



**Murathe & 3 others v Office of the Registrar of Political Parties;
Kutuny (Interested Party) (Tribunal Appeal E001 (NRB A) of 2023)
[2023] KEPPDT 1276 (KLR) (19 April 2023) (Judgment)**

Neutral citation: [2023] KEPPDT 1276 (KLR)

**REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
TRIBUNAL APPEAL E001 (NRB A) OF 2023
D. NUNGO, CHAIR, W MUTUBWA, VICE CHAIR & S MUSAU, MEMBER
APRIL 19, 2023**

BETWEEN

**DAVID MURATHE 1ST APPELLANT
EREMIAH KIONI 2ND APPELLANT
KAGWE GICHOHI 3RD APPELLANT
JUBILEE PARTY 4TH APPELLANT**

AND

THE OFFICE OF THE REGISTRAR OF POLITICAL PARTIES ... RESPONDENT

AND

HON. JOSHUA KUTUNY INTERESTED PARTY

JUDGMENT

Introduction

1. The 1st, 2nd and 3rd Appellants have at all material times been the Vice Chairperson, the Secretary General, and the Treasurer of the 4th Appellant respectively. However, following the 4th Appellant's National Executive Committee (NEC) meeting that was held on 10th February 2023, resolutions were passed to inter alia remove/suspend the 1st, 2nd and 3rd Appellants from their positions as party officials.
2. The subject resolutions were subsequently forwarded to the Respondent together with other party documents vide a letter to the Respondent dated 13th February 2023.

On the same date, the Respondent wrote a letter stating, inter alia, that the NEC of the 4th Appellant was properly convened as per the party constitution.



3. The Appellants are aggrieved by the Respondent's subject statement in the said letter dated 13th February 2023. According to them, the Respondent's subject letter had the consequential effect of ratifying the resolutions of the meeting of 10th February 2023. Accordingly, they have filed the instant Appeal dated 14th February 2023 (hereinafter referred to as the Appeal) seeking the following reliefs from this Tribunal:-
 - a. A declaration be and is hereby issued that the purported notice under the hand of the interested party dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 and the Registrar's letter dated 13th February 2023 are null and void.
 - b. An order quashing and/or setting aside the purported notice under the hand of the interested party dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 and the Registrar's letter dated 13th February 2023
 - c. Costs of the Appeal
4. The Appeal is supported by the Supporting Affidavit sworn by David Murathe on 14th February 2023, the Supporting Affidavit sworn by Jeremiah Kioni on 14th February 2023, and the Appellants' Written Submissions amongst other documents on record.

We shall highlight the grounds of Appeal later in this Judgment.
5. The Appeal is opposed by the Respondent and Interested Party who have filed their responses on record. We shall highlight the subject responses later in this Judgment.
6. Pursuant to the directions that were issued by this Tribunal, this Appeal proceeded for hearing substantively on 5th April 2023. The Appellants were represented by Mr. Awele Advocate, and the Respondent was represented by Mr. Kibanga Advocate appearing together with Mr. Mogire Advocate. The Interested Party was represented by Mr. Njomo Advocate.

The Appellant's Submissions

7. As we have already stated, the Appellants relied on the Appeal dated 14th February 2023, the Supporting Affidavit sworn by Jeremiah Kioni on 14th February 2023, the Supporting Affidavit sworn by David Murathe on 14th February 2023, the Supplementary Affidavit of Jeremiah Kioni, and Written Submissions dated 3rd April 2023.
8. The Appellants are aggrieved by the statement made in the Respondent's letter dated 13th February 2023 that the 4th Appellant's meeting held on 10th February 2023 was properly convened. The subject meeting made various resolutions including the ouster of the 1st, 2nd and 3rd Respondent from their respective positions of Vice Chairman, Secretary General, and Treasurer of the 4th Appellant. The subject statement forms the basis of the instant appeal.
9. According to the Appellants, the only question for determination in this appeal is whether the Respondent passed a decision which affected the rights of the Appellants vides her letter dated 13th February 2023.
10. It is the Appellants' submission that the decision to call a meeting and/or to suspend is regulated by *the constitution* of a political party and by the time the Respondent communicates that the meeting was properly convened as was in this case, the Respondent must satisfy herself that the decision taken accords with the party constitution. This requirement is implied in Section 34 of the *Political Parties Act* 2011 (the PPA) and was affirmed in the decision in Party of National Unity & Another vs. Registrar



of Political Parties & 6 Others ex-parte Edward Kings Onyancha Maina & 7 Others (2017) eKLR and Amani National Congress Party vs. Godfrey Osotsi & Another (2021) eKLR where the Court held that the Registrar of Political Parties was not simply a conduit but a critical player in checking compliance with the law. She is not simply to rubber stamp decisions of political parties and where the law is not adhered to, those aggrieved are at liberty to invoke the jurisdiction of the Tribunal to resolve their grievances.

11. In this case, it is submitted that the Respondent received a letter from the 4th Appellant on 13th February 2023 and barely a few hours later wrote to the party confirming that the meeting was properly convened. The finding, opinion, statement or conclusion to the effect that ‘the said meeting was properly convened per the party constitution’ on a matter falling within her regulatory purview under sections 34 and 34C of the PPA cannot be wished away as lightly as she exercised a statutory mandate and power over political parties under the *Political Parties Act*, 2011 (the PPA).
12. The Appellants submit that the Respondent’s statement to the effect that the meeting passed constitutional muster amounts to an administrative action. The Respondent has a constitutional obligation to abide by the provisions of Article 47 of *the Constitution* of Kenya and as an administrator, before she takes any decision, she ought to have known that there are rights likely to be affected and she should have at the very least accorded the parties an opportunity to be heard before making such a statement confirming that the meeting was convened in compliance with the party constitution.
13. According to the Appellants, the Respondent failed to conduct investigations and/or accord the Appellants the right to be heard and as a result made wrong conclusions that affect the legal rights of the Appellants. In effect, had the Respondent adhered to her statutory obligation under section 34(1) of the *Political Parties Act* to conduct a fair and thorough inquiry into the decisions sent to her by the interested party, including according the Appellants an opportunity to be heard, she would have reached the decision that the interested party’s correspondence and all decisions communicated thereunder were made in violation of section 7(2)(a)(i),(ii) &(v) of the Fair administrative Actions Act (the FAA) to wit; that the purported meeting of 10th February 2023 was not procedurally convened, that the decision to suspend the Appellants from office pending a disciplinary process was a substantive penalty that can only be meted out after a substantive hearing and that only the National Disciplinary Committee (NDC) of the 4th Appellant can exercise such powers and that NEC only ratifies the same, and most importantly, that the Appellants were not granted an opportunity to be heard prior to their suspension.
14. The Appellants, however, submit that they understand the remit of this tribunal and they are not asking the tribunal to substitute its views with that of the Respondent, but to remind the Respondent of her obligation under Article 47 of *the Constitution* and the FAA, and her duty to conduct investigations and have representations made before she decides what to communicate on the question of compliance. They are alive to the fact that questions relating to the party processes leading to the notice convening meeting dated 2nd February 2023, minutes and resolutions of the NEC meeting of 10th February 2023, amongst other internal party processes and documents, are still pending before the party’s internal dispute resolution mechanisms (IDRM). This appeal does not therefore intend to challenge those internal party processes at this stage and that this tribunal has only been moved on appeal.
15. Whereas the underlying issues which gave rise to the Respondent’s letter dated 13th February 2023 are subject of ongoing IDRMs proceedings, that does not take away the tribunal’s jurisdiction to hear appeal arising out of the registrar’s decision or such statements by the Respondent. The tribunal has jurisdiction under section 40(1)(f) of the PPA as read with section 7(1)(b) of the FAA to inquire



into the procedural and substantive merits of any decision of the Respondent founded on the said underlying issues.

16. It is the Appellants' prayer that the Appeal be allowed in the foregoing circumstances. The Respondent's Submissions
17. The Respondent relied on the Response to Appeal dated 23rd March 2013, Witness Statement of Joy Onyango dated 23rd March 2023, List and Bundle of Documents dated 23rd March 2023, and Written Submissions.
18. The Respondent submitted that in execution of her mandate, she received a letter dated 10th February 2023 from the Deputy Secretary General (DSG) of the Jubilee Party. The subject letter only required her to acknowledge receipt of certain documents and to confirm that the NEC of the 4th Appellant was compliant with the two thirds gender rule. It is her submission that in response to the interested party's letter, she accordingly acknowledged receipt of the documents submitted but did not ratify any decision of the 4th Appellant's NEC. She further acknowledges that she wrote the contents of her letter dated 13th February 2023.
19. It is the Respondent's further submission that the prayers sought by the Appellants as set out in the Appeal are in two limbs, one touching on the party's documents, and another touching on the Respondent's letter dated 13th February 2023. According to the Respondent, the Appellants seem to have abandoned the first limb of prayers touching on the party's internal documents as no submissions were advanced to warrant grant of such prayers. In any event, it was submitted that the Respondent associated herself with the submissions of the interested party raising jurisdictional issues with respect to the first limb of the prayers sought touching on the party's internal documents.
20. As regards the second limb of prayers touching on the Respondent's letter dated 13th February 2023, the Respondent submits that the letter did not ratify the meeting of the NEC, and that the mere statement that the meeting was properly convened as per the party constitution did not amount to a decision as defined in the case of *Charles Nyandusi & 3 Others vs. Registrar of Political Parties & Another* (2017) eKLR.
21. The Respondent contends that no party or person raised a question as to whether the meeting was properly convened for her consideration, and that her statement on the letter was therefore not a response to any inquiry made for her to consider and decide upon. She submits that her statement in the subject letter clearly indicate that her observation was not in any event conclusive, and that there were certain acts that she expected the parties to undertake including exploring and updating her office on the party's IDR. She submits that her statement regarding the meeting should be treated as 'orbiter' or 'off the cuff' remarks as they are not made pursuant to her powers under the PPA.
22. It is therefore the Respondent's prayer that the appeal be dismissed with costs, and that should the tribunal consider making a determination on the letter, it should only address itself to the stated offensive portion of the letter dated 13th February 2023, and that the rest of the contents of the letter should be allowed to stand.

The Interested Party's Submissions

23. The Interested Party relied on his Amended Response dated 18th March 2023, and Written Submissions dated 3rd April 2023.
24. It is the interested party's contention that from Part D of the Appeal and the Appellants' submissions, it is clear that the 1st to 3rd Appellants are essentially complaining against actions that were taken by the



party within the party structures. The Respondent's letter dated 13th February 2023 should not be read in isolation. It was drafted in response to his letter dated 10th February 2023 that he had written to the Respondent to notify her that the party had held a meeting on 10th February 2023, and to specifically seek confirmation of compliance with the two thirds gender rule.

25. The interested party avers that the Respondent was not invited to make any decision on the suspension of the 1st to 3rd Appellants and no such decision would therefore have been forthcoming. According to him, the impugned letter dated 13th February 2023 was not conclusive and the same does not constitute a decision, and cannot therefore be subject of an appeal before the tribunal. In any case, the letter was express that any dispute should be subjected to IDRМ.
26. As regards the prayers sought, the Respondent submits that the prayers touching on the party's instruments/documents including notice of meeting dated 2nd February 2023, minutes of the meeting of 10th February 2023, and the letter of 10th February 2023, cannot be granted in this appeal as such disputes ought to be subjected to IDRМ in the first instance. Therefore, jurisdiction does not lie since the Appellants have not disputed the fact that they did not invoke IDRМ on the issues complained of. He relied on the holdings by the tribunal in *Kieru John Wambui vs. Jubilee Party & Others (2022) eKLR* and *Republic vs. Registrar of Political Parties & Others ex-parte Edwards Kings Onyancha & Others (2017) eKLR*.
27. The interested party accordingly prays that the Appeal be dismissed with costs.

Issues, Analysis and Determination

28. Flowing from the parties' pleadings and submissions, we have isolated the following issues for determination:-
 - i. Whether this Tribunal has Jurisdiction to nullify the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 as sought in the Appeal? ii. Whether the content(s) of the Respondent's letter dated 13th February 2023 constituted a decision, and if so, whether the same was issued in accordance with the law?
 - iii. Who bears the costs of these proceedings?
Whether this Tribunal has Jurisdiction to nullify the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 as sought in the Appeal?
29. As we consider this issue, we are alive to the fact that an objection to our jurisdiction had been raised in this matter and vide our ruling delivered on 14th March 2023, we disallowed the preliminary objection solely on the ground that the same was not a pure point of law as defined in the locus classicus case of *Mukisa Biscuits Manufacturing Company limited v West End Distributors Limited [1969] EA 696*. In essence, the issues raised in the preliminary objection were not considered on merit. Nothing therefore precludes this tribunal from considering the merits after hearing all parties substantively on the Appeal.
30. The Respondent and interested party submitted that we do not have jurisdiction to grant orders sought towards the nullification of the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023, for the reason that such issues relate to internal party processes that ought to have been subjected to IDRМ in the first instance.
31. The jurisdiction of this Tribunal flows from Article 169 (1) (d) of *the Constitution* of Kenya as read together with Section 40 of the *Political Parties Act*, 2011, which provides as follows: -
 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.
32. From the foregoing provisions of Section 40 of the PPA, it is clear that unlike appeals arising from decisions of the Registrar of Political Parties, disputes between party members and disputes between a member and a political party must be subjected to IDRМ before moving the tribunal. It is not in dispute that the issues underlying this appeal, to wit, the internal party processes leading to issuance of the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 are internal issues between the party and its membership. Accordingly, pursuant to Section 40(1)(a)(b) as read together with Section 40(2) of the PPA, the tribunal can only assume jurisdiction once an attempt at IDRМ is demonstrated. This is in furtherance of the doctrine of exhaustion that is now of esteemed juridical lineage in Kenya.
33. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR. The Court stated as follows:
52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR...
34. The 5-Judge Bench Court also dealt with the exceptions to the doctrine of exhaustion and expressed itself as follows: -
59. “ ... However, our case law has developed a number of exceptions to the doctrine of exhaustion. In R. Vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)



(supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. (See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)..."

35. The Court of Appeal also provided the Constitutional rationale and basis for the doctrine in the case of *Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court stated that:

“...It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts...

36. This tribunal has considered what amounts to an attempt at IDRM in various cases.

In the case of *John Mworira Nchebere & Others vs The National Chairman Orange Democratic Movement & Others* (Nrb PPDT Complaint No. E002 OF 2022), the Tribunal held that:-

“Our pre-amendment position that a party must demonstrate bona fides (an honest attempt) in pursuing IDRM remains good law. Furthermore, the party to a dispute should also show, among others:

- a. The unavailability of the organ to resolve disputes;
- b. If the same is available; it is inoperative, fraught with conflict of interest, obstructive, in perpetual paralysis or subject to inordinate delays which may compromise the subject matter of the dispute;
- c. Reasonable time is afforded to the party to respond, constitute or activate an IDRM organ and deal or determine the dispute;
- d. Due consideration should be given to the urgency and public interest in the subject matter of the dispute; and



- e. The reliefs sought should be proportionate, and if alternative remedies suffice to mitigate the harm likely to be suffered, the same should be considered. In essence, the utilitarian or proportionality of the process and remedies should be considered so as to achieve an equilibrium.

The foregoing list is by no means exhaustive, but is a useful compass for navigating the frontiers delimited by section 40 (2) of the *Political Parties Act*, 2011.”

37. In order to prove that IDRМ has been explored, the dispute does not require to be heard and determined to completion, rather an honest attempt at pursuing IDRМ should be demonstrated. This was the holding in the case of Jeconia Okungu Ogutu & another v Orange Democratic Movement Party & 5 others, where the Court stated;

“Where there has been an attempt to refer to the IDRМ, this Tribunal becomes well seized of the matter.”

38. Turning to this case, we note that in response to the jurisdictional issue raised by the Respondent and the interested party, the Appellants have in paragraph 21 of their submissions acknowledged that there are pending IDRМ proceedings challenging the subject internal party documents and processes. They are in agreement that any prayers concerning the same before this tribunal are premature, but maintain that the tribunal nevertheless retains jurisdiction under section 40(1)(f) of the PPA as read with section 7(1)(b) of the FAA to inquire into the procedural and substantive merits of any decision of the Respondent founded on the said underlying internal party issues.
39. Noting that the Appellants do not dispute that the underlying internal party issues require IDRМ in the first instance, and that they have in fact invoked IDRМ processes that are said to be ongoing, and in consideration of the foregoing judicial authorities, this tribunal is under an obligation to allow the 4th Appellant deal with the dispute that they are already seized of independently in the first instance. To this extent, we are careful not to make any statements that may prejudice or prejudge the matter bearing in mind that the dispute may in future find its way back to the tribunal subject to compliance with the provisions of Section 40 of the PPA. We therefore find that we do not at this stage have jurisdiction to consider and grant any prayers for nullification of the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 as sought in this Appeal.
40. In the upshot, we decline the invitation to issue a declaration of invalidity of the notice issued by the interested party dated 2nd February 2023, the agenda, resolutions and letter dated 10th February 2023. We also decline to order the quashing and/or setting aside the purported notice issued by the interested party dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023.

Whether the content(s) of the Respondent’s letter dated 13th February 2023 constituted a decision, and if so, whether the same was issued in accordance with the law?

41. The Respondent’s and interested party’s position is that there is no decision capable of being appealed against since the Respondent’s letter of 13th February 2023 simply acknowledged receipt of documentation that were forwarded to her, and that none of the parties had invited her to make any finding on legality or otherwise of the NEC meeting or any of the party’s internal processes.
42. The submission by the Respondent that her letter dated 13th February 2023 was simply an acknowledgment of receipt of the interested party’s letter of 10th February 2023 gives rise to various questions that beg to be answered. Why did the interested party write to the Respondent forwarding



the party documents in the first place? Why was it necessary for the Respondent to keep a record of the documents that were forwarded to her? Was it simply for the Respondent to merely acknowledge receipt of the documents and to confirm compliance with only the two thirds gender rule as they claim to the exclusion of any other laws? Was it possible for the Respondent to confirm compliance with the two thirds gender rule without considering the resolutions? Would the Respondent consider the resolutions without checking on compliance with the law?

43. From the foregoing questions, it is inescapable to appreciate the functions of the Respondent under the PPA. This tribunal was referred to Section 34 of the PPA which stipulates the Respondent's functions as follows:

- “(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;
- b. administer the fund;
- c. ensure publication of audited annual accounts of political parties;
- d. verify and make publicly available the list of all members of political parties;
- e. maintain a register of political parties and the symbols of the political parties;
- f. ensure and verify that no person is a member of more than one political party and notify the Commission of his findings;
- g. investigate complaints received under this Act; and
- h. perform such other functions as may be conferred by this Act or any other written law.

44. Considering the statutory mandate of the Respondent as, inter alia, the regulator, monitor, and supervisor of political parties, we posit that the communication that was issued by the Respondent in response to the interested party's letter dated 10th February 2023 could only have been made in furtherance of the functions of the Respondent under Section 34(a) of the PPA. In the exercise of her afore-stated functions, it has been held that the Respondent should ensure compliance with the PPA.

45. In the case of Republic v Registrar of Political Parties & 6 others Ex parte Edward Kings Onyancha Maina & 7 others [2017] eKLR, Odunga, J observed as follows:-

“...Under section 34(1) of the *Political Parties Act*, one of the functions of the Registrar of Political Parties is to register, regulate, monitor, investigate and supervise political parties to ensure compliance with the Act. Accordingly, I agree that as the regulator, monitor and supervisor of political parties, it is upon the Registrar to ensure that those who purport to have entered into the merger agreement are indeed the duly authorised officials of the party or parties in question of course without purporting to micro-manage the manner in which the said parties conduct their affairs. To that extent I agree with the decision of the Political Parties Disputes Tribunal in Appeal No. 5 of 2016 - Party of National Unity & Another vs. The Registrar of Political Parties & 2 Others - that the Registrar is not simply a conduit but a critical player in determining whether parties seeking to merge have complied with the law. Where therefore the law is not adhered to those aggrieved by the decision are at liberty to invoke the jurisdiction of the Tribunal to resolve their grievances...”



46. Similarly, in *Amani National Congress Party v Godfrey Osotsi & Another* [2021] eKLR, A. Mboghli Msagha, J stated as follows:-

“...The Registrar of Political Parties has powers under Section 34 (a) and (g) of the *Political Parties Act* which are extensive and independent. The duty of the Registrar is to conduct independent inquiries and ensure compliance with the law. In so doing, it has been held the duty is not merely to rubber stamp decisions of political parties or their institutions. – see *Republic vs. Registrar of Political Parties & 6 others ex parte Edward Kings Onyancha Maina & 7 others* (2017) e KLR....

Section 15 (7) of the *Political Parties Act* empowers political parties to expel members, but this can only be effected “if a member has infringed *the constitution* of the political party and after the member has been afforded a fair opportunity to be heard in accordance with the internal party disputes resolution mechanism as prescribed in *the Constitution* of the party.”

It is clear from the foregoing that the letter from the Registrar of Political Parties acknowledging communication from the appellant was, to say the least, inadequate. It is also noted that the letter from the appellant was dated on the same date and acknowledged by the Registrar on the same date. There is no reason to question the efficiency of the Registrar’s office. However, the matter presented by the appellant for ratification was weighty and impacted on the 1st respondent’s rights to political association.

Going by the provisions of Section 34 (a) and (g) of the *Political Parties Act*, the Registrar’s words in the letter of acknowledgment dated 13th May, 2019 stating, “The contents therein are duly noted” can hardly be said to have been in due execution of those powers and or functions. With respect, that falls short of the scrutiny required by Section 15 of the same Act cited above.

A meticulous examination of the proceedings which took place in the appellant’s internal dispute resolution mechanism, and the ultimate decision was called for in this matter. The Registrar’s office fell short of this.

Where an office does not execute its duties to the expected standards conferred by law, the same must be faulted because prejudice is likely to adversely affect the other parties...”

47. We are therefore concerned with the Respondent’s submission that their role was merely to acknowledge receipt of the documents forwarded, and that they did not consider the compliance aspect as they were not invited to do so. Mere acknowledgement and replying without checking on compliance with the PPA has been found to be inadequate. We cannot agree more with the reasoning in the above cited judicial authorities.
48. We have further considered the contents of the letters under reference. The interested party wrote to the Respondent a letter dated 10th February 2023, which letter read as follows:-

“...Dear Madam,

Re: Jubilee Party -national Executive Committee Meeting Held on 10th February 2023 at Sarova Woodlands Hotel, Nakuru

This is to bring to your attention that the National Executive Committee of Jubilee Party held a meeting on 10th February 2023 at Sarova Woodlands Hotel in Nakuru.

We have enclosed herewith the following documents for your perusal and record:



- i. Notice of a National Executive Committee meeting dated 2nd February 2023.
- ii. Minutes of the National Executive Committee meeting held on 10th February 2023
- iii. Resolutions of the National Executive Committee meeting held on 10th February 2023
- iv. List of the members of Jubilee Party National Executive Committee in attendance at the said NEC meeting

Kindly acknowledge receipt of the said documents and confirm to us that the National Executive Committee is now compliant with the two thirds gender rule.

Yours faithfully,

Hon. Joshua Kutuny

Deputy Secretary General

Jubilee Party...”

49. In response thereto, the Respondent wrote to the interested party the impugned letter dated 13th February 2023, where it was expressly stated as follows:-

“...Dear Hon. Joshua,

Re: Jubilee Party National Executive Council Meeting of 10th February 2023

Reference is made to the above subject matter.

This office acknowledges receipt of your letter dated 10th February 2023 and received on 13th February 2023 on the Jubilee Party (JP) National Executive Council (NEC) meeting held on 10th February 2023 wherein you submitted the following documents:-

- a. A notice of a NEC meeting dated 2nd February 2023;
- b. Minutes of the NEC meeting;
- c. Resolutions of the NEC meeting; and
- d. A list of NEC members present at the meeting.

The Office has taken note of the contents of your submissions and the resolutions. It is also noted that the meeting was properly convened as per the party Constitution. However, it is expected that the party shall update the office on the progress of the internal dispute resolution and disciplinary processes. You are further required to adhere to the provisions of the party Constitution as you undertake the said processes. With respect to exiting from the coalition political party, kindly observe the provisions of the Azimio La Umoja One Kenya Alliance coalition agreement and the role of respective party organs.

Yours Sincerely,

Anne N. Nderitu, CBS

Registrar of Political Parties/CEO



Copy...”

50. From the foregoing, it is our observation that the Respondent’s letter dated 13th February 2023 cannot in any event be regarded as a mere acknowledgement as purported. The letter obviously went beyond acknowledging the interested party’s correspondence. In addition to the acknowledgment, an express statement was made to the effect that the Respondent had taken note of the contents of the submissions and resolutions, and further, that the 4th Appellant’s NEC meeting of 10th February 2023 was properly convened in accordance with the party constitution. What was the basis for this statement by the Respondent?
51. To answer this question, we turn to the Respondent’s own response titled ‘Response to the Appeal by the Respondent’ dated 23rd March 2023. We note that Part C of the response is on ‘Grounds on Which the Response is presented’. Under that part, the Respondent expressly pleaded as follows:-
- “ ... Article 8.2.2.5 of the party constitution prescribes a notice period of 7 days
8. for convening the NEC. The NEC meeting was convened vide a notice dated 2nd February 2023 and the meeting subsequently held on 10th February 2023 well within the 7 days’ notice period. Additionally, the notice convening the meeting was addressed to all NEC members.
9. Article 23 of the Jubilee Party Constitution prescribes the quorum of the meeting as 1/3 of the total members. Article 8.2 further stipulates the composition of NEC with a total of 28 officials.
10. The Respondent perusing the materials provided by the interested party established that the NEC meeting held on 10th February 2023, had 14 members in attendance. As a result of the reconstitution of the NEC, the current numbers of members is 24 including the Executive Director vis a vis the prescribed number per the party constitution of 28 members. Therefore, 1/3 of the current 24 members sets the threshold at 8 members which was satisfied.
11. The role of the Deputy Secretary General (DSG) is provided for under Article 10.6 of the Jubilee Party Constitution. The said Article empowers the DSG to deputize all the functions of the SG including the power to convene a NEC meeting. In the exercise of this role, it can be said that the DSG properly convened the impugned NEC meeting.
12. It is on the above basis that the Respondent reached a finding that the meeting by the Jubilee party held on 10th February 2023 was properly constituted...” (emphasis ours)
52. From the foregoing averments, the Respondent has expressly acknowledged that she considered the facts as disclosed in the documentation furnished, and various provisions of the party laws/ constitution, and it is on that basis that the statement was made. It is instructive to note that the Respondent has in her own pleading referred to her statement as a finding.
53. The Black’s Law Dictionary 9th edition defines a decision as “a judicial or agency determination after consideration of facts and law.” We are alive to the fact that this definition of a “decision” has been adopted in numerous cases (See Republic v Commissioner of Lands & 13 others Ex-parte Ereri Co. Ltd & 8 others [2013] eKLR; Republic v Land Registrar & 3 others Ex-parte Aryan Limited [2016]



eKLR; and Republic v Registration of Societies & 5 others Ex-parte Uhuru Kenyatta & 6 others Misc. Civil Appl. 747 of 2006).

54. As per the authorities cited above, a decision is a determination made after the consideration of facts and law. Accordingly, based on the Respondent's own pleading detailing the considerations that were made prior to making the statement/finding, we find that the impugned statement constituted a decision, within the meaning of Section 40(1)(f) of the PPA.
55. Having found that the Respondent's statement constituted a decision, we now proceed to examine whether the same was arrived at in accordance with the law. We have already highlighted the statutory mandate of the Respondent above, and found that in exercise of her mandate, the Respondent should check and verify on compliance with the PPA. It is also noteworthy that Respondent's functions are administrative duties and needless to note, fair administrative action is envisaged in the performance of those administrative duties under Article 47 of *the Constitution*.
56. As already observed, the Respondent highlighted the considerations she made of various facts and law prior to finding that the NEC meeting was properly convened. The same have been highlighted in the above extracts from her response where she has made various factual averments, some of which we note from pleadings are contested and may be subject of ongoing IDRM proceedings. It is, however, not in dispute that no person made representations before her. Neither has it been demonstrated that she made any investigations beyond what she claims was in the documentation furnished.
57. Section 2 of the FAA defines an "administrative action" to include - the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates. In essence, whereas the Respondent knew that the Appellants were likely to be affected by the exercise of her function under the PPA and her finding, she did not allow them a reasonable opportunity to be heard. Her action or finding was procedurally unfair. Apart from purporting to consider the legality of the meeting in a manner that we have found to be unfair and violated the legitimate expectation of the Appellants, the Respondent was quiet on all other aspects of compliance with the PPA. We therefore find that the Respondent acted in violation of Section 34(1) of the PPA as read together with Article 47 of *the Constitution* and Sections 7(2)(a)(v) and 7(2)(b)(c)(f)(m) & (n) of the FAA.
58. Consequently, we find that the Respondent's letter dated 13th February 2023 was in breach of the law, and we respond to this issue in the affirmative.

Who bears the costs of these proceedings?

59. Ordinarily, costs follow the event. However, in exercise of our discretion, we note that the Appeal has partially succeeded. Accordingly, in the interest of fostering party unity, we are of the considered opinion that each party should bear its own costs of these proceedings.

Disposition

60. We have considered the reliefs sought in the Appeal. We have already made a finding on our jurisdiction in so far as grant of any prayers relating to nullification of the notice dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023 are concerned. We have also found that the Respondent made a finding that was in breach of the law. Taking into consideration the totality of the foregoing circumstances, we order as follows: -
 - i. A declaration be and is hereby issued that the Respondent's letter dated 13th February 2023 is null and void and of no consequential effect.



- ii. The prayer for a declaration of invalidity of the notice issued by the interested party dated 2nd February 2023, the agenda, resolutions and letter dated 10th February 2023 is rejected.
- iii. The prayer for an order quashing and/or setting aside the purported notice issued by the interested party dated 2nd February 2023, the agenda, resolution and letter dated 10th February 2023, is also declined.
- iv. The Interim Orders issued herein on 16th February 2023 hereby stand discharged.
- v. Each party to bear its own costs of the proceedings.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF APRIL 2023.

HON. DESMA NUNGO HSC - CHAIRPERSON

HON. DR. WILFRED MUTUBWA OGW C.Arb FCIArb - VICE CHAIRPERSON

HON. STEPHEN MUSAU - MEMBER

