



**Nchore & another v Party & 2 others; Office of the Registrar of Political Parties (Interested Party)
(Complaint E016 (NRB A) of 2023) [2023] KEPPDT 1267 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEPPDT 1267 (KLR)

**REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT E016 (NRB A) OF 2023
G. GATHU, MM YUSUF JIN & S MUSAU, MEMBERS
OCTOBER 12, 2023**

BETWEEN

JESSE SARUNI NCHORE 1ST COMPLAINANT

KIPNG'ETICH SIGEY 2ND COMPLAINANT

AND

DEMOCRATIC PARTY 1ST RESPONDENT

DR. JACOB HAJI, SECRETARY GENERAL 2ND RESPONDENT

ESAU KIONI, CHAIRMAN 3RD RESPONDENT

AND

OFFICE OF THE REGISTRAR OF POLITICAL PARTIES INTERESTED PARTY

RULING

1. The 2nd and 3rd Respondents have filed a Preliminary Objection to the Complaint. The Preliminary Objection is dated 19th September 2023. The 1st Respondent did not file a Preliminary Objection but indicated that it associated itself with the Preliminary Objection filed by the 2nd and 3rd Respondents.
2. The Tribunal directed parties to file written submissions to the Preliminary Objection. The Complainant filed written submissions dated 19th September 2023. The 1st Respondent filed written submissions dated 21st September 2023. The 2nd and 3rd Respondents filed written submissions dated 24th September 2023. The Interested Party indicated that it would not participate in the proceedings in so far as the Preliminary Objection is concerned.
3. The Complainants having filed written submissions on the Preliminary Objection before the Respondents, the Tribunal gave them an opportunity to file supplemental submissions. They however indicated that they did not wish to file any supplemental submissions.



Issues for determination

4. Having considered the parties' submissions on the Preliminary Objection, the Tribunal finds that the only issue for determination is whether this Tribunal has jurisdiction to hear and determine this matter pursuant to section 40(2) of the *Political Parties Act*.

Analysis and Determination.

5. The 2nd and 3rd Respondents submit that under Section 40(2) of the *Political Parties Act*, this Tribunal shall not hear and determine a dispute unless the same has been heard and determined by a Political Party's IDR. However, this is not quite the position. There is no requirement to have the dispute heard and determined under IDR. Section 40(2) reads thus:-

“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.”

6. All that is required is for a party to adduce evidence of a bonafide attempt at IDR. Indeed, this Tribunal has addressed this issue extensively in *John Mworira Nchebere and Others vs The National Chairman, Orange Democratic Movement and Others* PPDT Complaint No. E002 of 2022.
7. The Complainants have produced a letter dated 3rd August 2023 addressed to the Dispute Resolution Committee of the 1st Respondent. The letter is duly stamped as received.
8. Although the 2nd and 3rd Respondents contend that the Complainants did not address the Secretary General of the 1st Respondent as required under article 28 of the 1st Respondent's constitution, a plain reading of the said article paints a different picture. Article 28 of the 1st Respondent's Constitution seems to be aimed at disciplinary processes. Indeed, article 28(a) (i) to (iv) lists various offences. Article 28(b) then states that “a complaint by any person alleging that an offence has been committed shall be forwarded to the Secretary General who shall forward the same to the National Executive Committee.”
9. It seems that the issues raised by the Complainants do not concern any of the offences listed in article 28(a). It is therefore not plausible that the applicable IDR process is lodging a complaint with the Secretary General, for the complaint is not grounded on disciplinary issues.
10. On the other hand, article 38 of the 1st Respondent's constitution does seem to envisage an IDR as contemplated under section 40(2) of the *Political Parties Act*. However, it is silent on the procedure to be followed in invoking such IDR. None of the parties pointed the Tribunal to the appropriate IDR procedure envisaged under article 38 of the 1st Respondent's constitution.
11. In the circumstances, we are inclined to find that the Complainant's letter dated 3rd August 2023 addressed to the 1st Respondent's Dispute Resolution Committee amounted to a bona fide attempt at having this dispute resolved under the 1st Respondent's IDR. This is in line with this Tribunal's decision in *John Mworira Nchebere (supra)*, to which the 1st Respondent should have clear mechanisms of invoking the IDR.
12. As regards the issue raised by the Respondents to wit that the letter dated 3rd August 2023 does not raise the same issues as raised in the Complaint, we note that this issue is pertinent and of concern as it may indeed affect the bonafides of the attempt at referring the dispute to IDR. However, we note that there are broad issues raised by the Complainants in the letter of 3rd August 2023 that also feature in his Complaint such as the issue of nomination fees. We shall say no more on that save that in the circumstances of this case, we are not inclined to uphold that ground.



13. We therefore find that the Preliminary Objection dated 19th September 2023 has no merit and we dismiss the same. Costs shall be in the cause.

DATED AND DELIVERED VIRTUALLY THIS 12TH DAY OF OCTOBER 2023

Gad Gathu

(Presiding Member)

Muzna Jin.....

(Member)

Stephen Musau

(Member)

