INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
DISPUTE RESOLUTION COMMITTEE

CASE DIGEST

DECISIONS OF THE IEBC DISPUTE RESOLUTION COMMITTEE
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I would like to express my sincere gratitude to the Chairman of the Independent Electoral and Boundaries Commission, Mr. Ahmed Issack Hassan, for entrusting me with the chairmanship of the Dispute Resolution Committee and for the unwavering support and non interference disposition he exhibited.

I also wish to extend special thanks to my fellow commissioners who comprised the membership of the Dispute Resolution Committee, to wit, Commissioner Mohamed Alawi, Commissioner Amb. Yusuf A. Nzibo and Commissioner Kule Godana for their support and unrivalled team work.

I wish to further appreciate the commission staff that comprised the secretariat for their commendable support.

It is worth reckoning that this was the pioneer IEBC Dispute Resolution Committee under the Constitution of Kenya 2010. The Committee meticulously executed its mandate and made legally wise, fair and balanced decision’s pedigreed on facts and the law. It is noteworthy that the Committee in the discharge of this onerous duty handled close to two thousand (2,000) complaints and worked within the set constitutional timelines to deliver.

It is instructive to note that whereas many parties who lost cases before the Committee lodged appeals in the High Court, basically all the Committee decisions were upheld by the Courts of law. This was in effect a sound affirmation of our fairness in the resolution of the disputes in such a hotly contested electoral nomination process.
I wish to equally take this opportunity to pass special thanks to Mr. Felix Owuor, EISA-Kenya, Country Director, and Ms Ilona Tip, for reviewing and improving the final draft of this digest.

Finally, the development of this digest would not have been possible without the financial assistance and support of the Embassy of Sweden, Kenya. We are indeed grateful for the continued support and cooperation.

Thank you all.

COMMISSIONER THOMAS LETANGULE
CHAIRMAN, IEBC DISPUTE RESOLUTION COMMITTEE
 FOREWORD

This Case Digest compiles and synthesizes sixty of the IEBC Disputes Resolution Committee (DRC)’s decisions relating to the 2013 General Elections. It will be useful to especially the political parties and other key stakeholders in understanding electoral jurisprudence on resolution of disputes arising from Political Parties’ nominations and Party Lists. By so doing, it will contribute immensely in enriching the legal and institutional arrangements for resolution of elections disputes in Kenya.

Under Art 88(4)(2), the IEBC is responsible for resolving electoral disputes except “election petitions and disputes subsequent to the declaration of election results”. The IEBC constituted the DRC to handle disputes that fall within this mandate. The DRC decided over 2000 disputes revolving around party Lists and more than 200 decisions touching on internal Political Parties’ nominations. Most of the disputes handled by the Committee centred on Political Parties’ primaries and Party Lists.

Since the re-introduction of multiparty democracy in 1991, Political Parties have rarely held credible party elections and primaries. For a long time, there was no law that governed party nominations. However, the Constitution 2010 and new elections sector laws have addressed the legal gaps and require Political Parties to embrace democratic culture. As the DRC’s decisions show, challenges still exist though and indeed this is one of the most litigated aspects of the electoral process.

Aside from the IEBC, other institutions, notably, Political Parties, the Political Parties Dispute Tribunal and the Judiciary- have roles in resolving elections disputes indicated in their legal mandates. Although
by and large this arrangement led to successful resolution of the disputes that arose, it has, in some instances, not functioned as seamlessly as we would have hoped. Most notably, it has led to concurrent jurisdiction, characterised by forum shopping, overlapping jurisdiction and in certain instances duplications. In light of this, the country may explore how to harmonize and synchronize the regime to remove the weaknesses and at the same time preserve the strengths.

The IEBC is committed to engaging constructively in this debate and any other discussion geared towards improving and enhancing electoral laws and process in Kenya.

Thank you.

MR. AHMED ISAACK HASSAN
CHAIRPERSON, IEBC
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>EDR</td>
<td>Elections Dispute Resolution</td>
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<tr>
<td>FORD-Kenya</td>
<td>Forum for Restoration of Democracy-Kenya</td>
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<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<td>DRC</td>
<td>Dispute Resolution Committee</td>
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<td>KANU</td>
<td>Kenya African National Union</td>
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<td>National Rainbow Coalition</td>
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<td>Orange Democratic Movement</td>
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<td>PO</td>
<td>Presiding Officers</td>
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<td>RO</td>
<td>Returning Officer</td>
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<td>TNA</td>
<td>The National Alliance</td>
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<td>WDM-K</td>
<td>Wiper Democratic Movement-Kenya</td>
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<td>URP</td>
<td>United Republican Party</td>
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1. INTRODUCTION AND CONTEXT

This case digest summarises a number of decisions that the Dispute Resolution Committee of the IEBC made in response to complaints filed in relation to the 2013 General Elections, as well as in relation to by-elections that took place after the General Elections. Most of the disputes emanated from controversies surrounding internal Party nominations and the election of members to the National Assembly, Senate and County Assembly under proportional representation. Over 200 complaints were about internal party nominations while over 1000 related to proportional representation (Party Lists).

1.1 Background

The impetus for the current legal and institutional framework for resolving election disputes can be traced to the developments that followed the disputed 2007 Presidential General Elections. These elections were contentious, divisive and triggered violence. International mediation efforts, spearheaded by Kofi Annan, engendered a power sharing agreement, whose salient feature was the formation of a Government of national unity. One of the principal tasks of this Government was to initiate comprehensive political and social reforms that would address the grievances that triggered the 2007 violence.

Relating to constitutional, legal and institutional reforms, the Government was required to create structures to address the genesis of the 2007 election violence. A key outcome was the creation of the Independent Review Commission on the General Elections (The Kriegler Commission) held in Kenya. The Independent Review Commission’s mandate was to analyse the institutional and legal framework for elections and to review the work of and capacity of the Electoral Commission of Kenya (ECK) to discharge its mandate. In its report, the Kriegler Commission concluded that the elections were so flawed that it would be difficult to ascertain who won. On the issue of resolution of election disputes, the Commission concluded that “the system of electoral law
enforcement and dispute resolution are conceptually defective and were executed poorly if at all by the ECK and the ordinary law-enforcement agencies of Government.” The Commission recommended far-reaching legal and institutional changes to the laws governing elections including electoral disputes. \(^1\) The 2010 Constitution and electoral laws have largely followed the recommendations of the Kriegler Report.

### 1.2 Electoral Dispute Resolution: The Law and Institutions

Election disputes in Kenya are conducted under the Constitution, the Elections Act, the Independent Electoral and Boundaries Commission Act and the Political Parties Act.

**The Constitution of Kenya**

The Constitution lays the foundation of the Election Dispute Resolution (EDR) framework. Article 81 stipulates the principles of the electoral system and these include;

a) Freedom of citizens to exercise their political rights under Article 38;
b) not more than two-thirds of the members of elective public bodies shall be of the same gender;
c) fair representation of persons with disabilities;
d) universal suffrage based on the aspiration for fair representation and equality of vote; and
e) free and fair elections, which are:
   i. by secret ballot;
   ii. free from violence, intimidation, improper influence or corruption;
   iii. conducted by an independent body;
   v. transparent; and
   vi. Administered in an impartial, neutral, efficient, accurate and accountable manner.

Article 87(1) enjoins Parliament to enact legislation to establish mechanisms for timely settling of electoral disputes. Article 88(4) (2)

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\(^1\) The Report of the Review Commission on the General Elections Held in Kenya on the 27\(^{th}\) December 2007 (generally referred to as *The Kriegler Report*)
provides that the IEBC is responsible for resolving electoral disputes except “election petitions and disputes subsequent to the declaration of election results”. The IEBC constituted the Dispute Resolution Committee (DRC) to handle disputes that fall within its mandate.

**The Independent Electoral and Boundaries Commission Act**
The IEBC Act governs the establishment and operations of the IEBC. It, among others, specifies the process of appointment of Commissioners and lists the functions of the IEBC. It also implements Article 88 of the Constitution, which provides for the establishment of the IEBC.

**The Elections Act, 2011**
The Elections Act 2011 is the substantive legislation governing the electoral process. The Act provides for, among others, registration of voters and elections dispute resolution. Section 71 repeats Article 88 (4) (e) of the Constitution; the Commission is responsible for settling “electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results”.

**The Political Parties Act**
Section 39 establishes the Political Parties Disputes Tribunal (PPDT), which is given powers to determine disputes between: (1) the members of a Political Party; (2) a member of a Political Party and a Political Party; (3) Political Parties; (4) an independent candidate and a Political Party; (5) and coalition partners. As a precondition to activating the jurisdiction of the PPDT, a Party must have exhausted the internal dispute resolution mechanisms of their respective Political Parties before they are referred to the Tribunal. The Tribunal also hears appeals of the decisions of the Registrar under this Act.

1.3 **Elections Dispute Resolution: A comparative overview**
The Electoral Dispute Resolution has attracted significant attention from policymakers, practitioners and other stakeholders in the electoral processes in the recent past. An efficient and effective EDR mechanism
is indispensable for the conduct of free and fair elections. Several countries and international organizations have attempted to formulate key principles underpinning EDR including its conceptual foundation, legal framework, institutional design, and processes. This section provides an overview of these principles and highlights their application to institutional design in some countries.

**General principles**

The International Foundation for Electoral Systems lists the following seven overarching standards, that are not exhaustive, as representing good practice on electoral dispute resolution:

1. A right of redress for election complaints and disputes;
2. A clearly defined regimen of election standards and procedures;
3. An impartial and informed arbiter;
4. A system that judicially expedites decisions;
5. Established burdens of proof and standards of evidence;
6. Availability of meaningful and effective remedies; and
7. Effective education of stakeholders.

**Right of Redress for Election Complaints and Disputes**

Participants in electoral processes must have the right of redress which contributes to creating confidence in the electoral process. The rights must have a strong foundation in the Constitution and the law and be supported by clear procedures and processes. The process for dispute resolution must be transparent with all the participants well informed in advance. This mechanism must encompass the fundamental right to judicial review with the prospect of an effective remedy.

“The guarantee of a right to redress must be clearly established by the law and known to the general public; when dealing with election irregularities in a failed election,” and “the public must be able both to understand why the election failed and to accept how it will be fixed.” This is particularly important when an election outcome is at stake. Specifically, the civil

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2 Guidelines for Understanding Adjudicating, and Resolving Disputes in Elections pg. 11 - 95
society, political parties and individuals need to know: 1) which entity will be in charge of their claim; 2) the chronological process of bringing such a claim; and 3) which procedural and substantive rules will govern the complaint.”

A clearly defined regime of Election Standards and Procedures
Election law must be generally expected to be pre-determined and certain as well as amenable to reform to account to changing political realities. These two elements of an electoral legal framework are important yet are sometimes conflicting, i.e. certainty and flexibility to change. EDR measures must be clearly written and accessible to provide adequate information of the process to individuals, political parties, and the civil society. This substantive body of law must be augmented by codified procedural mechanisms to adjudicate conflicts that arise in an election. An effective electoral complaint mechanism should legislate both the structural framework for adjudicating conflicts, as well as the specific procedural guidelines for stakeholders operating within that framework. The codification of substantive election law is essential for actors to bring claims in the event of irregularities. Thus a complaint adjudication system can only function properly if it works in tandem with a clearly defined body of electoral laws, regulations and rules of procedures.

Timing is of the essence in the codification or reform of the electoral framework. The public, candidates, contesting parties and staff of electoral management bodies should have sufficient time to become familiar with the law before an election takes place.

An impartial and informed Arbiter
The recognition of the universal importance of an impartial and informed arbiter is particularly relevant when it is applied to election complaints, which are generally politically sensitive and controversial. In addition to being independent, a judge or arbiter dealing with electoral complaints should be aware of the existing election related law and have sufficient capacity to assess, investigate and settle the complaints relating to this

3 Page 12 ibid
specific area of the law. Corruption undermines the independence of arbiters and judges, the legitimacy of electoral law, and the right to an effective remedy.

**A system that judicially expedites decisions and contains substantive due process safeguards**

Timely resolution of electoral disputes and meeting of public expectations regarding the substantive due process safeguards are mutually reinforcing elements of EDR. Timeliness requires countries to make an effort to:

1. ensure that the substantive and procedural law provide for clear timeframes for filing and determination of disputes; and
2. provide the courts or authority in charge of electoral complaints adjudication with the ability and resources to implement these time limits stated in the law.

Expeditious decisions cannot be made to the detriment of the right to a fair trial or the ability to prepare a defence. The proper administration of justice requires that principles such as equality before the courts, the right of an individual to be heard in his or her own defence and the right to a fair and public hearing by a competent, independent and impartial tribunal be respected. The concept of due process embraces all of these rights and principles and is guaranteed in the major international and regional human rights conventions.

**Availability of meaningful and effective remedies**

A functional dispute resolution regime must provide for effective and meaningful remedies which are proportionate to the infringements as well as serves as a deterrent. Most EDR mechanisms provide for a pyramid of sanctions which include warnings for minor infringements and, in more severe breaches, result in nullification of the election or penal sanctions. The right to an appeal or, at the very least, review by an independent authority, is a key component in ensuring access to an adequate remedy. An effective system of electoral appeals is an important safeguard against arbitrariness in the electoral process. Comprehensive reasoning based on facts and the law for a decision will also ensure the transparency
of a decision, provide for the enforcement of the decision and help in establishing the legitimacy of the final electoral results. The right to an effective remedy to erase all of the effects of the decision requires the relevant authority to comply with the ruling and to take concrete steps for enforcement. The sanctions should be clear, pre-determined in the law and applied proportionately in relation to the violation.

**Effective education of Stakeholders**

The stakeholders involved in the electoral complaints adjudication process have different needs. Lawyers and arbiters need to understand; the entire process of the claim, the parties who have legal standing, the required burden of proof, the possible appeals and the sanctions and penalties. On the other hand, the public, political parties, candidates and electoral management bodies need to know how to file a claim, which entity has jurisdiction to handle such a claim, and what evidentiary elements they should collect to support their claim. Understanding challenges and complaints may also lessen the workload of the complaints adjudication body, which will have to deal with electoral stakeholders that attempt to avoid accountability.

**Emerging EDR models**

Initially in the European and American democratic contexts, the EDR was a legislative function. Gradually, there was a shift to assigning the EDR role to the Judiciary, complemented by the electoral management bodies, which generally are allocated limited EDR functions. Some Counties have established specialized courts within the judicial branch to ensure speedy and efficient EDR processes and to build specialized capacity.

In Kenya, the IEBC first handles “electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes, subsequent to the declaration of election results”. Disputes contesting the result of the Presidential elections are handled by the Supreme Court. The reason why IEBC handles disputes within its jurisdiction is that election commissions have practical understanding
and experience of election law and implementing regulations. It also reduces the case load for courts hearing election complaints on appeal and ensures that disputes are resolved at the lowest administrative level. An effective EDR mechanism at the administrative levels ensures that activities relating to electoral administration are conducted within the strict statutory timeframes.

However, the piecemeal implementation of the electoral reform process in Kenya has resulted in a somewhat disintegrated approach to EDR. The Constitution, the Elections Act, 2011 and the Political Parties Act, 2011 have created overlapping jurisdiction, especially between the IEBC and the PPDT. Late changes to the law, barely four months before the 2013 General Elections, in an attempt to clarify jurisdiction of the courts, also resulted in a controversial allocation of EDR jurisdiction to the courts.
2. POLITICAL PARTIES NOMINATIONS DISPUTES

2.1 Background

The IEBC established the Dispute Resolution Committee (DRC), comprised of its Commissioners, to handle disputes emanating from internal Political Parties nominations. There were also disputes on the enforcement of the Code of Conduct and challenges to the Party Lists. Any person contesting the process or any other aspect of nominations was expected to first use the internal party dispute resolution mechanism. Thereafter, an appeal could be made to the Returning Officers and then to the DRC and High Court. However, the DRC handled most of the disputes at the first instance and any appeals were referred to the High Court.

Based on the analysis of the decisions from the DRC, the following were the grounds given by complainants for filing disputes:

- **Challenges to the authority of party officials:** Some disputes averred that the officials who signed the nomination forms were not *bona fide* or the nomination was endorsed at a meeting of a party organ that did not have the necessary authority.
• **Challenges relating to the membership of the candidate to the relevant Political Party:** Such disputes alleged that the candidate whose nomination was impugned was a member of a different Political Party. Section 14 of the Political Parties Act provides for the procedure of resignation from a Political Party:

• **Breach of internal party rules:** Some complainants alleged that the Political Parties flouted their own nomination rules, for instance, when they did not conduct competitive nominations. Under Article 91 of the Constitution every Political Party shall, among others, “Abide by the democratic principles of good governance, promote and practice democracy through regular, fair and elections”.

• **Disputes relating to voter registration:** These claims are founded on the grounds that the candidate whose nomination was challenged was not a registered voter.

• **Claims that the nomination was not conducted within the statutory timeframes:** The contention was that the nomination was not held within the statutory timeframes under the Elections Act. At least three events are designed to precede nomination by Political Parties: Political Parties are required to submit nomination rules at least three months before nomination; submit their Political Party members at least two months before the General Elections and submit a list of their nominees within forty five days before the date of the General Elections.

### 2.2 Rulings of the IEBC EDR Committee

Over 200 complaints were filed regarding party nominations. Because of time constraints, the DRC allotted a very short time for parties to present their cases.

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4 Elections Act, 2011 initially provided for six months but the requirement was reduced to three months under the Statute Law (Miscellaneous Amendments) Act, 2012

5 The initial Act provided for three months, and the requirement was reduced to two months.

6 The sixty day requirement was reduced to forty five days.
1.0  George Washington Omondi v ODM

Summary of Facts
The interested party, Edwin Yinda, won ODM’s nomination for Alego Usonga Constituency. An appeal by the Complainant, George Washington Omondi, to the County Appeals Tribunal was successful on the grounds that only results from 49 out of 73 polling stations were used to determine the winner. For this reason, the Returning Officer declared the complainant the winner. However, ODM’s National Elections Committee nominated Edward Yinda as its candidate on the strength of Rule 3(3) of the Party’s Nomination Rules. The Respondent admitted that it had nominated Mr Yinda and said that this was allowed in its Constitution.

Ruling
The DRC dismissed the complaint on the grounds that there was insufficient evidence.
2.0 Elisha Ochieng Odhiambo v Jakoyo Midiwo & ODM

Summary of Facts
The Complainant alleged that he received the most number of votes totalling to 12,124 during the ODM’s nomination exercise that took place on 17th January, 2013 in Gem Constituency. However, the party issued the Nomination Certificate to Mr. Jakoyo Midiwo who received 7,109 votes during the nomination exercise. He also alleged that there was partisan participation of the ODM National Elections Board in the nomination exercise. The Complainant alleged that he was subsequently declared the winner of ODM party nomination for Gem Constituency. Attached to the complaint is a letter dated 19th January 2013 allegedly written by the Returning Officer and addressed to the ODM Chairman stating, among other things, the result for the ODM nominations conducted by the Party in Gem Constituency.

The letter then sought to declare the Claimant the winner of the nomination exercise in Gem Constituency. The Applicant acknowledged that the nomination exercise was marred with violence.

The Party conceded that the nomination exercise that was conducted on 17th January, 2013 was marred with violence and malpractices that led to the disappearance of the Returning Officer. As a result of the violence, the Party took the decision to cancel the nomination exercise in Gem Constituency.

In a replying affidavit by the Respondent Jakoyo Midwio of 25th January, 2013, he admitted there was widespread violence in Gem Constituency during the nomination of the Party primaries that were held on 17th January, 2013 and that the violence affected the nomination process. He then states that at midnight of 17th January, 2013 he went to Wagai Shopping Centre where the Claimant’s supporters started beating up everyone, causing the Returning Officer to flee.
The Claimant exhausted all the Party mechanisms. An affidavit sworn by the Party’s National Election Board’s Chairman Franklin Bett on 25th January, 2013 stated that the parties agreed, during their appearance at the ODM National Appeals Board, that there were numerous malpractices that occurred during the nomination exercises. He further states that on realising that only ballot boxes from 49 polling stations had been submitted, he organized for the ballot papers from the remaining 24 polling stations to be brought to Wagai Shopping Centre.

He then alleged that the Party primaries conducted in Gem Constituency were cancelled at 3.00 a.m. by the Party.

**Decision**

Party nominations were not completed and thus a candidate could not be declared.
3.0 Kipoki Oreu Tasur v Richard Kilele & ODM

Summary of Facts
This dispute related to the nominations by ODM for the Kilgoris Parliamentary seat. The Complainant, Mr. Oreu Tasur, who was a contestant in the nominations for the said seat, complained that:

- His name was written on the ballot as “Joel Ole Tasur” as opposed to his correct name which is Kipoki Oreu Tasur;
- There was improper tallying of votes during ODM nominations for the Kilgoris National Assembly seat;
- Ballot papers for three stations, namely, Kimintet Ward, Lolgorian Ward, and Angata Barrikoi Ward, were missing from the final tally; and
- In some cases improvised materials were used for the elections and were delivered as late as 3pm.

Notwithstanding the irregularities, Mr. Oreu Tarus participated in the nominations and was declared the runner up with 5,770 votes against the winner, Mr. Richard Kilele, with 8,649 votes. In his view, if his name was correctly spelt on the ballot and the results of the three stations were included in the tally, he would have won. The Complainant alleged that he had complained to the County Election Panel on the recommendation of the ODM Elections Board Secretary Honourable Pareno, and that the Panel forwarded the recommendations to the ODM National Elections Board but the Board did not give him audience. He, however, did not say what the recommendations of the County Election Panel were.

In response, ODM argued that there was no mistake with the name on the ballot papers as the Complainant was popularly known as “Joel”. The Party also argued that the Complainant had not provided any evidence regarding his allegations. In addition to submissions before the Committee, ODM also relied on the affidavit dated 25th January 2013 sworn by its National Election Board’s Chairman Honourable Franklin Bett.
While the Complainant cited a range of irregularities that he claimed occurred during the nominations and repeated these under oath before the Committee, he did not produce any evidence to substantiate his claims. The documents attached to his claim were self-generated in the form of letters and his own tallies. The Complainant also alleged that the County Panel had made some recommendations to the ODM National Elections Board but he did not state what these recommendations were.

Regarding the names appearing on the ballot, Mr. Oreu Tarus, notwithstanding his allegation that the wrong name was on the ballot, participated in the nomination. Mr. Oreu while claiming that his name was wrong on the ballot paper, did not produce any evidence such as his National Identity Card or other document, to prove his correct names.

**Decision**
The Committee upheld the decision of the Party.
4.0 Wilson Ongele Ochola v ODM Elections Board & Reuben Pius Ojwang

Summary of Facts
This dispute related to the Utalii County Assembly Ward in Nairobi County. The Complainant’s main complaint was that although he won the ODM nominations for the Ward with 2,211 votes and had been issued with a nomination certificate, a different candidate’s name (Reuben Pius Ojwang) was forwarded to IEBC as the party’s nominee. The latter had received 1,037 votes. In support of his complaint, Mr Ochola filed a verifying affidavit dated 23rd January 2013. The returning officer, a Mr. Eric Theuri Njeru, also filed an affidavit dated 23rd January 2013 in support of the complainant’s position.

The ODM, which relied on the affidavit dated 25th January 2013 by its National Election Board’s Chairman Honourable Franklin Bett, conceded that during the Committee hearing the Party had indeed erroneously forwarded the name of Reuben Pius Ojwang as the Party’s nominee for the Utalii County Assembly Ward to IEBC. Consequently, the Party would honour the nomination certificate issued to the Complainant. ODM also agreed that IEBC should replace the name of Reuben Pius Ojwang with that of Wilson Ongele Ochola on its nomination list.

Mr. Ojwang, who appeared before the Committee as an interested party, opposed ODM’s position and argued that he had been properly nominated by the Party following the nullification of the Complainant’s nomination due to malpractices by the Complainant. He filed an affidavit dated 25th January 2012 in support of his position. Among other things, he argued that the Party had the right to nominate candidates directly under Article 3.3 of its Constitution.

Mr. Ojwang did not argue that he won the nominations. Rather, he argued that because the Complainant and his supporters assaulted him and committed malpractices he was entitled to be nominated. The
allegations of violence against him by the Complainant were however not proven. Though he filed a police report, there was no police report or any other evidence provided to show that Mr. Ochola was responsible for assault on the Complainant.

**Decision**
The Complainant should be issued with a Certificate and the name be included on the Party’s nomination list.
5.0 George Ochieng Okanga v Prisca Auma Misachi & ODM

Summary of Facts
This dispute related to the Shauri Moyo/Kaloleni County Assembly Ward in Kisumu Central Constituency. The Complainant alleged that although he won the ODM nominations for the Ward, he was not issued with a nomination certificate. Instead, the certificate was issued to Mrs. Prisca Auma Misachi and her name forwarded to the IEBC as the ODM nominee. He asked that Mrs. Misachi’s nomination be nullified and his name entered into the ODM nominee’s list for the Shauri Moyo/Kaloleni County Assembly Ward elections.

His complaint was supported by an affidavit sworn by Michael Wanjala on 24th January 2013. Mr. Wanjala, who was the ODM Returning Officer at Shauri Moyo/Kaloleni, said that he had announced and declared the Complainant as the winner of the ODM nominations in the Ward. The Complainant, who had paid KES 20,000 as nomination fees, wrote to the Party on 22nd January 2013 to complain. He alleged that he did not receive any response. On the same day he filed a complaint with the IEBC.

In response, ODM, through its lawyer Mr. Arwa and the chairman of its National Elections Board Honourable Franklin Bett, said that the party had issued the nomination certificate to the right candidate and forwarded the correct winner to the IEBC. The Party also argued that it did not receive any complaint from the Complainant within the stipulated time and consequently the Complainant had failed to use or exhaust the internal party dispute resolution mechanisms. In addition to submissions before the Committee, ODM also relied on the affidavit dated 25th January 2013 by its National Election Board’s Chairman Honourable Franklin Bett.

Decision
There is no evidence of the Complainant having exhausted the party mechanism. The DRC upheld the position of the Party.
6.0 Rone Achoki Hussein v Peter Owera Oluoch & ODM

Summary of Facts
The dispute related to ODM nominations for the Huruma County Assembly Ward in Mathare Constituency. The Complainant was a candidate in the ODM nominations and had duly paid the KES 20,000 nomination fee. However, the Complainant’s name did not appear on the nomination ballot paper meaning that the Complainant could not participate in the nominations.

ODM, which had filed an Affidavit dated 25th January 2013 sworn by its National Election Board’s Chairman Honourable Franklin Bett, conceded that the Complainant was indeed a candidate and that his name had been erroneously left out during the printing of the ballot papers. However the nominations had proceeded and the winning candidate’s name (Peter Owera Oluoch) had already been forwarded to IEBC. In the circumstances the Party could not correct the mistake. The Party offered to include the complainant in its Party list.

The facts in this complaint are not disputed. The only dispute related to whether ODM should have substituted the name of Mr. Oluoch with that of the Complainant. It was noted that the Complainant did not contest the fact that Mr. Oluoch won. There is also no allegation that Mr. Oluoch had anything to do with the Complainant’s name missing on the ballot.

Decision
The complaint was not allowed, but the Party was asked to refund the nomination fees.
7.0 Tabitha Wothaya Ndigiriri v ODM

**Summary of Facts**
The Complainant alleged that the particular nomination was improper due to voter bribery. Her name was also missing from the ballot paper in four of the five polling stations. The nomination process was also claimed to be marred by violence with a number of voters not being allowed to vote. She alleged that no valid nomination took place in South C Ward. The Party responded that the Complainant did not submit any nomination certificate to them for investigation and denied all her allegations on the basis that no evidence was produced to corroborate her allegations. They thus left the decision to the Committee. The Complainant provided no evidence to corroborate her contention.

**Decision**
The Claim was dismissed for lack sufficient evidence to support the allegations.
8.0 Lt. Col. (Rtd.) F.C. Mugambi v Joash Olum & ODM

Summary of Facts
The dispute related to the ODM nominations for the Member of the National Assembly for Lang’ata Constituency. The Complainant was a candidate for the nominations, having paid the Kshs. 30,000 nomination fee. The Complainant, addressed a letter dated 18th January 2013, to the National Elections Board to lodge his complaint. Subsequently, on 19th January 2013, he lodged a complaint with the Party County Appeals Tribunal which subsequently heard the complaint and made a determination. The Complainant claimed that the County Appeals Tribunal disqualified the candidate who won the nominations. In a letter dated 21st January 2013 the Complainant alleged that the nominations were marred by various irregularities. He also argued that having received the second highest number of votes, he should then have automatically been declared the nominee for Lang’ata Constituency and a certificate should have been issued to him. ODM, however, forwarded the name of another candidate, Mr. Joash Olum, as their nominee.

ODM, through its National Election Board Chairman, Honourable Bett, submitted that the Complainant had participated in the nominations and lost to Mr. Olum. Further, Honourable Bett stated that the Complainant did not provide any evidence of the alleged irregularities or that the nomination of Mr. Olum had been cancelled. In addition to submissions given during the hearings of the Committee, ODM also relied on the affidavit dated 25th January 2013 sworn by its National Election Board’s Chairman Honourable Franklin Bett.

The Committee found that it was not disputed that the Complainant was a candidate in the nominations. The dispute related to the veracity of his allegations against Mr. Olum and regarding the actions of the ODM County Appeals Tribunal. The Complainant made a range of allegations primarily in a number of letters, without supporting evidence. While he repeated these allegations under oath before the Committee, he did
not provide corroborative evidence to support his allegations against Mr. Olum. He also did not provide evidence of the Appeals Tribunal’s decision.

**Decision**
The Claim was dismissed due to insufficient evidence.

**9.0 Peter Anyule Imwatok v ODM**

**Summary of Facts**
The dispute related to ODM nominations for Makongeni County Assembly Ward where the complainant Mr. Imwatok was a candidate. The Complainant was declared the winner after receiving 1,276 votes. After the announcement of the results, the Complainant was attacked and stabbed, and had to be hospitalized. However, ODM issued the nomination certificate and forwarded the name of Mr. Nicodemus Ochieng to the IEBC as the nominee for the County Assembly Ward seat in the 4th March 2013 General Elections. Mr. Ochieng, according to the Complainant, was sixth in the nominations having garnered 181 votes. The complaint was supported by the Complainant’s affidavit dated 22nd January 2013.

ODM, in response, conceded that the nomination certificate to Mr. Ochieng had been erroneously issued and that Mr. Imwatok had validly won the nominations for the Makongeni County Assembly Ward. The Party promised to issue a nomination certificate to Mr. Imwatok and cancel the certificate earlier issued to Mr. Ochieng. Mr. Ochieng did not attend the Committee’s proceedings and did not file any opposition to Mr. Imwatok’s complaint.

**Decision**
The Complainant be issued with the certificate and his name be included in the Party’s nomination list.
10.0 Omar Sheikh Ali v ODM

Summary of Facts

The Complainant asserted that ODM did not conduct nominations although the Complainant paid the required nomination fee of Ksh 120, 000 on the 18th of December, 2012. Instead, it directly nominated Nasir Mohammed Dolal, the interested party. Mr Omar claimed that the interested party was an American citizen and attached the American Passport number 076036368 to his affidavit.

In his replying affidavit of 25th January, 2013, the interested party admitted that ODM did not hold nominations and that he was given a direct nomination. He added further that the nomination was approved by the clan and the community and that Mr Dolal’s nomination would promote peace and tranquillity in the area. He did not deny being an American citizen as alleged by the Complainant, but contended that he had a right to contest the parliamentary nomination for Garissa Township Constituency as he was a Kenyan by birth, annexing his National Identity Card no. 10361491.

The Party defended its decision of the nomination citing Rule 3.3 of its Nomination Rules and stated that the nomination was based on community interest and group pressure. However, Honourable Franklin Bett, for the Party left the issue of citizenship to the Committee to determine.

There was direct nomination based on the community interests and this was not in dispute. On the issue of citizenship, the interested party did not dispute the Complainant’s assertion that he holds dual citizenship.

The DRC cited Article 78 of the Constitution which provides that:

_(1) A person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya

2) A State officer or a member of the defence forces shall not hold dual citizenship_
“State officer” as defined by Article 260 means ‘a person holding a state office.’
“State office” is further defined to mean, inter alia, the office of the President, the Deputy President, Cabinet Secretary and Member of Parliament

**Decision**
The complaint was allowed as a person with dual nationality is not eligible for nomination or to stand for elective post.
11.0 Edward Ochieng Otieno v ODM

Summary of Facts
The Complainant alleged that the direct nomination of Hon. Gerald Otieno Kajwang, the interested party in the dispute, was improper because:

a) It violated the Elections Act, 2011 and the Constitution as he had been struck off the Roll of Advocates for several offences committed under the Advocates Act, and therefore, lacked personal integrity, as required in Chapter Six of the Constitution.

b) There were other two competitors on the ballot for the same position and failure to hold competitive nominations violated their rights in Article 73 (2) & (1) of the Constitution.

For the above reasons, Mr Otieno asserted that unilateral naming of Gerald Otieno Kajwang as the ODM nominee to contest for the position of Senator in Homa Bay county was invalid, illegal and unconstitutional and therefore null and void.

In his submissions and sworn oral evidence, the Respondent admitted to that he was struck off the Roll of Advocates, but contended that he had subsequently settled all claims that had resulted in the disbarment, he had applied for reinstatement to the Advocates’ Roll and the same application had been heard and allowed. In support, he attached a letter from the Law Society Reference No. P105/1336/84 dated 10th January, 2013 and signed by the Secretary to the Law Society of Kenya.

The basis of the Complainant’s claim has been rebutted by the interested party and supported by the Law Society of Kenya.

Decision
After giving this matter due consideration, the Committee concluded that the complaints raised are beyond the jurisdiction of this Committee. The claim was accordingly dismissed.
12.0 Joseph Nyarigita Kinara v Benson Mutura Kang’ara & TNA

Summary of facts
The dispute related to the TNA nominations for Maringo County Assembly Ward. The complaint filed by Mr. Joseph Kinara stated that the TNA nominations scheduled for 17\textsuperscript{th} January 2013 were postponed due to logistical challenges and the nominations were conducted on 18\textsuperscript{th} January 2013. The complaint which was supported by an affidavit dated 24\textsuperscript{th} January 2013 contains details of various irregularities that were alleged to have occurred during the TNA nominations.

Amongst the irregularities were that:

- Supporters of the Complainant were not allowed to vote during the nomination;
- The supporters of other candidates were allowed to vote multiple times;
- There was no membership register used by the Party officials to vet persons who participated in the TNA nomination, as witnessed in Baraka polling station in Harambee Ward.

The Complainant lodged a complaint with the Party through a letter dated 20\textsuperscript{th} January 2013. The Complainant alleged that the matter was not heard or determined.

An interested party, Mr. Njuguna Mwangi who was a candidate for the TNA nomination for Maringo County Assembly Ward, alleged in an affidavit dated 23\textsuperscript{rd} January 2013 that the TNA nomination exercise was free and fair. According to the affidavit there was an incident of violence recorded which was allegedly carried out by Mr. Mark Ndung’u who was then arrested. Mr. Mwangi stated that he won the TNA nominations and was subsequently issued with a nomination certificate.

A response was filed by a Mr. Mark Ndungu Nganga in an affidavit dated 24\textsuperscript{th} January 2013. Mr. Nganga, who was a candidate in the
TNA nomination for Maringo County Assembly Ward stated that the nominations were marred by various malpractices including violence, bribery, undue influence and personation. His name was also missing from the ballot papers. Mr. Nganga’s plea was for the Committee to nullify the TNA nomination results in Maringo Hamza Ward and revoke the certificate awarded to Mr. Njunguna Mwangi.

Mr. Benson Mutura Kingara, an interested party, also filed an affidavit dated 26th January 2013 objecting to his enjoinment in the dispute. He said that the TNA nominations for Maringo County Assembly Ward were open and transparent. He also stated that Mr. Njuguna Mwangi was duly nominated as the TNA candidate for Maringo County Assembly Ward.

Consent was recorded.

**Decision**

TNA conceded the complaint and consent was recorded that the Complainant be included in the County Assembly Party List.
13.0 Hon Elias P. Mbau v Nahason Thuo Maina & TNA

Summary of facts
The dispute related to TNA nominations for Maragua National Assembly seat where the complainant was a candidate. The Complainant stated in the main complaint that the TNA nominations were irregular and that:

- The polling materials were not adequate for the exercise and the voters had to improvise. Plain ruled papers were used as ballot papers and therefore there was opportunity for fraud;
- Many voters did not find their names on the register and therefore were not allowed to vote. This disenfranchised many of his supporters;
- The Returning Officer and other polling officials were seen to be compromised by other candidates. The Returning Officer, a Mr. Thuo, disappeared from the tallying centre for an unknown period of time;
- The Complainant’s agents were harassed and ejected from various polling stations (Saba Saba, Jhaara and Kabati Polytechnic). The Complainant was also unable to access these polling stations.

The Complainant asked the Committee to revoke the certificate issued to Mr. Peter Kamande and declare the Complainant, Honourable Eliud Mbau, as the TNA nominee for the Maragua National Assembly seat.

The Returning Officer, Mr. Thuo Maina, submitted an affidavit dated 24\textsuperscript{th} January 2013 where he states that:

- He was not compromised by any candidate in the nomination exercise;
- When he had completed tallying, at least three quarters of the polling stations in the constituency, Hon. Elias Mbau was leading with 9648 votes while the second highest a Mr. Peter Kamande Mwangi received 4231 votes;
- He only left the tallying centre after threats to his security and life were made;
• No tallying took place after he left the tallying centre and as at that time the Complainant Hon Mbau was leading in the results;
• Later, the TNA County Nominations Committee Chairman announced Mr. Peter Kamande as the winner of the TNA Maragua National Assembly seat.

The Returning Officer did not have a conclusive tally of the votes. TNA stated that Honourable Mbau lost the nomination as his name did appear on the ballot paper in every polling station.

**Decision**
Disallowed. The Party position was upheld.
14.0 Lillian Wakiiya Mwaura v TNA

Summary of facts
The dispute related to the TNA nominations for Kiambu County Woman Representative to the National Assembly. The Complainant was a candidate in the nominations and paid the requisite nomination fee of Ksh 75,000. The Complainant’s name, however, did not appear on the ballot papers used in the nomination exercise. The Complainant also stated under oath that she had lodged a complaint with the TNA Dispute Resolution Board. The matter was allegedly heard by the Party Dispute Resolution Tribunal and the decision was to be communicated to the Complainant.

TNA through , a Ms. Wambui , allegedly contacted the Complainant to inform her that the party had realized the error and was willing to reimburse the nomination fee paid to the party as well as being included on the TNA Party List to the National Assembly.

The Complainant, therefore, prayed that the Committee ensures that TNA includes her name on the Party List to the National Assembly. In the alternative the Complainant should be compensated by TNA for all the expenses incurred during the nomination and campaign process.

TNA, through its Secretary for Legal Affairs Mr. Mbiuki, conceded that indeed they had erroneously excluded the Complainant’s name from the ballot papers due to a mix up with the printers. The party was therefore willing to refund her nomination fees and include her name on the Party List.

Decision
Following the concession by TNA there was no further dispute between the Complainant and the Party. The matter was marked as withdrawn.
15.0  Said Bakaru Mwakama v Ibrahim Mwashenga & TNA

Summary of Facts
This was a dispute relating to the TNA nominations for the Jomvu National Assembly seat. The complaint was that Mr. Mwakama, the Complainant, had participated in and won the TNA nominations for the Constituency but was not issued with an interim or final nomination certificate. Instead, the nomination certificate was issued to his opponent (Mr. Mwashenga) who had lost. His prayer to the Committee was to affirm his nomination win and have him included in the TNA nomination list. In response, TNA, through its Advocate Ms. Milimo and its Legal Secretary Mr. Mbiuki, conceded that the nomination certificate had been erroneously given to Mr. Mwashenga. Mr. Mwakama was therefore the validly nominated TNA candidate for Jomvu Constituency.

Decision
Following the concession by TNA there was no further dispute between the parties. Complaint allowed. Consent by the Party allowed. Objection raised by the Respondent was overruled. The Committee ordered that the Complainant be issued with a certificate and the name be included in the Party nomination list.
16.0 Michael Francis Chemonges v FORD-Kenya

Summary of Facts
The Complainant contested the seat having paid the requisite nomination fee. He contended that he was declared the winner by the Returning Officer. He was informed that a complaint had been raised about his integrity and that no nomination exercise had taken place. The complaint was thereafter withdrawn. The Complainant then found out that the Interested Party had been awarded the nomination certificate. He further claimed that upon raising this issue with the Party Leader he was requested to drop his candidature and that in its place he would be offered a diplomatic position in Government.

The Party filed written submissions dated 24th of January, 2013 stating that no election took place and an affidavit dated 24th January, 2013 by Desma Nungo, a board member of the National Elections Board of the Party, stated that no elections took place in Endebes constituency. He further stated that the Complainant, despite having filed an appeal on 20th January, 2013, failed to appear before the tribunal and opted to go directly to the IEBC Nominations Dispute Resolution Committee.

In an affidavit dated 24th January, 2013 by Jackson Baraza Wasike, the Trans Nzoia Returning Officer for the Party, asserted that nominations did take place and that the Complainant was declared the winner. Another affidavit dated 24th January, by Morgan Kimutai Ndiema 2013, the Presiding Officer in Endebes, said that two contestants vied for the seat and the Complainant was declared winner.

The Party, in their submissions and affidavits, alleged that no nominations took place.

Decision
The Complaint was disallowed due to insufficient evidence.
17.0 Gabriel Kipkorir Bergcelin v KANU

Summary of facts
The Complainant alleged that he was the sole candidate for the gubernatorial seat for KANU and was requested on 25th January, 2013 to collect his nomination certificate on the 18th of January, 2013. He was later informed that there was no certificate as the Party Chairman was yet to sign them on his return on the 21st of January, 2013. The Interested Party/2nd Respondent, Moses Kiplagat Changwany and Richard Chemweno were given Governor and Deputy Governor Nomination certificates respectively. He further claimed that the Interested Party was not a member of KANU but a member of URP. He investigated and confirmed that by 21st January, the Interested Party was not a member of KANU.

Decision
The complaint was disallowed due to insufficient evidence.

18.0 Abuya Abuya v ODM & Okongo Omogeni

Summary of facts
The Complainant asserted that he was the only candidate seeking the nomination of ODM to contest the Nyamira Senate seat. He stated that on 18th January 2013, being the only candidate, he was presented with the certificate of interim nomination by the ODM Returning Officer Nyamira County. Thereafter, he was surprised to learn that the Party had forwarded the name of the Interested Party, Mr Omogeni, to the IEBC as its nominee for the Nyamira Senate seat. In response the Party stated that the Complainant had not complied with the Party’s requirements for nomination, as he had only paid Kshs 100,000 out of the Kshs 200,000 payable to the Party by people seeking senatorial positions. This was not refuted by the Complainant.

Decision
The DRC agreed with the Complainant that he was the only candidate at the close of the Party nominations on 18th January 2013 and ordered the Party to issue him with a nomination certificate.
19.0 Paul Babu Ongili Owino v Timothy Wanyonyi Wetangula

Summary of Facts
The Complainant, Mr Owino, challenged ODM’s nomination of Timothy Wanyonyi Wetangula to contest Westlands Constituency elections on the ODM ticket. According to the complaint the Complainant had participated in the ODM nominations held on the 17th of January 2013. Eventually, the Respondent was given the Party’s nomination certificate. In a complaint dated the 22nd of January 2013, the Complainant challenged the nomination process and the outcome. He alleged that the ballot papers that were used in the internal Party nominations on 17th of January 2013 were pre-marked in favour of the Respondent and that he reported the matter to the Parklands Police Station, recorded as complaint OB-62 of 17th January 2013. He also alleged that the Respondent committed other electoral malpractices including the transportation of voters and voter bribery and that he and the Presiding Officers were from the same community.

The Complainant attached a letter from the Returning Officer, Lola Walela, dated the 18th of January 2013 which stated that there were serious flaws in the nomination process including lateness in the delivery of polling materials, irregularities by the Respondent and his supporters, including possession of pre-marked ballot papers and threats of violence. The Returning Officer (RO) concluded that there were serious malpractices in some polling stations and proceeded to disqualify the Respondent and another candidate, Jefferson Kassam. She simultaneously declared the Complainant the winner with 4,687 votes.

In response, six affidavits, all sworn on the 24th of January 2013, were filed. The deponents were Humphrey Omukuti, the Presiding Officer (PO) at the St. Martin’s Primary School Polling Station, Michael Aswani, PO Kangemi Primary School Polling Station, Giles Simiyu, PO at the Hospital Hill Primary School Polling Station, Joseph Oloo, PO at the Muguga Green Polling Station, John Kirui, PO at New Kihumbuini Polling Station and Lola Walela, the RO.
Humphrey Omukuti said that after the counting and tallying of votes at the Polling Station, the Respondent emerged the winner with 503 votes whilst the Complainant had 28 votes. He proceeded to Nyayo Stadium but was unable to submit the ballot papers to the RO as she was ‘under attack from aspirants and their supporters’. He opted to hand over the results directly to the Nairobi County Returning Officer.

Michael Aswani said that the Respondent emerged the winner after the counting of votes at the Polling Station and that he was able to deliver the ballots to the RO at Nyayo Stadium.

Giles Simiyu said that after the counting of votes at the polling station, the Respondent emerged the winner with 205 votes. The PO however did not state the total number of votes cast for the other candidates. The PO stated that he went to Nyayo Stadium to deliver the ballots but found that the RO was surrounded by a large mob and was under attack from aspirants and their supporters. When he handed the ballots to the RO, they were forcefully taken from her and destroyed.

Joseph Oloo said that upon the counting of ballots at the polling station the Respondent was declared the winner with 548 votes. The PO did not however, indicate in his affidavit the number of votes cast for the other aspirants. He too found a chaotic situation at the Nyayo Stadium and whilst attempting to hand the ballots to the RO, they were forcefully taken and destroyed.

George Kirui said that he too counted the ballots at the polling station and the Respondent garnered 1356 votes against the Complainant’s 595. He went to deliver the sealed ballot boxes to the RO at Nyayo but did not find her, and he signed the Results Form.

Lola Walela said that she wrote the letter dated the 18th of January 2013 under severe threat and duress of aspirants and supporters who claimed that the elections had been rigged. She further said that as the results were
delivered by the POs, they were forcefully taken and torn but that she had earlier received all the results by short message text which showed that the Respondent garnered 7178 votes against the Complainant’s 4687. She said that no incidents were reported to her by the POs, regarding the Respondent’s electoral malpractice.

At the hearing, the Complainant was represented by Ms. Kwamboka, the Respondent by Immanuel Wetangula and the ODM by Jotham Arwa. The Complainant reiterated the facts that were contained in his complaint whilst the Respondent submitted that there was no valid complaint filed as none was filed under oath.

Honourable Franklin Bett, the ODM’s Chairperson of the National Elections Board, testified that the only ballot papers that were used at the election were those issued by the Party, and that the RO had no authority to disqualify any candidate as that power lay with the Party’s National Elections Board. Rule 4.3.1 of the ODM’s Party Election and Nomination Rules which provided for duties of Returning Officers and this did not include disqualifying candidates.

The PO’s affidavit evidence showed that the nomination exercise in the polling station cited above was fairly peaceful but there was chaos at the Tallying Centre. The RO had, however, already been given the provisional results via text message which showed that the Respondent was the winner with 7178 against the Respondent’s 4687.

On the question of the RO’s letter of the 18th of January 2013 having been written under duress, such an outcome was feasible in view of the chaos at the Tally Centre.

**Decision**
The complaint was found not to have any merit and was dismissed with no order as to costs. The Committee upheld the position of the Party.
20.0  Charles Kapolonto Napaso v Stanley T. Mpoé & Others

Summary of Facts

The dispute was triggered by ODM’s nomination of Stanley T. Mpoé as its candidate for Narok West Constituency. The Complainant contended that ODM’s internal primaries were not free and fair because they were characterised by several nomination irregularities including the lack of voting materials, failure to adhere to voting, lack of a fair hearing by the Party’s dispute resolution mechanism, Returning Officers and Presiding Officers’ breach of ODM nomination’s rules and the presence of violence. Mr Napaso was a life member of the ODM (he produced as evidence the Certificate of Life Membership) and paid nomination fees of Kshs 100,000.

The Complainant alleged his case on a number of grounds. First, all the election materials for Llmotiook Wards were missing. The Respondent insisted that elections must not be held in the Ward predominantly occupied by the Kipsigis community, on the assertion that it is a URP zone. Most voters from the Kipsigis community were members of URP. Second, the Presiding Officer for Ngiito Primary School, Dickson Lukeine, disappeared with the ballot boxes and was seen in Narok Town during the night. Third, the RO refused to receive or tally the results from three other polling stations, namely, Kilusu, Mogoywet and Kuto. Fourth, the RO later drove to Narok with the ballot boxes that were already counted using the first Respondent’s chief campaigner’s car. When the Complainant followed the RO to Narok, a distance of over 110 kilometres, he found that the RO had already released the results. The RO indicated that the Complainant came third with 6,946 votes. The Complaint insisted that he had received 10,014 votes, while the person declared winner had received 6,946 votes. Fifth, that the internal dispute resolution mechanism was not properly conducted by the Party and that he was not afforded a fair hearing.

At the hearing, Mr. Kinyanjui appeared for the Complainant whilst Mr. Sankale appeared for the Respondent. Mr. Kinyanjui submitted
and reiterated the facts in the Complainant’s affidavit and prayed that an order be issued restraining and forbidding Stanley Taparia Mpoe, the purported ODM nominee of the Narok West Constituency, from participating in the 4th March elections and that Charles Kapolonto Napasobe be declared the nominee instead.

Mr. Sankale submitted that the Complainant did not exhaust internal Party dispute resolution mechanisms. The Complainant in cross-examination admitted that he did not avail the official tally record sheet and that there was no evidence from the RO regarding the primaries in Narok West.

Mr. Arwa for the ODM submitted that the Party’s position with regard to the outcome of the primaries was final.

Other than the Complainant’s account of these flaws, there was no corroborating evidence including the official results of the outcome of the primaries. Some of the flaws affected all the candidates while others could have affected the Complainant. No evidence or witnesses with knowledge of the relevant facts was presented before the Committee by the Complainant. The Complainant did not indicate how he knew that the voters in Ilmotiook did not vote and the number of the registered voters in that Ward was unknown. It was therefore not possible to say whether the outcome in the Ward would have been to the benefit of the Complainant and to what extent.

Further, an affidavit from the RO would have been necessary to provide evidence of what transpired during the nomination process.

**Decision**
The complaint was disallowed. The Committee upheld the decision of the Party.
21.0 Rone Achoki Huseein v Steven Kariuki & ODM

Summary of Facts
The Complainant stood for nomination for the Mathare Constituency under the ODM ticket. He held Party Membership No. 4140132. In a complaint dated 21st January 2013, he stated that the nomination process was marred by malpractices including the use of violence during the vote counting and loss of nomination materials. Another candidate, Anthony T. Oluoch, also complained about the manner in which the nominations were conducted in the Mathare Constituency.

The Complainant relied on several statements attached to his complaint. The statement by Zachaeus Okoth Oliech dated 18th of January 2013 stated that he was appointed as an agent of the Interested Party and attached to the Ngei Ward. He alleged that before the votes were counted, one Jack Mugoya, who was reportedly the driver of Honourable Bishop Margaret Wanjiru, mother to the Respondent, went with a group of youth to the Lion’s Ward Mathare and forcefully took the ballots at gun point whilst being protected by the Administration Police. Some of the Interested Party’s aides were attacked with acid. A report was made to the Pangani Police Station and the incident also reported to the Party’s National Election Board on the 18th of January 2013. Dominic Oulu and Fredrick Odhiambo Oluoch, agents of Antony Tom Oluoch filed statements confirming that the Respondent and his supporters carried out acts of violence at Lion’s Ward Mathare

On the 17th of January 2013 Antony Oluoch wrote to the Presiding Officer Mathare Constituency complaining about the forceful handling of the uncounted ballots at gun point. On the 18th of January 2013, he wrote to the ODM Elections Board and complained that the results for Ngei Ward were not counted due to electoral malpractices and that Steven Kariuki should be disqualified.
Both the Complainant and Antony Oluoch in their summary of submissions complained that, even though Steven Kariuki had garnered 7000 votes and Antony Oluoch 4,000, the Respondent should be disqualified because the nomination exercise was marked by violence and that a total of 8,411 votes were cast excluding the Ngei ballots which were not counted. The Complainant attached a tally sheet that he prepared during the nomination exercise to support his allegations.

On the 21st of January 2013 Ms Ochieng Opiyo& Company Advocates wrote to the IEBC Disputes Resolution Tribunal complaining about the flawed nomination process in Mathare Constituency.

At the hearing before the Committee, Ochieng Opiyo appeared for the Complainant while Oluoch Advocate and Kariuki Advocate appeared for the Respondent.

The Complainant reiterated his complaints and further stated that tallying of the ballots was moved from Huruma Social Hall to St. Teresa without their notice and that the Respondent should be disqualified.

Olunya Advocate submitted that Antony Oluoch was not a member of ODM as he had joined FORD-Kenya and denied that his client had committed any acts of violence. There was also replying affidavit by the ODM Returning Officer John Rotich.

Hon. Franklin Bett, the Chairman of the ODM National Elections Board, testified that he was not aware of any blank ballot papers that had been used or that the ballots were taken to the District Officer’s office. In any event, the Complainant had joined Ford Kenya.

It is probable that there were acts of violence in Mathare North but it is not possible to determine the extent of the violence and what action, if any, the police took. That notwithstanding, the IEBC may at any time investigate electoral offences committed and order the appropriate sanctions.
Further, the statements that the Complainant sought to rely on were not in the form of an affidavit. This meant that the parties offering the evidence were aware of the penalties if they committed perjury or if they failed to adhere to the provisions of the Oaths and Statutory Declarations Act, Chapter 15 of the Laws of Kenya.

No official Party record was made available regarding the outcome of the primaries and it is therefore not possible to confirm the correctness of the tally that the Complainant prepared.

**Decision**
The complaint was disallowed due to insufficient evidence.
22.0 George Wambugu Kanuri v TNA

Summary of Facts
The Complainant was an aspirant for the Ol-Kalou Constituency on a TNA ticket. The Complainant filed a complaint dated 22nd January 2013, stating that the nomination was improper because his photograph was missing on the ballot paper, there was no register in some polling stations, inadequate ballot materials were provided and voting went on until after midnight.

The Complainant relied on several documents including his letter of complaint to the TNA dated the 19th of January 2013 and received on the 22nd of January 2013 and a sample ballot paper which indicated no photograph against his name but instead a diagonal line across the designated space. He also relied on several affidavits.

In his affidavit sworn on 25th January 2013, the Complainant said that in areas which he perceived to be his stronghold, for example in Githunguri and Mawingo Primary Schools, voting was closed early whereas in areas he perceived that he had less support, for example Nyakiambi and AC Primary Schools, voting went on past midnight.

Michael Njau Karanja, in his affidavit sworn on 25th January 2013, said that he is a registered voter in the constituency and that aspirant person seeking nomination Mr Kiaraho had been donating chairs labelled with his name to influence voters and samples of the same.

Another registered voter, Winnie Mbuthia, said in her affidavit on 25th January 2013, that on the 17th of January 2013, she heard Steve Mureithi, the Chief Campaigner of Mr. Kiaraho, say that the Complainant had defected from TNA and that his photograph would not appear on the ballot paper. When she went to vote on the 18th January, 2013, she found that the Complainant’s photograph was missing and instead there was a slash across the space against his name and as a result she did not vote
because she assumed that her candidate was not participating in the nominations.

Ngugi Kariuki Advocate appeared for the Complainant. Jasper Mbiuki represented the TNA.

The Complainant argued that the process and the outcome of nomination should be nullified, the certificate of nomination issued to Mr. Kiaraho should be nullified, the nomination repeated and that he was the front runner, and should be declared the winner.

Mr. Jasper Mbiuki testified that the reason that the Complainant’s photograph was missing was because he had omitted to submit one to the Party within the prescribed period or at all. Further, that since the difference between the winner and the Complainant was 4,000 votes it was highly improbable that this was attributed to the lack of a photograph against the Complainant’s name. The Party therefore said Mr. Kiaraho was duly nominated.

There is a high probability that the lack of a photograph against the Complainant’s name did cost him some votes as evidenced by the deposition by Winnie Mbuthia. The Complainant, however, did not rebut the evidence by the TNA that he had failed to provide his photograph and that he had therefore contributed to his loss. It was also, not clear when, why and to whom the chairs carrying the Respondent’s name were donated.

**Decision**
The complaint was disallowed and the Party’s position was upheld.
23.0  Prof. Lucy Njerimu Gwere v TNA

**Summary of Facts**
The Complainant was an aspirant for the Kajiado County Women Representative for a TNA ticket. In a Complaint dated 23rd January 2013, the Complainant stated that the nomination was improper because her name did not appear on the ballot paper on nomination date at Nakeel Primary School Kajiado. She complained that she had campaigned for more than a year and spent a lot of money. Her supporters at Nakeel Primary School had demanded to know why her name was not on the ballot paper but the police dispersed them and they were denied their right to vote. The Complainant lodged a complaint with the TNA on the 17th of January 2013.

At the hearing the Complainant appeared in person and reiterated her allegations. She testified that she was informed by her agents in Kajiado West that her name was on the ballot but under a Member of Parliament position. She pleaded that in view of the Party’s error the Party should place her on the Party List for nomination to Senate as TNA’s Party officials namely Oloo and Sakaja had promised to place her on the Party List.

Mr. Jasper Mbiuki for TNA testified that the Complainant’s name was recorded properly on the ballot paper and there could not have been a photograph missing in some of the ballot papers as these are produced by the same supplier at the same time.

The Complainant made numerous allegations which remained unsubstantiated and she did not provide any supporting documentary evidence. She confirmed that she indeed participated in the nomination exercise.

**Decision**
The complaint was disallowed due to insufficient evidence.
24.0  Mathew Adams Karauri v TNA

Summary of Facts
The Complainant was an aspirant for Meru County Senate under the TNA. In a complaint dated 23rd January 2013, the Complainant stated that the nomination was improper because the Complainant was the sole candidate of the TNA and no nominations took place. However a certificate was later issued to Gideon Meenye Kaumbuthu.

The Complainant relied on various documents. Firstly, a letter dated the 18th January 2013, in which he expressed deep concern that he believed that he was the only candidate for the TNA senatorial seat, three days before the nomination he learnt that another candidate had shown interest and that a nomination exercise would therefore be held. The Complainant kept vigil at the TNA offices in Meru, until the day of nomination, and the other potential candidate did not show up at the Party offices. In his letter he demanded that he be issued with a nomination certificate as he was unopposed.

Secondly, the Complainant exhibited a receipt issued by the TNA for the sum of Kshs. 250,000/- as nomination fees paid. Thirdly, the Complainant relied on a petition by the TNA County Elections Board dated 18th January 2013 and supporting the issuance of the certificate of nomination to the Complainant. Fourthly, the Complainant relied on an extract from the TNA portal showing that as at 21st January 2013 he was the beneficiary of the TNA Nominations Provisional Certificate. On the same day the Complainant’s Advocates M/s. Muema & Associates wrote to Justice Ringera, the Chairman of the TNA Disputes Resolution Appeals Chamber pleading the Complainant’s cause. His lawyers also indicated that he had earlier, on the 19th of January 2013, appeared before the Disputes Tribunal chaired by Faith Waigwa and that he had been assured that he would definitely get the nomination certificate. It was later, on the 21st of January 2013, that the Complainant heard rumours that Gideon Meenye Kaumbuthu had been given the nomination certificate.

At the hearing before the Committee D.P. Mugambi Advocate for the Complainant reiterated the contents of the Complaint and further
added that Gideon Kaumbuthu Meenye had been campaigning on a Government of National Unity (GNU) ticket. He sought an order that the nomination certificate issued to Gideon Kaumbuthu Meenye be cancelled and the Complainant be declared the sole candidate for Senator on a TNA ticket for Meru County. The Complainant personally informed the Committee that even the ‘Njuuri Ncheeke’ had affirmed his candidature for the position.

Mr. Meenye testified that he had been with the GNU but that he had left the Party in December 2012, and joined the TNA upon pressure from the larger Meru. He resigned from GNU on the 17th of January 2013 and joined TNA on the same date. He was also a member of the ‘Njuuri Ncheeke’ and he was nominated for the Senate position to balance the sharing of elective positions as the Complainant comes from Nyambene which had been awarded a Governor seat whilst the Imenti sub-tribe to which he belonged, would produce the Senator.

Jasper Mbiuki testified that the TNA’s slogan is inclusiveness.

It is indisputable that the Complainant was a long-term member of the TNA having paid the nomination fee for the position of Senator on the 5th of December 2012. It was not suggested by the Party that there were any factors preventing the holding of nominations if any other member, other than the Complainant, expressed interest in the Senate position. It was evident that the sole justification for denying the Complainant the right to participate in the primaries was the regional balance in the sharing of the available elective positions.

**Decision**
The complaint was allowed based on Rule 2 (f) of TNA Nomination Rules that a candidate qualifies to contest under the party if he or she has paid up and registered as a member for at least one month before the date of submission of the Nomination List.

The Complainant was issued with a certificate and his name included in the Party List of Nominees for election.
25.0 Mohamed Issack Ali v U.D.F

Summary of Facts
The Complainant was an unopposed candidate for nomination during the UDF primaries for Kamukunji held on 17\textsuperscript{th} January 2013. He was not issued with a nomination certificate for reasons which were not explained to the Complainant. He lodged a complaint on 21\textsuperscript{st} January 2013 and alleged that there was bribery, threats, intimidation and denial of the nomination certificate and asked the IEBC to compel the UDF to issue the nomination certificate. Attached to the complaint form was his letter dated 20\textsuperscript{th} January 2013 setting out has allegations against the UDF.

In response, the Party filed an affidavit sworn on 23\textsuperscript{rd} January 2013 by Abraham Limo, the Chairman of the National Elections Board. In his affidavit, the deponent admitted that the Complainant had sought the Party’s ticket to contest the Kamukunji Parliamentary seat and that no one had opposed him. He however, alleged that the Complainant had been denied the certificate on the basis that there ‘was an allegation raised about his citizenship’. It was noteworthy that this ground was being raised for the 1\textsuperscript{st} time in the affidavit as the Complainant had not been notified of the allegations about the status of his citizenship.

When confronted with this allegation before the Committee, the Complainant produced his National ID and his passport and denied allegations of dual citizenship.

From the evidence presented before the Committee, the sole reason given by the UDF why a nomination certificate was not given to the Complainant was the allegation about his citizenship. UDF deliberately chose not to substantiate those allegations. The intervention of the Ministry of Immigration was not sought by the Party.

Decision
The complaint was allowed and directed that the Complainant be issued with a certificate and his name be included in the Party’s List of nominees.
26.0 Samuel Kiprono Misi v UDF

Summary of Facts
A complaint was lodged by Samuel Kirono Misi against the UDF party on the grounds that the Party had informed him that he was the sole candidate during the nominations and hence he would be issued with a certificate as an unopposed candidate in Moiben/Kuserwo Ward. No nominations were carried out but a certificate was issued to a third party, Major (Rtd.) Itok.

In addition to the complaint, the Complainant also made two affidavits in support of his allegations. He stated that the UDF Party had acted deceptively by promising him the certificate and later reneging from its position. He said that no other person had paid the nomination fees by the due date thus there could not have been any other valid nomination.

In his testimony before the Committee, the Complainant reiterated his allegations. He urged the committee to nullify the nomination of Major (Rtd.) Itok and that he should be given the certificate.

Decision
The Committee upheld the Party’s position and ordered a refund of the nomination fees paid by the Complainant.
27.0 Nicholas Simiyu ‘Tosana’ v New FORD-Kenya

Summary of Facts
Nicholas Simiyu was a candidate for New FORD-Kenya during the nominations for Kimilili Constituency held on 17th January 2013. The appeal was filed on 22nd January, 2013 to contest the Ruling on an appeal lodged by his erstwhile competitor for the Party ticket. The matter came to the IEBC as a second appeal from the decision of the Party.

The Appellant challenged the decision of the New FORD-Kenya Elections Appeals Board on several grounds including; no voter was called by the candidate to testify on the accusations levelled against him before the tribunal, he never carried ballot papers in his car contrary to the findings of the Appeals Board, charges levelled against him were malicious, and the Board had no mandate to gauge the candidates popularity.

When the matter came up for hearing, Mr. Bernard Netto appeared for the Complainant while the Secretary General of New FORD-Kenya was present. The Respondent conceded that the second certificate be revoked hence effectively reverting to the position after the first appeal.

Decision
The complaint was allowed and directed that the Complainant be issued with a certificate and his name be included in the Party Nomination List for elections.
28.0 John Munyasia Juma v Wiper Democratic Movement-Kenya

Summary of Facts
A complaint was initiated by John Munyasia Yuma, a registered member of the Wiper Democratic Movement Membership No. 10679555 on the 22nd of January, 2013 against Hassan Omar Hassan Sarai, Shahbhal Suleiman and Badi Twalib Badi for breach of the Political Parties Act and the Elections Act 2011. The complaint was that no nominations were held in Mombasa County for the Party’s Primaries for the positions of Governor, Senator and Member of Parliament of Jomvu Constituency respectively and that the Respondents were given direct Party nominations. They complained that the Respondents were at the time of nomination, Party members of other Political Parties namely; ODM, UDF and ODM respectively.

The Complainant sought a declaration that the nominations by Wiper Party of the Respondents were contrary to the law and invalid.

On record were affidavits by Evans Odhiambo Otieno, John Munyasia Yuma and Mariamu Mohamed Mwidani all sworn on 21st of January, 2013.

On 24th of January 2013, the Suleiman Shahbhal swore an affidavit in opposition to the complaint by Evans Odhiambo Otieno against the Respondents Shahbhal Suleiman and Hassan Omar Hassan Sarai. He said that as all the Complainants were registered members of Wiper Democratic Party-Kenya, they should have first exhausted the Party dispute resolution prior to lodging the complaint. He also said that nominations were held by the Party on 17th January 2013, and he reiterated the relevant submissions in a related complaint, (IEBC/NDRC/193/2013Kelvin Lunani Kwena – VS – UDF, discussed below).

At the hearing, Morara Onsongo appeared for the 1st Complainant John Munyasia, while Evans Odhiambo Otieno was in person and Katiku Advocate and Abubhakar Advocate appeared for the Respondents.
The Complainants questioned how Hassan Omar who participated in the nomination proceedings of the ODM on the 17\textsuperscript{th} of January 2013 was at the same time was awarded a nomination certificate by the Wiper Party. There were no nominations for the Wiper Party and the Respondents were given direct nominations whilst the Complainants had paid for their participation and denied the opportunity. The Wiper Party election and nomination rules did not provide for direct nomination.

Katiku Advocate for the Respondents argued that the Complainants did not exhaust internal Party dispute resolution mechanisms. Further, Hassan resigned on the 16\textsuperscript{th} of January, 2013 and he had a Wiper membership card. He was therefore assumed to have left the ODM and he applied for membership to Wiper on the 16\textsuperscript{th} of January 2013. There were no nominations for Wiper in Mombasa and there were no applications for nominations by Wiper. The Respondents were therefore unopposed. The Respondents had until midnight on the 18\textsuperscript{th} of January 2013 to resign from their political parties and their direct nomination in the Wiper Party was valid.

Both Respondents had resigned from their previous parties prior to midnight on 18\textsuperscript{th} January 2013 and would therefore not be disallowed due to the statutory timelines under section 13 (1) of the Political Parties Act.

**Decision**
The complaint was disallowed due to insufficient evidence.
29.0 Kelvin Lunai Kwena v UDF

Summary of Facts
The Complainant, a member of the UDF Membership No. UDF1551124 filed a complaint against Shahbhal Suleiman on 23rd January 2013. In his complaint he states that the Respondent had double registration in two Political Parties namely Wiper Democratic Party and UDF and that he did not resign from UDF before joining Wiper Democratic Movement as required by the law. In support of the Claim, the Complainant relied on several documents including pleadings filed before the Committee.

In a letter dated the 22nd of January 2013, the firm of M/s. Ahmednasir, Abdikadir& Company Advocates wrote to the IEBC, amongst other institutions and persons, complaining that the Respondent had violated the Elections Act, 2011 and the Political Parties Act, 2011 on various grounds. These included; the securing by the Respondent, on the 19th of January 2013, of a Wiper Democratic Movement-Kenya ticket to contest the Mombasa gubernatorial seat; that as at the material time he held membership in two different parties and he was in breach of the Elections Act, 2011 section 13 as read together with the amendments contained in Gazette Notice No. 132 of 28th December 2012 which set the 18th of January 2013 as the last day within which one was to resign from a Political Party; that the Political Parties Act, 2011 was breached by the Respondent in that he continued to be a member of the UDF until 21st of January 2013 and he did not issue a notice of resignation from the UDF and that on the 21st of January 2013 the Secretary General of the UDF wrote to the Registrar of Political Parties complaining about the unlawful conduct of the Respondent.

Thus the advocates for the Complainant sought orders seeking to declare the purported nomination of the Respondent on the Wiper Democratic Movement-K as null and void, disqualify the Respondent from contesting the gubernatorial seat or any seat on any Political Party or as an independent candidate and the prosecution of the Respondent for various offences under the Elections Act and the Political Parties Act.
On 22nd January 2013, the Complainant said that he was aware that the Respondent was seeking nomination as a candidate for Governorship Mombasa County on a UDF ticket and as he was unopposed was deemed the candidate for the party. He was surprised to learn from the media that the Respondent had secured nomination of Wiper Democratic Movement for the same position. He therefore objected to the nomination of the Respondent as he could not simultaneously belong to two parties. The Complainant had annexed several documents to the affidavit including an undated certificate of nomination for Suleiman Shahbal for Governor on a UDF ticket, a list of UDF candidates where the Respondent is also listed, Membership Notice to the Registrar of Political Parties dated 20th January 2013 indicating that certain members, who include the Respondent had left the Party for other Parties without notice (KLK 2), and Certificate of Life Membership by the UDF in favour of the Respondent and dated 17th August 2012.

In an affidavit sworn by Dan Ameyo the Secretary General of UDF the deponent stated that the Respondent was a life member of the UDF and duly nominated as the party’s gubernatorial candidate and that his name was forwarded to the IEBC on the 21st of January 2013 for the said elective position.

The Complainant, in his affidavit sworn on the 24th of January 2013 replied to the allegations by the Complainant and denied that he was in breach of any of the provisions of the law. He stated that he had already resigned as a member of the UDF on 16th January 2013 and said that the resignation letter was received by the Registrar of Political Parties on the same date and proceeded to remove his name from the register of the members of UDF. He also said that he neither sought nomination for UDF and nor filed an application form or paid the requisite Kshs 100,000/- in that regard and had never received a nomination certificate from the Party. He said he had applied for a nomination certificate from the Wiper Democratic Movement-Kenya on 16th January 2013 and was duly issued with a nomination certificate on 18th of January 2013 and
marked as exhibit ‘SS2’. He denied that he has ever held two nomination certificates and that he was deemed to have resigned from the UDF once he joined the Wiper Democratic Movement-Kenya Party. He also denied that he moved to any Party after 18th January 2013. He also was not aware of a letter dated 20th of January 2013, by the Secretary General of the UDF to the Registrar of Political Parties.

On record was the affidavit by Hassan Osman, the Chairman of the UDF, sworn on the 25th of January 2013 which said that the Respondent was the UDF’s nominee for Governor for Mombasa County and that having joined another Political Party, his membership with UDF had ceased and the nomination certificate had been revoked. A letter by Hassan Osman dated the 25th of January 2013, saying the same thing was sent to the IEBC.

At the hearing, Ahmednasir Advocate appeared for the Complainant, John Katiku for the Respondents and Abubaker Advocate for the UDF. In addition to their allegations, Ahmednasir Advocate submitted that as the Respondent had a valid nomination certificate by the UDF, resigning from the Party on the 16th of January, 2013 was of no effect and that he was listed as No. 384 for Governor on the UDF list forwarded to the IEBC on 21st of January 2013. The Advocate argued that in accordance with section 13 (2) of Political Parties Act, a Political Party shall not change the candidate nominated after the nomination of that person has been received by the Commission. Further that the proviso was clear that it is only in the event of death, resignation or incapacity of the nominated candidate or if there is violation of the electoral code of conduct that the Party may after notifying the candidate and seek to substitute where applicable, its candidate before the date of presentation of nomination papers to the Commission.

Mr. Katiku for the Respondent submitted that the Respondent had neither applied for the nomination of the Governor for UDF nor paid a fee nor filled an application. The nomination certificate attached by the
UDF was not dated. He alleged that UDF in its letter dated the 20\textsuperscript{th} of January 2013 and sent to the Registrar of Political Parties conceded that the Respondent had resigned from the UDF and he did not understand therefore why the UDF was ‘hanging’ onto their client. Mogaka for the Interested Party supported the Respondents and restated the submissions above.

Abubakr for the UDF submitted that the Complainant had not proved that the Respondent had a valid nomination certificate from the UDF or an application from him seeking to be nominated and that there was fraud against the Complainant and the UDF. He submitted that once a member resigned from a Political Party, the nomination certificate is invalid.

The evidence produced by the parties indicated that the Respondent resigned from the UDF on the 16\textsuperscript{th} of January, 2013. Under the provisions of section 14 (5) (c), of the Political Parties Act, notwithstanding the requirement for written notice by a member to his or her Party prior to his resignation, a member who joins another Political Party is deemed to have resigned. In accordance with the provisions of section 13 (1) of the Elections Act which requires that a Political Party shall nominate its candidate to an election under the Act at least 45 days before a General Election under the Act in accordance with the Constitution and nomination rules, aspirants had until the 18\textsuperscript{th} of January 2013 to be eligible to participate as candidates in Political Party primaries.

**Decision**
The complaint was disallowed due to insufficient evidence.
30.0 James Ontiri Kenani v Henrey Obwocha & 2 Others

Summary of Facts
The dispute centred on Ford People Party’s nomination of candidates to contest the Nyaribari Chache Constituency by-elections. The Complainant, James Ontiri Kenani, wanted the Party to revoke the nomination of Richard Nyagaka Tongi as its flag bearer.

Mr Kenani’s case rested on two grounds. First, he stated that the Party’s National Executive Committee met on 28th October, 2013 to endorse candidates for the by-elections and that he was the only candidate. The Executive Director and Chairperson of the Party put forward the name of Richard Nyagaka Tongi, violating Article 19(d)(iv) of the Party’s Constitution, that required the Party to conduct elections where more than one person expressed interest to be its candidate. Second, he asserted that Richard Nyagaka Tongi was a member of the Wiper Democratic Movement–Kenya (WDM-K) Party during the General Elections held in March and therefore ineligible to be nominated by Ford People Political Party. He said that he lodged an appeal with the Party’s national nominations appeal committee, but it never convened to handle the dispute.

The Respondents lawyer, Aboki Begi, admitted that Mr Tong’i was a member of WDM-K but had moved to FORD-P on 30th October 2014. He said that the nomination did not violate the Party’s Constitution and cited Article 19(e) which allows direct nominations.

The WDM-K party, through its representative, submitted that they had received a resignation letter from Richard Tong’i on 30th October, 2013.

Prayers sought
1. Nullification of the nomination of the Richard Nyagaka Tongi.
2. Declaration that the FORD-People (FORD-P) primaries were not free and fair.
4. The Complainant be declared the right candidate to represent the FORD-People party in the Nyaribari Chache by-elections.

Issues for determination
1. Whether the nomination process was properly conducted in accordance with the law and Party nomination rules.
2. Whether the nominee was a bona fide member of the FORD-P Party at the time of nomination.

Held
The Committee found that the nomination of Mr Tong’s was improper, revoked it and ordered fresh nominations. It made reference to the case of Diana Kethi Kilonzo & Ano. v IEBC & 2 Others, where the High Court ordered fresh nominations although the statutory timelines had elapsed.

Orders
1. There was a clear demonstration of failure of Political Party to comply with the constitutional principles which seek to promote internal Party democracy.
2. The nomination of Richard Tong’i was improper.
3. Richard Tong’i was not a duly registered member of FORD-P Party as per the records from the Registrar of Political Parties.
4. The Complaint is allowed and the nomination of Richard Tong’i revoked.
5. FORD-P Party to conduct proper and fresh nominations and to submit a signed decision to the Commission signed by authorized signatories by 12 noon of that day.
31.0 People’s Party of Kenya & 2 others v Diana Kethi Kilonzo & 2 others

(Consolidated with Complaint No. 3 of 2013: Agnes Mutinda Ndetei & 2 Others v Diana Kethi Kilonzo & 3 Others)

Summary of Facts
The dispute arose from the nomination of Diana Kethi Kilonzo by the Returning Officer, Makueni County, to contest the Senate seat of Makueni County in the 22nd July, 2013 by-elections. Complaints were filed at the Dispute Resolution Committee on the 1st July, 2013 and 3rd July, 2013. The Complainants’ case rested on two grounds. First, that the 1st Respondent, Diana Kethi Kilonzo, was not a registered voter as the elector’s number and the acknowledgement slip number did not exist in the register of voters and, had been wrongfully been cleared by the Returning Officer of Makueni County. Second, they contended that the WDM-K Party did not nominate the 1st Respondent within forty 45 days as provided for in the Elections Act.

In her affidavit, Ms Kilozo responded that she was a registered voter and annexed an elector’s number and the acknowledgement slip. Thus, she was eligible to contest the elections.

The Committee relied on the testimonies of witnesses from both the Complainants and Respondents during examination.

The DRC looked at the legal framework for the registration as a voter and nomination as a Parliamentary candidate and relied on the provisions of Articles 38(3)(a),(c), 93(1), (99)(1), Sections 5(3), 24(1)(a), 101(1) of the Election Act, Legal Notice No. 126 of 2012 and the Elections (Registration of Voters) Regulations, 2012, Part IV which provides for the registration of a voter.

The definition of a voter was defined as provided for under Section 2 of the Election Act and the Committee relied on the Supreme Court Decision of Raila Odinga -vs- IEBC & Others.
**Prayers sought**

1. Nullification of the nomination certificate of the 1\textsuperscript{st} Respondent.
2. Disqualification of the 1\textsuperscript{st} Respondent to contest the Makueni Senate by-election.

**Issues of determination**

1. Whether the 1\textsuperscript{st} Respondent was a registered voter
2. Whether the 1\textsuperscript{st} Respondent was validly nominated.

**Orders**

1. The 1\textsuperscript{st} Respondent was not validly nominated and her nomination certificate was revoked.
2. The 3\textsuperscript{rd} Respondent to take immediate steps to commence investigations to determine how the acknowledgement slip issued to the 1\textsuperscript{st} Respondent was issued.
32.0 Peoople’s Party of Kenya & 2 others v Prof. Philip Kaloki

Summary of Facts
The complaint was filed before the Dispute Resolution Committee on 1st July, 2013 challenging the nomination of Prof. Philip Kaloki by the Returning Officer of Makueni County to contest the Senate post in the Makueni by-election that had been scheduled for the 22nd July, 2013. It was alleged that the 1st Respondent, Mr Kaloki, was a member of two Political Parties, the National Rainbow Coalition (NARC) and the United Republican Party of Kenya (URP), at the time of his submission of the nomination documents to the Returning Officer and thus was not eligible to be issued with a nomination certificate to contest.

The 1st Respondent stated that he was a member of NARC at the date of nomination and was within the 45 day window period provided for by the Act. This was supported by the Office of the Registrar of Political Parties in an affidavit sworn by its legal officer, Rebecca Wahu.

The Committee relied on the provisions of the Elections Act, particularly the provisions of Sections 28, 31(1) & 34 (8). The Complainants did not present evidence other than the letter dated 8th June, 2013 by the 1st Respondent to the Registrar of Political Parties and his resignation letter from Wiper Democratic Party. The letters did not support or prove the allegations in the complaint. The Complainants did not appear in court to present their testimony and advance their complaints.

Summary of Prayers sought
1. Nullification of the nomination certificate of the 1st Respondent.
2. Disqualification of the 1st Respondent to contest the Makueni Senate by-election.

Issues for determination
1) Whether the 1st Respondent was a member of more than one Political Party when he was cleared by the 2nd Respondent.
2) Whether the 2nd Respondent received the 1st Respondent’s nomination documents twice thus unfairly advantaging him
3) Whether the clearance and nomination of the 1st Respondent was illegal and null and void.

**Decision**

1. The nomination of the 1st Respondent by the NARC Party was within the forty five (45) day period as required under Section 28 of the Elections Act
2. The clearance of the 1st Respondent by the 2nd Respondent was valid
3. The 1st Respondent was validly nominated
33.0 Isaac Aluoch Polo Aluochier v Moses Masika Wetangula & 5 Others

Summary of Facts
The complaint was filed by Isaac Aluoch Polo challenging the nomination of Moses Masika Wetangula (1st Respondent), Musikari Nazi Kombo (2nd Respondent) and Sylvester Wakoli Bifwoli (3rd Respondent) as well as their sponsoring political parties who were the 4th, 5th, & 6th Respondents respectively to the Bungoma Senate seat by-election. The Interested Party, Ben Moseti Misati, was the County Returning Officer who had cleared them.

The Complainant relied on his sworn Affidavit and submitted that the Respondents were public officers prior to the March 4th General Elections as they Ministers and Assistant Minister respectively. He based his argument on the provisions of Article 99(2) (a) of the Constitution. He also submitted that the 1st, 2nd & 3rd Respondents held Political Party offices as they were Members of Parliament. He relied on the provisions of Article 77(2) of the Constitution. On the integrity issue, he relied on the provisions of the Leadership and Integrity Act stating that there are ethical and moral considerations to qualify to contest for the Office.

The Respondents, through their Counsels, objected to all the allegations made by the Complainant and submitted that the issues lacked merit. They submitted that the complainant did not address his mind to the effect of the transitional clause in Section 12(2) of the Sixth Schedule to the Constitution. They also submitted that Article 77(2) did not apply to them but to ministers and their assistants.

The Committee relied on Affidavits and considered oral submissions of the parties. The issue of the Committee’s jurisdiction in handling this matter was also addressed. The relevant provisions of the Constitution, Election Act and the Leadership and Integrity Act were relied upon in determining the Committee’s reasoning.
Summary of Prayers sought

4. Disqualification of the 4th, 5th, & 6th Respondents from fielding candidates in the senate by-election.

Issues for Determination

1. Whether the Respondents were eligible to contest for the public office as serving State Officers.
2. The alleged lack of integrity on the part of the Respondents.
3. The complaints against the sponsoring Political Parties.

Decision

1) No sufficient evidence was placed before the Committee on the issue of integrity of the Respondents.
2) There has been no finding by a court that the 4th, 5th and 6th Respondents had committed electoral offences to trigger the jurisdiction of the IEBC under section 72(2) of the Elections Act and to prevent the parties from fielding candidates.
3) Complaint dismissed and the nomination of the 1st, 2nd & 3rd Respondents upheld.
34.0 Thomas Malinda Musau v IEBC and 2 Others

**Summary of Facts**
The complaint had been filed by Thomas Malinda Musau, a registered voter and aspirant in Matungulu Constituency, on the 23rd September, 2013 challenging the appointment of Leonard Okemwa as the Returning Officer and Dennis Muthama Muli as the Deputy Returning Officer for the Matungulu Constituency by-elections on the ground that they both lacked accountability due to the irregularities experienced during the General Elections in the Constituency. He cited paragraphs 119 and 122 of the High Court of Machakos’ judgment in Elections Petition Case No.2 of 2013 to support his contention that they lacked accountability. He further argued that there was an appeal pending between him and the Returning Officer before the Court of Appeal. The Complainant admitted that he had not served the other two candidates that were contesting the by-election with the complaint.

The 2nd Respondent submitted that all the issues made by the Complainant pertaining to the Judgment of the court at Machakos in Election Petition No. 2 of 2013 had been dismissed. He submitted that the only issue that the Court relied on to invalidate the Matungulu Constituency election was the issue of counterfoils not being sealed in the right ballot boxes. He also submitted that it was the role of the Presiding Officer to seal counterfoils and therefore does not support any allegation against him.

The 2nd Respondent also relied on paragraph 117 of the Judgment to support his allegations on the issue of counterfoils being packed in the wrong ballot box. In his response, the 3rd Respondent never received any complaints before the candidates were cleared for nomination and that they were impartial in discharging their duties.

Through their Counsel, the Respondents also submitted that the Complainant should have challenged them when their names appeared in the gazette in terms of Regulation 3(2) of the Election (General)
Regulations, 2012. He submitted that the complaint lacked any basis and was inadmissible.

The Committee relied on the provisions of Article 88(4) (e) of the Constitution, Section 74 of the Election Act, 2011 and Regulation 99 of the Elections (General) Regulations, 2012 in considering that the complaint was not a nomination dispute per se.

Summary of Prayers Sought
1. An order that the IEBC remove, from the gazette, the names of the 2nd and 3rd Respondents as Returning Officers and new ones appointed.
2. An order declaring the 2nd and 3rd Respondents to be unfit to hold office as Returning Officers.

Decision
4. The complaint ought to have been filed before the 2nd & 3rd Respondents’ names were included in the gazette.
5. The actions of the 2nd & 3rd Respondents would have been null and void ab initio including the nomination of the Complainant as a candidate for the by-election.
6. Complaint is without merit and was dismissed.
3. **DISPUTES ARISING FROM POLITICAL PARTY LISTS**

Kenya’s electoral system combines elements of the First-Past-The-Post electoral system, and proportional representation. Article 81 of the Constitution requires the electoral system to comply with a number of principles including gender equity\(^7\) and fair representation of persons with minorities.\(^8\)

Articles 97(1) (c), 98(1) (b) (c) and (d) and Article 177 (1) (b) and (c) provide for election of members of the National Assembly, Senate and County Assembly respectively on the basis of proportional representation. Before an election, a Political Party is expected to nominate candidates under the proportional system and submit the party lists, in order of priority, to the IEBC. After elections, and based on the performance of the Party, the Commission will allocate seats to those on the party’s list.

The National Assembly has 349 members made up of three categories: 290 elected by voters in each constituency; 47 women elected by voters of each county; and 12 nominated under the proportional system to represent special interest including the youth, persons with disabilities and workers.

The Senate shall have 67 members made up of four categories: 47 members elected by the voters of a County; 16 women nominated from Party Lists, and allocated to the Parties in proportion to the number of seats they won in the country’s Senate elections; one man and one woman representing the youth; and one man and one woman representing persons with disability. Each County Assembly will be made up of three categories of members: those directly elected by the voters of the ward; special seats to ensure that no more than two-thirds of the members are from one gender; members representing marginalized groups, including persons with disabilities and youth as prescribed by an Act of Parliament.

This section summarizes decisions of the IEBC Disputes Resolution Committee arising from disputes over proportional representation.

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7. *Article 81(b).*

8. *Article 81 (c).*
3.1 Party Lists Based on Gender Top-up

35.0 Risper Kimaiyo Jebichii v Jennifer Nariamut Koipiri & 2 Others

Summary of Facts
The Complainant, Risper Kimaiyo Jebichii, challenged the nomination of: (1) Juliana Letangule into the Baringo County Assembly because she was not a member of the United Republican Party (URP): 2) Jennifer Nariamut because she was not on the original list URP party list; and 3) Stella Kalegeno, because she was a public officer as she was a primary school teacher. She argued that the official signatories of the Party were the Chairman and Secretary and not the Executive Director.

This complaint was dismissed by the Committee on the 7th June, 2013 for lack of sufficient evidence. The Complainant appealed to the High Court, which referred the dispute back to the Committee for determination.

With regard to Stella Kalegeno, the Complainant’s lawyer cited s193(2)(a) of the Elections Act 2011, and submitted that she was a public officer. A letter from the Teachers Service Commission (TSC) was produced
as evidence. With respect to the nomination of Juliana Letangule, the Complainant submitted that she was not a member of the URP but a member of the Orange Democratic Movement (ODM) and therefore did not qualify to be nominated.

The 3<sup>rd</sup> Respondent submitted that she was a school teacher until the time she saw her name had been published in the newspaper. She insisted that she deserted her work as a school teacher and had not resigned.

The Committee relied on the oral submissions of the parties and the URP Part List for Baringo County. It also looked at the documentary evidence produced during the hearing.

**Prayers Sought**

a) Nullification of the nomination of the Respondents.
b) The Complainant be nominated under the gender top-up category in place of the Respondents.

**Issues**

a) Whether the 1<sup>st</sup> Respondent was on the original list.
b) Whether the 2<sup>nd</sup> Respondent was a member of the URP.
c) Whether the 3<sup>rd</sup> Respondent was a public servant.

**Held/Orders**

a) The complaint against the 1<sup>st</sup>& 2<sup>nd</sup> Respondents was dismissed for lack of sufficient evidence.
b) The 3<sup>rd</sup> Respondent cannot be nominated as she is a public servant.
c) The Complainant replaces the 3<sup>rd</sup> Respondent in the list as she appears on the URP list in order of priority.
36.0  Furaha Juma Sheba v Fatuma Saidi Jirani & 2 Others

Before: Commissioner Thomas Letangule (Chairman), Commissioner Mohamed Alawi Hussun (Member), Commissioner Muthoni Wangai (Member), Commissioner Kule Galma(Member), Commissioner Amb. Yusuf Nzibo (Member) and Nur Ghalgan (Secretary)

Summary of Facts
The Complainant challenged ODM’s nomination of Fatuma Said Jirani and Furaha Juma Nimakelele for the Kwale County Assembly because the nominees were not members of the ODM and they were also public officers.

The Committee dismissed the complaint and the Complainant appealed to the Nairobi High Court- Petition No. 317/2013-. The Court referred the dispute back to the Committee for determination.

The Committee relied on the Complainant’s oral testimony and the ODM party list for Kwale County. The Respondents were not present to reply to the allegations of the Complainant.

Prayers Sought
a) Nullification of the nomination of the 1st & 2nd Respondents.
b) The Complainant to replace the Respondents in terms of the gender top-up.

Issues
a) Whether the 1st & 2nd Respondents were not members of the ODM party.
b) Whether the 1st & 2nd Respondents were public servants.
c) Whether the Complainant ranked ahead of the Respondents in the ODM list in order of priority.
Orders
a) There was insufficient evidence to show that the Respondents were not members of the ODM Party.
b) The Complainant did not produce sufficient evidence to prove the allegations that the Respondents were public officers.
c) The Complainant was ranked much lower in the list and would not have been the automatic beneficiary in case of a vacancy.
d) The Complaint was dismissed.
37.0 Maria Kopito and Nalang’u Taki v Monica Chebet, Mary Chelang’at Kirui & URP

Summary of Facts
This was a decision on a number of disputes that are consolidates. They refer URP’s nomination on the basis of gender of Monica Chebet and Mary Chelang’at Kirui to the Narok County Assembly.

Maria K’Oopito stated that she was on the original URP party list for gender prepared and submitted to the IEBC on 30th January, 2013. However, when the list was revised, she was replaced with Monica Chebet.

Both Monica Chebet and Mary Chelang’at Kirui defended their nomination on the ground of cultural diversity arguing that the Kalenjins were marginalized in Narok County.

The Committee in its decisions of 4th May, 2013 and 7th June, 2013 dismissed both complaints. Not satisfied with this dismissal, the Complainant appealed to the High Court, as Miscellaneous Judicial Review Application No. 238/2013 and High Court at Nairobi Misc. App. No. 153/2013 respectively. The court referred them back to the Committee for determination.

During the hearing, the lawyer for Mary Kopito submitted that the 1st Respondent was nominated and yet she did not appear on any of the lists submitted by the URP. She stated that she always appeared on top of the list in priority and that the issue of cultural diversity was not a consideration in the county assembly nominations. She urged the Committee to rely on the original Party List that URP submitted on 30th January, 2013.

Nalang’u Taki’s lawyer argued that the 2nd Respondent, Mary Chelang’at Kirui, appeared on the original Party List submitted on the 30th January, 2013 but ranked much lower in order of priority than the 2nd Complainant,
Nalang’u Taki. The submissions were based on the provisions of Article 90 (2) of the Constitution, Section 34(5) of the Election Act and the affidavit sworn by the URP Secretary General.

Mary Chelang’at Kiru’s advocate agreed that URP submitted an original Party List on 30th January, 2013, but said that this list was dominated by one community from Kilgoris. To rectify the anomaly, URP revised and submitted a new Party List, on which Mary appeared, to the Commission on 15th February, 2013.

At the hearing, URP’s replaced its lawyer and indicated that the position given by the previous URP counsel in the tribunal hearings was erroneous and that the Party relied on the original list submitted to the Commission on 30th January, 2013. URP’s lawyer stated that the Party supported the nomination of Maria Kopito and Nellang’u Taki. Through an affidavit of Fred Muteti, a Party official, the Committee heard that the Respondents would only be on the Party list for the marginalized and not the gender Party List.

The Committee relied on the oral testimonies and submissions of the Parties, filed affidavits and the URP original and re-submitted lists for Narok County.

**Prayers Sought**

a) Nullification of the nomination of Monica Chebet and Mary Chelang’at Kirui in the gender top-up slot.  
b) The Committee to use the original list submitted on 30th January, 2013.  
c) That the names of the Respondents be deleted from the list and replaced by the names of the Complainants.

**Issues**

1. Whether the URP list represented a community and cultural diversity.
2. Whether the Respondents were in deed marginalized in Narok County.

3. Whether the committee should ignore the submissions made by the URP counsel during the 1st & 2nd round of the Committee’s hearing.

Held/Orders

a) The previous decisions of the Committee delivered on the 4th May, 2013 and 7th June, 2013 still stands.

b) The 1st Respondent Monica Chebet and 2nd Respondent Mary Chelang’at Kirui were nominated on community and cultural diversity.

c) The Complaint was dismissed.
38.0 Jane Ochieng Mukholi v Doris Neesa Nanyokia

Summary of Facts
The dispute was about New Ford-Kenya (NFK) Party’s list for nomination to the Bungoma County Assembly on grounds of gender. This dispute was being heard by the Committee for the second time. In its decision of 7th June, 2013, it dismissed it. However, the Complainant, Jane Ochieng Mukholi appealed to the High Court (Miscellaneous Judicial Review Application No. 217/2013) who in turn referred it back to the Committee for determination.

The Complainant argued that she was entitled to Party nomination because she was a member of the NFK Party and had participated fully in the nominations. She, therefor, wanted to replace the Respondent, Doris Nekesa Nanyokia, who was not on the list that NFL submitted to the Commission 45 days before the General Elections.

Ndeto, the lawyer for the Complainant, argued that the Respondent was not a registered member of the NFK Party and so could not be on the Party List. He relied on the official search that was conducted at the Registrar of Political Parties, which confirmed that the Complainant was a member of the NFK Party while the Respondent was not.

Musungu, lawyer for the Respondent, submitted that the Respondent was a member of NFK, relying on the annexure to the affidavit. He further submitted that the Complainant was never on the Party List and only wished to be nominated at that stage.

Prayers Sought
a) Nullification of the nomination of Doris Nekasa in the gender top-up slot.
b) The Complainant to replace the Respondent in the list.
Issues
a) Whether the Respondent was a member of the New Ford-Kenya Party.
b) Who was ranked higher in order of priority in the New Ford-Kenya list for Bungoma County

Orders
a) Insufficient evidence was provided to prove the allegations that the Respondent was not a member of the NFK Party.
b) The Respondent was validly nominated as she appeared on the original list submitted by the NFK Party.
c) The Complaint was dismissed.
39.0 Wiper Democratic Movement-Kenya v Selina Ngagwa

Summary of Facts
The dispute was about the Wiper Democratic Movement–Kenya (WDM-K) Party’s list for nomination to the Migori County Assembly on grounds of gender. This dispute was being heard by the Committee for the second time. In its decision of 7th June, 2013, it had dismissed it. However, the Complainant appealed to the High Court (Miscellaneous Judicial Review Application No. 200/2013), but this in turn referred it back to the Committee for determination. WDM-K sought to amend its Party list by replacing the Respondent on the grounds that she had resigned from their Political Party. Mogaka, lawyer for the WDM-K, produced correspondence from the Party and also a sworn affidavit attesting that the Respondent had resigned from the Party.

The complaint was dismissed by the Committee pursuant to the Decision delivered on 7th June, 2013. The Complainant appealed to the High Court Nairobi as a Miscellaneous Judicial Review Application and the High Court referred the matter back to the Dispute Resolution Committee for determination.

Prayers sought
a) Nullification of the nomination of Selina Ngagwa in the gender top-up slot.
b) The Respondent be replaced with Bunyige Anna Otaigo as per the Party’s previous correspondences.

Issues
a) Whether there was sufficient evidence on the resignation of the Respondent from the Party.
b) Whether the Complaint was valid.

Held/Orders
a) The Respondent is replaced by Bunyige Anna Otiago.
b) The Complaint was allowed.
40.0  Imelda Nafula Wanjala v Agnes Njoki Waithaka

Summary of Facts
The dispute was about The National Alliance (TNA) Party’s list for nomination to the Nairobi County Assembly on grounds of gender. This dispute was being heard by the Committee for the second time. In its decision of 7th June, 2013, it dismissed the matter. The Complainant appealed to the High Court (Miscellaneous Judicial Review Application No. 329/2013), who referred it back to the Committee for determination.

The Complainant, Imelda Nafula Wanjala, alleged that she ranked higher than Agnes Njoki on the original and re-submitted lists that TNA submitted to the Commission. In spite of this, TNA nominated Agnes. Imelda indicated Agnes participated in the Pprimaries and lost.

Oluoch, lawyer for the Respondent, submitted that Agnes Njoki was properly nominated and argued that her participation in the Party’s primaries should not be a ground to remove her.

The Committee relied on the oral testimony and submissions of the parties and TNA’s original and re-submitted lists for TNA Nairobi County.

Prayers sought
a) Nullification of the nomination of Agnes Njoki in the gender top-up slot.
b) The Committee corrects the error by replacing the Respondent with her.

Issues
a) Whether the Complainant was ranked ahead of the Respondent in order of priority in the TNA list for Nairobi County.
b) Whether there was an error on the part of the Committee in nominating the Respondent instead of the Complainant.
c) If there was an error, was the error a valid ground to nullify the nomination of the Respondent.
Held/Orders
a) The Complainant’s name was erroneously skipped resulting in her not being nominated.
b) The name of Agnes Njoki is replaced with that of Imelda Nafula Wanjala.
c) The complaint was allowed.
41.0 Christine Gona Fondo v KADU-Asili Party

Summary of Facts
The complaint was about KADU Asili’s nominations to Kilifi County Assembly on grounds of gender. KADU Asili removed Patience Mwangiri from its Party list for gender on the ground that she appeared on Party lists for both the marginalized and gender. The Complainant, Christine Gona Fondo, wished to replace her on the gender Party list on the ground that she was next on the list in order of priority. KADU Asili Party conceded that Patience appeared on two Party lists, but said that this was because of an error by the IEBC. It informed the Committee that the Commission had not rectified the mistake despite a letter from the Party’s Secretary General. The Committee relied on the oral testimony and submissions of the parties. It also considered the KADU ASILI list for Kilifi County.

Prayers sought
a) Nomination slot under the gender top-up category.
b) The Complainant to replace the name of Patience Mwangiri under the gender top-up slot.

Issues
a) Whether Patience Mwangiri had relinquished her nomination to the Complainant.
b) Whether the Complaint was valid.

Held/Orders
a) The development needed confirmation from Patience Mwangiri who was not present.
b) The status quo be maintained.
c) The complaint was dismissed.

Notes
The decision was later reversed subject to consent between the parties and Patience Mwangiri in a meeting held at the Commission’s offices.
42.0  Nushad Rishad v Democratic Party

Summary of Facts
The Complainant, Naushad Rishad, wanted to be nominated by Democratic Party (DP) to the Lamu County Assembly on the basis of gender. The DP said that it was not given a slot to nominate any person under the proportional representation. The DP’s Executive Director submitted that the DP deserved a slot as the Commission did not consider the votes of all candidates. She stated that all other small parties in the county got one slot each and it was unfair for them to be denied at least one slot. The committee relied on the oral testimony and submissions of the Executive Director. It considered the provisions of Article 90 (3) of the Constitution and the Formula of Allocation of seats in the County Assembly to determine whether the DP Party was entitled to a slot in Lamu County.

Prayers sought
Nomination slot under the gender top-up category.

Issues
a) Whether the DP Party was entitled to a slot in Lamu County.
b) If yes to (a) above, was the Complainant ranked on top in order of priority.

Held/Orders
a) The allocation of Party list was done in accordance to Article 90 (3) of the Constitution.
b) Seats were allocated to Political Parties in proportion to the number of seats won by candidates of a Political Party at the General Elections.
c) The law was properly applied.
d) DP did not qualify for allocation of a slot.
e) The Complaint was dismissed.
43.0 Mwanaidi Kisa Mataa v Orange Democratic Movement

Summary of Facts
The complainant, Mwanaidi Kisa Mataa, was from the Pare community in Taita Taveta County and wanted to be included on ODM’s gender Party list on the ground that the Pare is an indigenous and marginalized community and that two of the nominees who ranked higher than her on the Party were from the dominant Taita Taveta community. In arriving at its decision, the committee relied on the oral testimony and submissions of the parties and both the original and re-submitted lists for ODM Taita Taveta County.

Prayers sought
a) Nomination slot under the gender top-up category.

Held/Issues
a) Whether the Complainant was marginalized.
b) Whether the Complainant was unfairly left out of the list.

Orders
a) The Party is responsible for submitting the list.
b) The issue is an internal Party issue.
c) The Party followed the law on the nomination.
d) The Complaint was dismissed.

Notes
The Committee’s decision was the subject of an appeal at the High Court (Petition No. 326/2013) which was dismissed.
44.0 Sarah Mohammed Ali v New Vision Party

**Summary of Facts**
The complaint was about whether a person who is not a member of a Political Party can be on a Party list. The New Vision Party (NVP) nominated Nestehe Bare to the Mandera County Assembly on gender grounds. The Complainant argued that this was untenable because Nestehe Bare was a member of Safina Party and not the NVP. This issue was the subject of the Committee’s decision of 4th May, 2013 in which it dismissed the complaint. The Complainant filed an appeal to the Chief Magistrate which in turn referred the matter back to the Committee for determination.

Mr Ruto, the lawyer for NVP, submitted that the Party was entitled to one nomination slot on grounds of the gender and that it was a mistake that Nestehe appeared on the Safina Party list. He reiterated that Nestehe was the right nominee of the Party. The committee relied on the oral submissions of the parties and both the NVP and Safina Party lists for Mandera County.

**Prayers Sought**
- a) Nomination slot under the gender top-up category.
- b) The Complainant to replace Nestehe Bare in the list.

**Issues**
- a) Whether the decision of the Committee in the previous hearing was still binding.
- b) Whether the Nestehe Bare was a member of the NVP.
- c) Whether Netehe Bare was Party less.

**Held/Orders**
- a) The Party is responsible for submitting the list.
- b) The Committee does not have appellate jurisdiction as the matter had already been heard and determined in the first round.
c) Due process of nomination had been followed.
d) The complaint was dismissed.

**Notes**
The matter was appealed against at the Chief Magistrate’s Court at Nairobi as Petition No. 11/2013.
45.0 Salo Wario Elemu v Orange Democratic Movement & Elizabeth Naitima

Summary of Facts
The Complainant, Salo Wario Elemu, was number 13 on the gender list and, the 2\textsuperscript{nd} Respondent, Elizabeth Naitima, was number 14 on ODM’s Party list for nomination to the Isiolo County Assembly. The issue was whether a candidate who appeared lower on the Party list could be nominated to the County Assembly ahead of the one who was ahead on the Party list. The ODM Party relied on its list and submitted that Elizabeth Naitima was selected because she was marginalized. The Committee relied on the oral submissions made by the Complainant and the Party and the ODM Party list for Isiolo County.

Prayers sought
a) Nomination slot under the gender top-up category.
b) The Complainant to replace Elizabeth Naitima in the list.

Issues
a) Whether the 2\textsuperscript{nd} Respondent was correctly on the list submitted by the Party.
b) Whether the nominee was a representative of the marginalized community.

Held/Orders
a) The 2\textsuperscript{nd} Respondent was picked to represent the marginalized.
b) The Party followed the law in its compilation of the list for nomination.
c) The complaint was dismissed.

Notes: The matter was appealed to the High Court in Meru as Judicial Review Petition No. 18/2013.
46.0 Salome Kirito Mutua v the National Alliance & Beatrice Mwendwa

Summary of Facts
The Complainant, Salome Kirito Mutua, wanted to substitute Beatrice Mwendwa who was the National Alliance (TNA) Party's nominee to the Meru County Assembly for the gender category. Beatrice is blind and because of this, argued that she ought to be nominated under the marginalized category and not the gender category. Salome hailed from Tigania and Beatrice hailed from North Imenti. The Complainant noted that the number of representatives from North Imenti had a higher representation than Tigania and therefore deserved another slot. The Complainant also argued that she was the first woman to assist the Party during the elections.

The Committee had, in its decision of 4th May, 2013, dismissed the matter and the Complainant appealed to the High Court, which in turn referred it back to the Committee. The Committee relied on the oral submissions of the parties and the TNA list for Meru County.

Prayers sought
a) Nomination slot under the gender top-up category.
b) The Complainant to replace Beatrice Mwendwa in the gender top-up list.

Issues
a) Whether the decision of the Committee in the previous hearing was still binding.
b) Whether the 2nd Respondent’s name ought to be moved to the marginalized category and one Ngechu Moses removed from the list.

Held/Orders
a) The law was followed by the Party in the nomination process.
b) The complaint was dismissed.

Notes: The matter was appealed at the High Court in Meru as Judicial Review Petition No. 28/2013.
47.0   Furaha Juma Sheba & Fatuma Juma Nimakelele v Orange Democratic Movement

Summary of Facts
The Complainant, Furaha Juma Sheba challenged the nomination of Fatuma Said Jirani and Furaha Juma Nimakelele under the ODM’s Party list for Kwale County Assembly, Tiwi Ward in Matuga Constituency. She argued that the nominees were not members of the ODM and that they were also public officers.

The Respondents were not present to respond to the allegations of the Complainant. The Committee had dismissed the matter and the Complainant appealed to the High Court (High Court at Nairobi as Petition No. 317/2013), who referred it back to the Committee for determination. The Committee relied on the testimony of Complainant and the ODM Party list for Kwale County.

Prayers sought
a) Nullification of the nomination of the 1st & 2nd Respondents.
b) The Complainant to replace the Respondents under the gender top-up slot.

Issues
a) Whether the 1st & 2nd Respondents were not members of the ODM Party.
b) Whether the 1st & 2nd Respondents were public servants.
c) Whether the Complainant ranked ahead of the Respondents in the ODM list in order of priority.

Held/Orders
a) There was no enough evidence to show that the Respondents were not members of the ODM Party.
b) The Complainant did not produce sufficient evidence to prove the allegations that the Respondents were public officers.
c) The Complainant was ranked much lower on the list and would not have been the automatic beneficiary in case of a vacancy.
d) The complaint was dismissed.
48.0  Wiper Democratic Movement–Kenya & Queen Teresia Titus v Ebyan Abdille Farah

Summary of Facts
The Complainant, Queen Teresia Titus challenged the Wiper Democratic Movement–Kenya (WDM-K)’s nomination of Ebyan Abdille Farah to the Garissa County Assembly on the grounds that the Respondent was not a member of the Party. Ms Titus also contended her omission from the Party list violated her rights enshrined in Section 34(8) of the Election Act.

Mogaka for the WDM-K submitted that the letter nominating the Respondent did not originate from the Party’s offices. He based his submissions on the annexed affidavit of the Party’s Executive Director and the letter signed by the National Chairman and Chairman of the National Elections Board. He further said that the Party had never submitted the name of the Respondent and that the Party did not accept the letter nominating her. He stated that the matter had been reported to the Central Police Station for further investigation.

The lawyer for the Respondent, Mr. Keya, submitted that his client was surprised at finding that there was another letter from the Party nominating someone else. He claimed that the deponent of the Party was not a representative of the Party and that the Party could not disown its nominee at that stage.

The Committee relied on the oral submissions of the Parties and also the Affidavit sworn by the Party officials which persuaded them to question the nomination of the Ebyan Abdille Farah.

The Committee in its decision of 7th June, 2013 dismissed the dispute and the Complainant appealed to the High Court, in Nairobi in the case Miscellaneous Civil Suit No. 197/2013. The High Court referred the matter back to the Dispute Resolution Committee for determination.
Prayers sought
a) Nullification of the Respondent’s nomination.
b) The 2nd Complainant be nominated under the gender top-up slot in place of the Respondent.

Issues
a) Whether the Respondent was a member of the WDM-K.
b) Whether the purported letter nominating the Respondent emanated from the Party.

Held/Orders
a) The complaint was allowed.
b) The name of Queen Teresia Titus Musau replaces the name of Ebyan Abdille Farah.
49.0 Wiper Democratic Movement–Kenya V Liza Mbinya Zakaria

Summary of Facts
The Complainant challenged the nomination of Liza Mbinya Zakaria and alleged that Anastacia was the right nominee to replace her on the grounds that Liza Mbinya Zakaria was married to an elected County Assembly official. The Complainant relied on the Wiper Democratic Movement–Kenya Party List for Makueni County and submitted that Anastacia was the next nominee in order of priority after Liza Mbiya Zakaria if she were to be disqualified. The committee relied on the oral submissions of the Complainant as the Respondent was not present during the hearing and the WDM-K Party list for Makueni County

Prayers sought
a) Nullification of the Respondent’s nomination.
b) The Respondent be replaced with Anastacia under the gender top-up slot.

Issues
a) Whether the Respondent could have been nominated if she was a wife to an elected County Assembly official.
b) Whether the complaint was valid.

Held/Orders
a) The Complainant was the one that duly submitted the name of the Respondent for nomination.
b) The complaint is not founded in law.
c) The complaint is dismissed.
50.0 Veronica Wangari Maina v Naomi Wangeci Gitonga & TNA

Summary of Facts
The Complainant, Veronica Wangari Maina, challenged the nomination of Naomi Gitonga on the grounds that she was not a member of The National Alliance (TNA) Party but was a member of the Republican Congress Party. Veronica also said that she was higher than Naomi on the Party’s list for nomination to the Nyeri County Assembly. She further submitted that she confirmed the 1st Respondent was not a member of the TNA through the Office of the Registrar of Political Parties and that TNA, through its advocate Jasper Mbiuki, during the tribunal hearing, had defended her position. Her submissions were also based on the affidavit of Moses Kipkogei, a Senior Legal Officer at the IEBC, who said that the 1st Respondent was not a member of the TNA.

The Committee relied on the oral submissions of the Complainant and the TNA Party list for Nyeri County. The Respondents were not present during the hearing.

Prayers sought
a) Nullification of the Respondent’s nomination under the gender top-up category.
b) The name of the 1st Respondent be replaced with that of the Complainant.

Issues
a) Whether the 1st Respondent was a member of the Republican Congress Party.
b) Whether the order of priority was followed.
c) Whether the name of the Complainant was in the Party list submitted by the TNA.

Held/Orders
a) No sufficient evidence was provided to support the allegation that the
1\textsuperscript{st} Respondent was not a member of the TNA.
b) The Complainant ranked much lower in the TNA Party list than the 1\textsuperscript{st} Respondent in order of priority.
c) The 1\textsuperscript{st} Respondent was properly nominated.
d) The complaint was dismissed.

Notes
The matter was taken on appeal to the Court of Appeal which on 8\textsuperscript{th} November, 2014 made the following orders:
a) The TNA nomination for Nyeri County representatives is set aside.
b) TNA, within 15 days, submit a proper list to the IEBC.
c) The IEBC shall in turn gazette the nominees within seven days of receipt of the list.
3.2 Party Lists Based on Marginalisation

51.0 Onoto Jillow Joshua v Orange Democratic Movement

Summary of Facts
The Complainant claimed a marginalised slot category under the Orange Democratic Movement (ODM) Party List on the grounds that he represented the Waliangulo or Sanye community which was a marginalized community that was not represented on the ODM list. He claimed that the list was dominated by the Mijikenda and Bajun communities. The Complainant relied on his written submissions. He stated that he was from a community that represented the hunters and gatherers and that they were marginalised in Kilifi County. He further submitted that the Party did not follow the law. The Respondent submitted that they strictly relied on their original and re-submitted lists. The Party further submitted that the Complainant’s name did not appear on any of the lists that were submitted to the Commission. Committee relied heavily on the oral testimony and submissions of the parties. It also relied on both the original and re-submitted lists for ODM Kilifi County.
Prayers sought
a) Nomination slot under the marginalized category.
b) The Committee directs the Party to grant him the nomination.

Issues
a) Whether the Complainant was marginalized.
b) Whether the Complainant appeared in any of the lists submitted by the ODM Party.

Held/Orders
a) The Complainant’s name did, not appear on any of the lists that were submitted by the Party.
b) The Party followed the law.
c) The complaint was dismissed.
Summary of Facts
The dispute revolved around whether the Complainant, Dubatali Amey, ought to be nominated to the Garissa County Assembly on the strength of ODM’s Party List for the marginalized. Dubat presented three arguments. First, he claimed that he was qualified to be on the Party List because he is Person with Disabilities (PWD). Second, he asserted that the nomination process was not fair. Third, he had campaigned for the Party and that the 2\textsuperscript{nd} respondent, Gedi Adou Abdi, was not a member of the ODM and did not deserve the slot.

The ODM Party, through its lawyer, supported the Complainant and informed the Committee that the 2nd Respondent did not appear on the Party list for the marginalised.

Gedi appearing in person submitted that he was in the first position on the Party list for marginalised representing the PWDs. He said that the Complainant’s submissions were not supported by facts.

The Committee relied on the oral submissions of the parties and on the original and re-submitted lists for ODM Garissa County. The Committee in its decision of 4th May, 2013 had dismissed the Complaint. It reached the same verdict in this instance.

Prayers sought
a) Nomination slot under the marginalized category.
b) The Complainant to replace the 2\textsuperscript{nd} Respondent in the list.

Issues
a) Whether the decision of the Committee in the previous hearing was still binding.
b) Whether the 2\textsuperscript{nd} Respondent was a member of the ODM Party.
c) Whether the list was followed in order of priority.
Held/Orders
a) The Party is responsible for submitting the list.
b) The 2nd Respondent appears on top in order of priority in the original list.
c) The Complainant is not a PWD.
d) The complaint was dismissed.

Notes
The matter was appealed at the High Court Nairobi as Misc. JR. No. 202/2013 and dismissed.
53.0 Hussein Badar Salah v United Republican Party

Summary of Facts
The dispute was about whether the Complainant, Hussein Badar Salah ought to be nominated to the Wajir County Assembly on the strength of URP’s Party List for the marginalized. This dispute had been heard and dismissed by the Committee earlier in the decision of the Committee on 4th May, 2013.

Salah claimed he was marginalized as he is an Arab while the rest of the nominees were Somalis, a dominant community in the County. The Committee relied on the oral submission of the Complainant, the original and re-submitted URP’s Party lists for Wajir County and formula of allocation of seats in the County Assemblies.

Prayers sought
a) Nomination slot under the marginalized category.
b) The Complainant to replace Shamza Issa, Dahaba Yusuf Farah and Halima Abdikadir who had been listed under the marginalized category.

Issues
a) Whether the decision of the Committee in the previous hearing was still binding.
b) Whether the three nominees qualified as PWDs.
c) Whether the URP Party qualified for a slot under the marginalized category in Wajir County.

Held/Orders
a) No evidence was adduced to show that the three nominees were not PWDs.
b) URP was only entitled to one slot under the gender top-up category
   c) The Complaint was dismissed.
54.0 Rashid Sheikh Hassan v United Republican Party & Halade Dida

Summary of Facts
The issue in dispute was whether the Complainant, Rashid Sheikh Hassan, ought to be nominated to the Marsabit County Assembly on the strength of URP’s Party List for the marginalized. Rashid argued that he was entitled to be on the Party List because he is from Borana Community, which was marginalized in the County. The Committee had on its decision of 4th May, 2013 dismissed this matter.

Lakicha, for the Complainant, submitted that Rashid was from a minority tribe and he appeared in position two on the original URP’s Party List to represent marginalised peoples. He stated that his name was replaced with that of Halake Dida whom he alleged was not a registered voter in Marsabit but Nairobi.

Casper Sitemba, for the URP, informed the Committee that the Party had only two slots in the County Assembly for the marginalized, one for the youth and the other for the minority. He stated that the Committee had the last word on the matter.

Halake Dida submitted that he was the youth nominee and that the Complainant appeared on the Party List for gender in position two. He further submitted that the Committee should follow the URP’s Party’s List. He dismissed the allegation that he did not come from Marsabit and stated that he was also a Borana, born and bred in Marsabit. The Committee relied on the oral submissions of the parties and the URP list for Marsabit County

Prayers sought
a) Nomination slot under the marginalized category.
b) The Complainant to replace Halake Dida on the list.
Issues
a) Whether the decision of the Committee in the previous hearing was still binding.
b) Whether the Borana were marginalized in Marsabit.
c) Whether the nominee was a representative of the marginalized community.

Held/Orders
a) Insufficient evidence was presented to support the allegation that the Complainant represented a marginalized community.
b) The law was followed in the nomination process.
c) The complaint was dismissed.
55.0  Abdirahman Aabdulahi Ismael v United Party of Kenya

Summary of Facts
The issue in this dispute was whether the Complainant, Abdirahman Abdulahi Ismael, ought to be on the United Party’s (UPK) Party List for the marginalised. The Party had included Angeline Akai on its list for the marginalized because she was blind. Abdirahman contended that Angeline hailed from Samburu and was a registered voter in Nairobi.

The Parties chose to rely on their written submissions and sworn affidavits. The Committee relied on the written submissions of the parties and the UPK list for Tharaka Nithi County.

Prayers sought
a) Nomination slot under the marginalised category.
b) The Complainant to replace Angeline Akai in the marginalised list.

Issues
a) Whether Angeline hailed from Samburu and was a registered voter in Nairobi.
b) Whether there was any law prohibiting her from being nominated in a different County.

Held/Orders
a) There was no law that prohibited Angeline from being nominated even though she did not come from that County nor a registered voter in same County.
b) Due process was followed in the nomination process.
c) The complaint was dismissed.
56.0 Hassan Guyo Jaso v the National Alliance & Mohamed Dado Hatu

Summary of Facts
The issue in this dispute was whether the Complainant, Imani Fumao Rado, ought to be on TNA’s Party List for Tana River County Assembly. Imani argued that he should be on the Party’s List for the marginalized and not Hassan Guyo Jaso.

Imani is from the Munyoyaya community in Tana River. He submitted that he appeared as position one on TNA’S Party List for the marginalized in Taita Taveta County instead of Tana River and therefore, asked that his name appear on the Tana River Party List.

Although he was not present on the TNA list for Tana River County, the Party had admitted during the Committee hearing that they had committed an error and confirmed that he ought to have been nominated in Tana River to represent the Munyoyaya, a marginalized community in the County.

The complaint was dismissed by the Committee through its decision delivered on 7th June, 2013 and the Complainant appealed to the High Court Nairobi as a Miscellaneous Judicial Review Application No. 201/2013. The High Court referred the matter back to the Dispute Resolution Committee for determination.

The Respondent argued that he was a PWD and that he appeared in position one on the Party List. He stated that he was not born in Tana River but Moyale and that he voted in Likoni, Mombasa although he was still a member of the TNA Party.

The Interested Party stated that the issues revolved around whether the nominee was a registered voter in Tana River County or a member of the TNA Party. He relied on the TNA Party List where he was in position
number two and that the Respondent did not appear on the list and had never hailed from Tana River. He supported the complaint.

The Committee relied on the oral testimonies and submissions of the parties and the TNA list for both Tana River and Taita Counties.

**Prayers Sought**

a) Nullification of the Respondent’s nomination.
b) The Complainant to replace the Respondent under the marginalized slot.

**Issues**

a) Whether there was an error on part of the TNA Party in nominating the Complainant in the incorrect County.
b) If yes to (1) above, was that error enough to disqualify the Respondent.
c) Whether the Complainant hailed from Tana River County.

**Held/Orders**

a) The TNA Party had admitted to the error and confirmed that the Complainant ought to have been nominated in the Tana River list to represent the Munyoyaya marginalized community.
b) The Respondent furthermore confirmed that before the Committee that he was neither a resident nor a voter of Tana River.
c) The complaint was allowed and the Complainant replaced the Respondent on the TNA list.
57.0 Rodgers Kitoo Mutai v Julius Lekosek Naisoi

Summary of Facts
The complaint was challenging the nomination of Naomi Gitonga on the grounds that she was not a member of The National Alliance (TNA) Party but instead a member of the Republican Congress Party.

The Complainant submitted that she was ranked ahead of the 1st Respondent on the TNA Party List for Nyeri County despite the fact that the 1st Respondent was not a member of the TNA Party but the Republican Congress Party.

She further submitted that she confirmed the 1st Respondent was not a member of the TNA Party through the office of the Registrar of Political Parties and that TNA through its advocate, Jasper Mbiuki, during the tribunal hearing had defended her position.

Her submissions were also based on the affidavit of Moses Kipkogei, a Senior Legal Officer at the IEBC that confirmed that the 1st Respondent was not a member of the TNA Party.

The Committee relied on the submissions of the Complainant as the Respondents were not present during the hearing. The members also relied on the TNA party list for Nyeri County in determining how the parties appeared in order of priority.

Prayers sought
a) Nullification of the nomination of the Respondent on the gender top-up slot.
b) The name of the 1st Respondent be replaced with that of the Complainant.

Issues
a) Whether indeed the 1st Respondent was a member of the Republican Congress Party.
b) Whether the order of priority was followed.
c) Whether the name of the Complainant was in the party list submitted by the TNA.

**Held/Orders**

a) Insufficient evidence was provided to support the allegation that the 1st Respondent was not a member of the TNA Party.
b) The Complainant ranked much lower on the TNA Party List than the 1st Respondent in order of priority.
c) The 1st Respondent was properly nominated.
d) The complaint was dismissed.

**58.0 Rodgers Kiptoo Mutai v Julius Lekosek Naisoi**

**Summary of Facts**
The Complainant, Rodgers Kiptoo Mutai, challenged the nomination of Julius Lekosekon on the URP’s Party List to represent the Ilchamus community in the Baringo County Assembly. The Ilchamus is a marginalized in Baringo County.

Rodgers alleged that he was the rightful nominee as he appeared in position number two on the URP list representing the youth. The first person on the list, Valentine Sergon, had already been nominated. The lawyer for the Complainant submitted that his client was a youth from a marginalized community and his name appeared on the original URP Party List for the marginalised. He was ranked ahead of the Respondent on the Party list on the basis of Article 90 (2)(b) of the Constitution. He further submitted that the Respondent’s name only appeared in the re-submitted list that was signed by the Executive Director of the Party and not the Chairman or Secretary General. He stated that the Executive Director was not the authorized signatory of the Party. On the point that the Respondent was nominated as a result of marginalisation, he referred to a decision of the Committee, *William Kiplagat v UDF Party*, in which it held that cultural diversity was not a factor considered in the composition of County Assemblies.
The Respondent submitted that, aside from coming from a marginalized community, he was an old man and that the youth were already represented by Valentine Sergon. He stated that the Complainant hailed from the larger Turgen community that was ably represented on the URP list and also by the Governor. He also submitted that the Complainant was in fact a nephew to the Governor. He further submitted that the representation on the list was unfair as out of all the nominees only four were Pokots and Ilchamus while the rest were Tugens.

The complaint was dismissed by the Committee through its decision of 7th June, 2013. The Complainant appealed to the High Court at Nairobi vide Misc. Civil Suit No. 198/2013, which referred the matter back to the Committee for determination.

**Prayers sought**
- a) Nullification of the nomination of the Respondent.
- b) The Complainant be nominated under the marginalized category in place of the Respondent.

**Issues**
- a) Whether the Respondent came from a marginalised community the Ilchamus.
- b) Whether the URP list for Baringo made provision for the Ilchamus marginalised community.
- c) Whether the Complainant ranked higher in order of priority than the Respondent.

**Held/Orders:**
- a) The youth were adequately represented.
- b) The Respondent was nominated to represent the marginalised and special interests of the old.
- c) The complaint was dismissed.
59.0 Coletta Ayombo Ong’ong’o v Charles John Otete & ODM

Summary of Facts
The issue whether the Complainant, Coletta Ayombo, ought to have been included on ODM’s Party List for the marginalized. The Complainant is visually impaired and under the Constitution and the Elections Act, persons with disabilities fall under the marginalized category and the law requires that a certain number of persons with disabilities be elected to Parliament and the County Assembly under proportional representation. The Complainant’s name on the Party list was replaced with that of the Respondent. Because she is visually impaired, the Complainant alleged that she was the rightful person to be put on the Party List for the marginalized to represent PWD.

When the matter came before the Committee at the first instance, it held that the Complainant was not a PWD. She appealed against the decision of the Committee to the High Court (Petition No. 344/2013), and the High Court referred the matter back to the Dispute Resolution Committee for determination.

Mr Namada, for the Complainant, submitted that she was the right nominee on the ODM Party list for the marginalised because she is a PWD and her substitution with the 1st Respondent was improper and against the law. In her affidavit, she annexed her membership of the Kenya Union for the Blind as proof of her visual impairment. He said that she was not able to obtain a medical certificate in time for production before the Committee.

Mr Namwamba submitted that it was the Party that had the authority to nominate its preferred candidate and it was doubtful that the Complainant was visually impaired. He stated that the Complainant had walked on her own from the reception at the 7th floor to the 6th floor of the Commission’s offices without assistance. He also submitted that the identification documents proving that she was visually impaired were
issued in 2011 and yet she stated in her Affidavit that her impairment began in 2009 and that in the absence of any optical report her blindness could not be verified. He further stated that he himself has had visual difficulty since the year 1993 and that he has records to attest to that but this did not mean that he was a PWD.

The Committee relied on the oral testimonies and submissions of the parties and the ODM Party list for Busia County. It also considered the Complainant’s affidavit and the fact that in the first hearing at the Committee, nearly all members from Busia who appeared before the Committee hearings, cast doubts on the Complainant’s claim of being visually impaired.

**Prayers sought**

a) Nullification of the nomination of Charles Otete in the marginalized slot.
b) The Complainant to replace the Respondent in the list as a PWD.

**Issues**

a) Whether the Complainant was a PWD by virtue of being visually impaired.
b) Whether the Complaint was valid.

**Held/Orders**

a) No medical report was adduced to prove the fact that she was visually impaired.
b) The Complainant failed to sufficiently prove that she was indeed visually impaired.
c) The complaint was dismissed.
4.0 COMPLAINTS RELATING TO THE CONDUCT OF ELECTION OFFICIALS

60.0 Thomas Malinda Musau v IEBC & Leonard Okemwa

Summary of Facts
The complaint was whether the gazettment on 23rd September, 2013 of Leonard Okemwa and the Deputy Returning Officer Dennis Muthama Muli who were the 2nd and 3rd Respondents, was proper. The Complainant, Thomas Malinda Musau, a registered voter and aspirant candidate in Matungulu Constituency alleged that the 1st Respondent lacked integrity because there were irregularities in the General Elections he had presided over. Thomas further argued that the 2nd Respondent was culpable by virtue of being the deputy to the 1st Respondent. For evidence, the complaint referred to the Judgment of the Court at Machakos in Election Petition No. 2 of 2013 in which the court found that the 1st Respondent was not accountable in his duties.

The 2nd Respondent submitted that all the issues raised by the Complainant pertaining to the Judgment of the Court at Machakos in Election Petition No. 2 of 2013 had been dismissed. He submitted that the only issue that the Court relied on to invalidate the Matungulu Constituency election was the issue of counterfoils not being sealed in the right ballot boxes. He also submitted that it was the role of the Presiding Officer and not his, to do so. The 2nd Respondent also relied on paragraph 117 of the Judgment which confirmed his allegations on the issue of counterfoils being packed in the wrong ballot box. In his response, the 3rd Respondent indicated that they never received any complaints on the gazetting before the candidates were cleared for nomination and that they were impartial in discharging their duties. Through their Counsel, the Respondents also submitted that the Complainant should have challenged their being gazetted before they were gazetted in terms of Regulation 3(2) of the Election (General) Regulations, 2012. He submitted that the complaint lacked any basis and was inadmissible and had no cause of action.
The Committee relied on the provisions of Article 88(4) (e) of the Constitution, Section 74 of the Election Act, 2011 and Regulation 99 of the Elections (General) Regulations, 2012 in determining their decision.

**Prayers sought**

a) An order that the IEBC degazette the names of the 2\textsuperscript{nd} & 3\textsuperscript{rd} Respondents as Returning Officers and news ones appointed.

b) An order declaring the 2\textsuperscript{nd} & 3\textsuperscript{rd} Respondents to be unfit to hold office as Returning Officers.

**Held/Orders**

a) The Complainant was cleared by the 2\textsuperscript{nd} & 3\textsuperscript{rd} Respondents and yet he lodged a complaint against them.

b) The complaint ought to have been filed before the gazettment of 2\textsuperscript{nd} & 3\textsuperscript{rd} Respondents.

c) The actions of the 2\textsuperscript{nd} & 3\textsuperscript{rd} Respondents would have been null and void \textit{ab initio} including the nomination of the Complainant as a candidate for the by-election.

d) Complaint is without merit and was dismissed.
Independent Electoral and Boundaries Commission Dispute Case Studies

Independent Electoral and Boundaries Commission Dispute Resolution Committee

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