



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi & 8 others v Dzuya & 7 others (Petition E004 of 2023)
[2023] KEHC 25041 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 25041 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E004 OF 2023
TA ODERA, J
OCTOBER 25, 2023
IN THE MATTER OF ARTICLE 1,2,3,4,10,20(1), 38,91(1) OF
THE CONSTITUTION OF KENYA
IN THE MATTER OF THE ELECTIONS ACT
IN THE MATTER OF THE JUBILEE ELECTORAL AND
NOMINATIONS ACT
IN THE MATTER OF ARTICLE 10(5), 22(3), ARTICLE 8 (1),
22, 23, 33 OF THE JUBILEE CONSTITUTION
IN THE MATTER OF POLITICAL PARTIES ACT NUMBER 11 OF 2011**

BETWEEN

**JOHN KIRERU MWANGI 1ST PETITIONER
JIMMY WAGAKABU 2ND PETITIONER
SAMUEL MURAGE KARIGITHO 3RD PETITIONER
GEORGE MANINI 4TH PETITIONER
ROSEMARY WANJIKU 5TH PETITIONER
BENSON WAWERU NJUGUNA 6TH PETITIONER
KARANU THUO 7TH PETITIONER
SAMUEL BURUGU MWANGI 8TH PETITIONER
DANIEL KAHUHO MWANGI 9TH PETITIONER**

AND

MR. NELSON DZUYA 1ST RESPONDENT



HON. JOSHUA KUTUNY	2 ND RESPONDENT
HON. MARGARET KAMAR	3 RD RESPONDENT
HON. KANINI KEGA	4 TH RESPONDENT
HON. SABINA CHEGE	5 TH RESPONDENT
HON. NAOMI SHABAN	6 TH RESPONDENT
JUBILEE PARTY	7 TH RESPONDENT
REGISTRAR OF POLITICAL PARTIES	8 TH RESPONDENT

RULING

Ruliong on the Respondents Pleriminary Objection dated 13. 3. 23 on Jurisdiction of this Court

1. The petitioners filed the petition dated 3.3.2023 as members of Jubilee Political party (7th respondent) against the 1st to 6th respondent whom they accused of holding an illegal and unconstitutional National Executive Committee meeting at Sarova Hotel Nakuru on 10.2.23 against the procedures and Constitution of the party.
2. They seek that this court nullifies the resolutions reached at that meeting, to terminate the membership of the 3rd to 6th respondents and to order the 7th respondent's secretary General and /or party leader to convene a National Delegates Convention (NDC) for the party delegates to elect and fill vacant positions in NDC, NRC and other party organs.
3. *Vide* the grounds of opposition dated 13.3.23 at paragraph 9, the 1st to 7th respondents questioned the Jurisdiction of this court to determine the dispute herein between the petitioners who are members of Jubilee party (7th Respondent) and the 1st -6th respondents who are members and officials of the 7th respondent.
4. The preliminary objection proceeded by way of written submissions and both parties complied.
5. The 1st to 7th respondents argued that section 40 of the Political Parties Tribunal Act provides that members must exhaust internal party mechanisms (IDRM) before escalating the dispute to the Political Parties Tribunal (PPT) and then appeal from the decision of the Tribunal is filed before the High court.
6. 1st and 6th Respondents submitted that section 39 of the *Political Parties Act* establishes a political parties Tribunal whose Jurisdiction is defined under section 40 of the Act. Section 40 of the said *Act* provides: -

Jurisdiction of Tribunal

- (1) The Tribunal shall determine—
 - (a) disputes between the members of a political party;
 - (b) disputes between a member of a political party and the political party;
 - (c) disputes between political parties;



- (d) disputes between an independent candidate and a political party;
 - (e) disputes between coalition partners;
 - (f) appeals from decisions of the Registrar under this Act; and
 - (fa) disputes arising out of party nominations.
- (2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c), (e) or (fa) unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute resolution mechanisms.
- (3) A coalition agreement shall provide for internal dispute resolution mechanisms.
7. Respondents submitted that the petitioners ought to have first moved the 7th respondent's Internal Disputes Resolution Mechanism in the first instance, then the Political Parties Tribunal and finally Appeal to the High court under Article 163 (3) (e) of the Constitution of Kenya and section 41b of the Political Parties Act.
8. Section 41 (2) of the Political Parties Act provides “
- (2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to the Court of Appeal and the decision of the Court of Appeal shall be final.
9. The 1st to 6th respondents submitted that the said procedure was not complied with and so the instant petition is premature. Counsel cited the case of Peter Ochara Anam & 3 others v Constituencies Development Fund Board & 4 others [2011] eKLR. Kisii High Court petition no. 3 of 2010 where it was held
- “I do not think that it is right for a litigant to ignore with abandon a dispute resolution mechanism provided for in a statute and which would easily address his concerns and rush to this court under the guise of a constitutional petition for alleged breach of constitutional rights under the bill of rights.”
10. Also Civil Appeal No. 135 of 2017 (Court of Appeal at Nairobi) Lilian Gogo v Joseph Mboya Nyamuthe & 4 others [2017] eKLR where it was held
- “In the present case, there is no doubt that the dispute arose out of party primaries of the 2nd respondent. That dispute is between members of the same political party. Although it is a dispute arising from the party primaries, it is nonetheless a dispute that falls under paragraphs a, b, c, and e of section 40(1) of the Act that is required to be heard by the party's internal dispute resolution mechanism before the PPDT can take cognizance of it. That is the procedure dictated by section 40 of the Act. In Kimani Wanyoike v Electoral Commission & another [1995] eKLR, this Court upheld the proposition advanced in Speaker of the National Assembly v Hon James Njenga Karume, Civil Application No. 92 of 1992 (2008) 1KLR 425 that
- “where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”



directly to PPDT.

11. The petitioners filed submissions dated 14.7.23, they submitted that Jubilee party has had leadership wrangles which frustrated its operations and attempts to have internal resolution has not succeeded due to the said division. Further that there are two factions; one supporting Kenya kwanza coalition while the other is pro Azimio La Umoja coalition .
12. The petitioners listed the issues for determination as follows;
 - a. Whether this court has jurisdiction to hear and determine the petition dated 3.3.23.
 - b. Whether the prayers in the petition dated 3.3.23 are meritorious.
13. Petitioners submitted that the courts exercise jurisdiction given to them by the Constitution, statute or both. The case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR where supreme court held that

“ A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. ”
14. Also that the petition has been brought under article 38 of the Constitution of Kenya and this court is where the political rights of the petitioners can be safeguarded due to the aforesaid infighting. Article 38 of the Constitution was cited and it provides that”.

38. Political rights

1. Every citizen is free to make political choices, which includes the right –
 - a. to form, or participate in forming, a political party;
 - b. to participate in the activities of, or recruit members for, a political party; or
 - c. to campaign for a political party or cause.

Also that Article 22 of the Constitution of Kenya provides that: -

1. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
2. In addition to a person acting in their own interest, court proceedings under clause (1) may be instated by-
 - a. a person acting on behalf of another person who cannot act in their own name;
 - b. a person acting as a member of, or in the interest of, a group or class of persons;
 - c. a person acting in the public interest of one or more of its members.

Further that this court has jurisdiction to adjudicate on a dispute touching on the infringement of the Fundamental Rights and freedoms under Article 23 (1) of the Constitution.

23. Authority of courts to uphold and enforce the Bill of Rights



1. The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

It was also submitted that the petitioners are seeking injunctive orders under Article 23 (3) of the Constitution of Kenya, this court is empowered to make the following orders: - In any proceedings brought under Article 22, a court may grant appropriate relief, including-

- a. a declaration of rights;
 - b. an injunction;
 - c. a conservatory order;
 - d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - e. An order for compensation; and
 - f. an order of judicial review.
15. It was submitted that the violations are stated in the supporting affidavit of Johnson Kireru Mwangi and cited the case of Ernest Kevin Luchido v Attorney General & 2 others [2015] on jurisdiction of courts where it was held that jurisdiction is everything. Petitioners also relied on Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Sategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) where it was held

"Article 23(1) and (3) of the Constitution were the launching pad of any analysis into the place and scope of interim orders in Kenya's human rights enforcement architecture. Article 23(3) provided that for a violation of the Bill of Rights the court could grant any appropriate relief including, a declaration of rights, an injunction, a conservatory order, a declaration of legal invalidity of any law that denied, violated, infringed or threatened a right or fundamental freedom in the Bill of Rights that was not justified under article 24 of the Constitution, an order for compensation and an order for judicial review. The list of appropriate reliefs that the court could grant was not exhaustive".

16. I have carefully considered the preliminary objection by the 1st to 6th respondents, the Constitution and the able submissions by both counsel and the political parties Act.
17. It is trite law that Jurisdiction is everything as was held by Justice Nyarangi in the celebrated case of Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd[9] where Justice Nyarangi held as follows:-

"I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

18. Further that Jurisdiction flows from the Constitution, statute or both as was held by the Supreme Court of Kenya in the SK Macharia case (Supra).
19. The preliminary objection herein is based on the allegation that the petitioners brought the dispute between members of a political party saight to the High Court instead of following the laid down



procedure of initiating the dispute at the Internal Dispute resolution body of Jubilee party, then the political parties Tribunal and in case they are not satisfied then they can Appeal to the High Court as provides for under Section 40 (1) of the Political Parties Act. The petitioners said their attempt to file the dispute in the party's Internal Dispute Resolution mechanism failed due to the wrangles between the two factions. They submitted that this court has jurisdiction to hear and determine the petition herein by dint of Article 38, 22, 23 (3) and 165 of the Constitution.

20. It is not disputed that the dispute herein is between members of the Jubilee party (7th respondent). Article 23 (1) and 165 (3) (b) of the Constitution provides that the High Court is the Custodian of the fundamental Rights and freedoms of the people of Kenya. Article 38 provides for political rights and Right to seek, enforcement of the same.
21. I have seen section 40 (1) of the Political Parties Tribunal, the same provides that a dispute between members of a political party must first be heard by the Internal Dispute Resolution body of a political party, then if not resolved it be filed at the Political Parties Tribunal for determination and the dissatisfied party then can appeal to the High Court. It is not denied that the petitioners moved this court in the first instance and they attempted to justify the same by submitting that the wrangles between the members made it impossible for them to approach the Internal Dispute Resolution body of the Party. If this is ue, then why didn't they move political parties Tribunal to Intervene?
22. There must have been a good reason why Parliament in it is wisdom in enacting of the Political Parties Act deemed it fit to include the Internal Dispute Resolution Mechanisms(IDRM) and Political Parties Tribunal in the Act as the first and second avenues for party dispute resolution. This is because the IDRM is better placed to hear and resolve it's internal issues amicably. The PPT is on the other hand composed of experts in Political affairs, social and economic, governance and administration and are thus able to deal with the disputes effectively and efficiently at that level and aggrieved party by the decision of the Tribunal has a recourse to move the High Court on appeal on points of law and fact.
23. The petition herein is guised as one for infringement of fundamental Rights but in the real sense it is a dispute between members of Jubilee party which ought to have gone through the process elucidated under section 40 (1) of the Political Parties Act.
24. In the upshot, I find that this court lacks Jurisdiction to hear and determine the petition herein as it is pre-mature. The court must therefore down it's tools. I proceed to sike it out with costs to the respondents.

RULING DELIVERED VIRTUALLY ON 25TH DAY OF OCTOBER, 2023 VIA TEAMS PLATFORM.

T.A ODERA

JUDGE

Delivered virtually in the presence of :-

1st and 3rd Petitioners present in person.

Keiro: I am holding brief for Mr. Njomo for 1st to 7th Respondents

Court Assistant - Yego

T.A ODERA

JUDGE

25.10.23

