



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lukorito v United Democratic Alliance (UDA) & 4 others (Complaint E025 (KK) of 2022)  
[2022] KEPPDT 1019 (KLR) (Election Petitions) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEPPDT 1019 (KLR)

**REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL  
ELECTION PETITIONS  
COMPLAINT E025 (KK) OF 2022  
M LWANGA O, PRESIDING MEMBER, T K  
TOROREY, L WAMBUI & D. KAGACHA, MEMBERS  
NOVEMBER 3, 2022**

**BETWEEN**

**TIMOTHY LUKORITO ..... COMPLAINANT**

**AND**

**UNITED DEMOCRATIC ALLIANCE (UDA) ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COUNCIL, UDA ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL EXECUTIVE COUNCIL, UDA ..... 3<sup>RD</sup> RESPONDENT**

**MOSES MABONGA ..... 4<sup>TH</sup> RESPONDENT**

**IEBC ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. The complaint herein dated October 28, 2022 was lodged before this tribunal with the Kakamega Bench. It is lodged by the complainant, who is a described as a member of the 2<sup>nd</sup> respondent, United Democratic Alliance (UDA).
2. The complaint, which was filed under certificate of urgency was accompanied with a notice of motion application, which sought the following:-
  - i. Spent



- ii. Pending the hearing and determination of this application, the tribunal be pleased to issue an injunction preventing the 5<sup>th</sup> respondents from gazetting the name of the 4<sup>th</sup> respondent as the sole senatorial aspirant for the Bungoma seat.
  - iii. Pending the hearing and determination of this complaint, the tribunal be pleased to issue an injunction preventing the 5<sup>th</sup> respondents from gazetting the name of the 4<sup>th</sup> respondent as the sole senatorial aspirant for the. Bungoma seat, and
  - iv. Costs be awarded to the complainant.
3. Given the strict timelines within which byelection are conducted, the matter was certified urgent and the parties instructed to file substantive responses to the said notice of motion application and the matter proceed to inter parte hearing of the same.
  4. The gravamen of the complaint revolves around failure by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to conduct competitive nomination for Bungoma County Senatorial seat following the declaration of its vacancy *vide* gazette notice No 11945 of October 4, 2022.
  5. The complainant seeks orders *inter alia* barring the 5<sup>th</sup> respondent from gazetting the 4<sup>th</sup> respondent as the 1<sup>st</sup> respondent's sole candidate for the Bungoma County Senatorial Seat in the upcoming by-elections.
  6. The complainant is represented by B.N Mbuthia & Co Advocates while the 5<sup>th</sup> respondent is represented by the firm of Arati & Co Advocates. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents did not enter appearance.
  7. When the application came up for hearing, the complainant was ready to proceed and had filed a detailed return of service showing the service effected on all respondents. The 5<sup>th</sup> respondent, who was the only respondent present at the proceedings, decried inability to proceed given the time within which they had been instructed. They sought 2 to 7 days to file responses.
  8. This tribunal having already determined the matter was urgent and being satisfied with the affidavit showing service effected directed that the matter proceed to hearing of the said notice of motion application.

#### **Complainant/Applicant's submissions**

9. The complainant avers that he is duly registered member of the 1<sup>st</sup> respondent, having acquired membership via Mpesa payment – QJ335Z6Y4T on October 3, 2022.
10. That following the declaration of a vacancy in the Bungoma county senatorial seat, the 1<sup>st</sup> respondent informed its members that the post would be competitively contested for through primaries conducted by the 2<sup>nd</sup> respondent who would in turn forward the name of the successful candidate to the 3<sup>rd</sup> respondent for onward transmission to the 5<sup>th</sup> respondent.
11. The complainant further avers that he was shocked to learn through the 5<sup>th</sup> respondent upon enquiry that the 1<sup>st</sup> respondent had submitted the name of the 4<sup>th</sup> respondent to the 5<sup>th</sup> as its sole candidate an act which he alleges to be fraudulent and illegal and proceeds to give the particulars of the fraud and illegality as follows:
  - a. There were no names forwarded by the 2<sup>nd</sup> respondent to the 3<sup>rd</sup> respondent contrary to article 12.1 (iv) of the 1<sup>st</sup> respondent's constitution.



- b. The 1<sup>st</sup> respondent never published an invitation to members to apply for the post of senator for Bungoma county.
  - c. The 1<sup>st</sup> respondent never conducted primaries for the post of senator Bungoma county.
  - d. There was no participation by party members on the 1<sup>st</sup> respondent picking the 4<sup>th</sup> respondent.
  - e. There was lack of free, fair and transparent elections in utter violation of article 8.1 (xiv) of the 1<sup>st</sup> respondent's constitution.
  - f. Despite lodging a complaint with the 3<sup>rd</sup> respondent about the misconduct, no action has been taken.
12. Reasons whereof the complainant prays:
- a. That the 1<sup>st</sup> respondent's submission of the 4<sup>th</sup> respondent's name to the 5<sup>th</sup> respondent as its sole candidate be nullified.
  - b. The 1<sup>st</sup> respondent be compelled to adhere to its constitution in electing candidates to elective office.
  - c. Permanent injunction barring the 5<sup>th</sup> respondents from gazetting the 4<sup>th</sup> respondent as the candidate for the post of senator Bungoma county for the UDA party.
  - d. Costs hereto.
13. The complainant submits that the prayers sought in the notice of motion warrant issuance as if the same are not issued the gazetting of the name of the 4<sup>th</sup> respondent will occur and thus render the entire complaint futile.
14. The 5<sup>th</sup> respondent stated that given the time within which they had received instructions they had been unable to get fuller instructions are thus unable to respond to the application.

#### **Issues for Analysis and Determination.**

15. In light of the background as provided above, the application remains unopposed, and thus the tribunal shall proceed to consider the following issues for determination:
- a. Is this tribunal properly seized of jurisdiction?
  - b. Is issuance of the orders sought in the said notice of motion application dated October 28, 2022 justified?
  - c. What orders should issue?

#### **Our Analysis**

##### **Whether PPDT has jurisdiction**

16. This tribunal's jurisdiction has been established pursuant to section 40 of the [Political Parties Act](#) which provides as thus: -

- “(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.”

17. In *Samuel Kamau & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR the court held that: - “a courts 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.”
18. In determining a complaint of this nature, this tribunal is therefore duty bound to confirm that provisions of section 40 (1) and (2) have been fully complied with as only then it can be properly clothed of jurisdiction.
19. The complainant has submitted that he is a duly registered member of the 1<sup>st</sup> respondent. A membership which he submits was acquired via Mpesa payment – QJ33Z6Y4T to the UDA Bungoma Branch on October 3, 2022.
20. Article 4.1 of the UDA party constitution provides as follows:  
Article 4.1 : application for membership
- i. One can apply for membership in person or in writing to the authorized officials of the party from counties or the national executive council.
  - ii. The National Executive Committee (NEC) has the right to reject or allow any application for membership based on the above.
  - iii. On payment of a subscription fee as shall be determined by the National Executive Council (NEC) from time to time, each approved member shall be issued with a valid party membership card that shall be renewed every beginning of the year when the members pay up membership subscription fee.
21. It is trite that he who alleges must prove. The complainant has alleged that he is a member of the UDA party and has supplied an Mpesa reference code dated October 3, 2022.
22. The procedure of acquiring membership under the UDA constitution is clearly not limited to payment, as we have reproduced above. In the absence of a membership card or any other prove and given how recent the Mpesa message referenced to is, this tribunal is therefore not convinced that the complainant is a duly registered member of the UDA party.



23. From our analysis, it is clear that the jurisdiction of this tribunal is thus ousted by dint of section 40(1) (b) of the *Political Parties Act* as well as regulation 7(1)(b) of the Political Parties Disputes Tribunal (Procedure) Regulations, 2017.

**What Orders Should Issue.**

24. Since jurisdiction is everything, this tribunal cannot make any further step and therefore downs its tools with no orders as to costs.
25. Orders accordingly.

**DATED THE 3<sup>RD</sup> DAY OF NOVEMBER 2022.**

**M. LWANGA. O (PRESIDING MEMBER)**

**TOROREY TIMOTHY KIPCHIRCHIR (MEMBER)**

**DR. LYDIAH WAMBUI (MEMBER)**

**DANIEL KAGACHA (MEMBER)**

