtue of the High Court decision. They are not because the TNA and IEBC did not comply with procedure required in conducting nominations and gazetting. On item (g) I have discussed the issue of the gazettes 9794 and 15096. As stated earlier the corrigendum was wrong, it was an instrument of correction and not of making or announcing substantive nominations and it is of no consequence. IEBC should carry the responsibility of de-gazetting or doing what is right. To sum up the case, this court can declare that TNA and IEBC did not conduct nominations and the gazetting of nominees in accordance with the law. Litigations must come to an end yes, but not at the expense of established institution or offices being allowed to use short cuts to do things in a certain way when the law provides for how things should be done. I am handling this case as a case of petitioners who are aggrieved after a nomination process and who come to court to seek redress and justice, and not because the petitioners were parties to a court of appeal case, the case which gave a road map of what TNA and IEBC was supposed to do to fill up the nominated slots. I am satisfied that petitioners have proved their case on a balance of probabilities that they lost in a contest which was never there. It was not for them to choose for TNA or IEBC what was the right method of getting to what the court of appeal wanted. They were players like the others. The respondents cannot be assisted by citing justification for what they did. I will in the circumstances, allow the petitions which was filed well within the 28 days stipulated in the law, and of all the prayers sought, I declare that their petition succeeds in the following terms.

1. All those nominated were not validly nominated in accordance with the law and the nominations are set aside.
2. The gazette Notice No.15096 of 29/11/13 is of no consequence, it was used in the wrong way.
3. The ball is in the court for TNA and IEBC to comply with the law regarding nominations, and proceed to conduct fresh nominations for members of the Nyeri county assembly.
4. The costs of the petition to be borne by the first and 2nd respondents, who caused the presence of the co-respondents in this matter, jointly and severally.

Right of Appeal 30 days.

W.A JUMA

C.M.

5/6/14

Court – Judgment read in open court on 5/6/14 in the presence of Mr. Kibe Mungai for petitioners, Mr. Omboga for 2nd respondent and holding brief for M/S Ameyo for 1st respondent, Mr. Ndungu for 3rd - 6th and 10th - 15th respondents holding brief for Mr. Ngunjiri for 7th, 8th and 9th respondents, and court clerk – Kiarie.

W.A JUMA

C.M.

5/6/14

Mr. Kibe – I pray for an order that the money deposited be released to the petitioners.

Mr. Omboga – my learned friend knows the law. He has to make a substantive application.

Order – Mr. Kibe to use the legal procedure set.

W.A JUMA

C.M.

5/6/14

Court – Once the ruling and judgment are typed, the parties to receive the copies at their cost.

W.A JUMA

C.M.

5/6/14