



**Huka v United Democratic Alliance & another; Konso (Interested Party) (Complaint E014 (NRB 'A') of 2023) [2023] KEPPDT 1363 (KLR) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEPPDT 1363 (KLR)

**REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL  
COMPLAINT E014 (NRB 'A') OF 2023  
G. GATHU, PRESIDING MEMBER, MM YUSUF JIN & S MUSAU, MEMBERS  
FEBRUARY 7, 2023**

**BETWEEN**

**HON JOHN BORU HUKA ..... COMPLAINANT**

**AND**

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

**THE SECRETARY MARSABIT COUNTY ASSEMBLY SERVICE**

**BOARD ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HON HALKANO KONSO ..... INTERESTED PARTY**

**RULING**

**Introduction**

1. Vide a Complaint dated 7<sup>th</sup> August 2023, the Complainant seeks the following prayers:-
  - a. A declaration that the Interested Party was not available for appointment for membership to the Marsabit County Assembly Service Board.
  - b. An order bringing before this tribunal Gazette Notice No. No.9305 of 12th July 2023 and the same be quashed and/or nullified for falling short of the requirements of Standing Order 16 and 42A of the Marsabit standing orders and Section 46 (c) of the [County Assembly Services Act](#).
  - c. An order finding the Complainant as the duly nominated Appointee to the County Assembly directing the 2<sup>nd</sup> Respondent be directed to gazette Boru John Huka as a member of the Marsabit County Assembly Service Board. d. Costs of this suit.
  - e. Any other order deemed fit and just to be granted by this tribunal.



2. The 2<sup>nd</sup> Respondent and the Interested Party have filed Preliminary Objections to the Complaint. The Preliminary Objections are both dated 7<sup>th</sup> August 2023. The 1<sup>st</sup> Respondent did not file a Preliminary Objection but indicated that it associated itself with the Preliminary Objections filed by the 2<sup>nd</sup> Respondent and the Interested Party.
3. The Tribunal directed parties to file written submissions to the Preliminary Objections. The Complainant filed written submissions dated 17<sup>th</sup> August 2023. The Interested Party filed written submissions dated 8<sup>th</sup> August 2023 and the 2<sup>nd</sup> Respondent's written submission are dated 15<sup>th</sup> August 2023. The 1<sup>st</sup> Respondent did not file submissions.

#### **The 2<sup>nd</sup> Respondent's Submissions.**

4. The 2<sup>nd</sup> Respondent submits that the Complainant has failed to exhaust the Internal Dispute Resolution Mechanism (IDRM) as contemplated under section 40(2) of the *Political Parties Act*, 2011. It further argues that the Complainant has also failed to comply with the provisions of section 9(2) of the *Fair Administrative Action Act* No. 4 of 2015. It urges the Tribunal to uphold the Preliminary Objections.

#### **The Interested Party's Submissions**

5. The Interested Party submits that the dispute that is the subject of this Complaint is not one that is envisaged under the provisions of section 40(1) of the *Political Parties Act*. Further, the Interested Party submits that the Tribunal lacks jurisdiction to hear and determine this Complaint over failure by the Complainant to exhaust IDRM.

#### **Issues for determination**

6. The Tribunal has identified the following issues for determination:-
  - a. Whether the Complainant attempted to subject the dispute to IDRM.
  - b. Whether the Tribunal has jurisdiction to hear and determine this dispute under section 40(1) of the *Political Parties Act*.

#### **Analysis and Determination.**

##### **Whether the Complainant attempted to subject the dispute to IDRM.**

7. Although the 2<sup>nd</sup> Respondent and the Interested Party have referred to a requirement to exhaust IDRM, the same is not quite the position. Section 40(2) of the *Political Parties Act* does not require a party to exhaust IDRM. All that is required is for a party to show a bonafide attempt at IDRM. 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*.
8. Has the Complainant made a bonafide attempt to subject the dispute to IDRM? The Complainant has annexed two letters each dated 18<sup>th</sup> July 2023 to his Complaint. He is the author of one of the letters whilst the other one is authored by one Hon. Amos Wako Guyo. The letters do not bear an address to which they were sent, nor do they have a subject line. They only state that they are for the attention of "Secretary General" and the salutation refers to one "Hon. Sen. Cleophas Malala". This begs the question as to where they were being delivered to, and whether they were an attempt to the IDRM.



9. Moreover, none of the letters is indicated or stamped as received and the Complainant has neither indicated how the letters were delivered nor shown any efforts he made to follow up on the letters prior to filing this Complaint. As such, it is not possible to ascertain whether the letters were indeed received and whether the 1<sup>st</sup> Respondent, if indeed it was the recipient, was given adequate time to respond or to set in motion its IDRМ, if indeed it was the party that ought to have initiated the IDRМ process.
10. As per the decision of this Tribunal in John Mworіа Nchebere (supra), the tests of bonafides of an attempt at IDRМ are well stated. The Complainant fails some of the most crucial of these tests. Consequently, the Tribunal finds that it has no jurisdiction to entertain this dispute due to non-compliance with sec. 40(2) of [Political Parties Act](#).

**Whether the Tribunal has jurisdiction to hear and determine this dispute under section 40(1) of the [Political Parties Act](#)**

11. Section 40 (1) of the [Political Parties Act](#) provides that

“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.”

12. The Complainant is a member of Ford Kenya which is a member of the Kenya Kwanza Coalition together with the 1<sup>st</sup> Respondent. Though the Interested Party in its Replying Affidavit sworn on 7<sup>th</sup> August 2023 indicated that the Complainant is a member of New Ford People, it has indicated in its submissions that the Complainant is a member of Ford Kenya. The Complainant is also indicated as a member of Ford Kenya in the minutes of the meeting held on 29<sup>th</sup> March 2023 which are not disputed. The Complainant also swore a further affidavit on 17<sup>th</sup> August 2023 in which he confirmed that he is a member of New Ford Kenya. It is also not disputed that Ford Kenya is a member of the Kenya Kwanza Coalition. There is an issue as to whether Ford Kenya and New Ford Kenya are one and the same entity as the parties have referred interchangeably to Ford Kenya and new Ford Kenya, but as nothing seems to turn on that issue, we shall not dwell on it.
13. It is not in dispute that the Complainant is not a member of the 1<sup>st</sup> Respondent which he has sued. The Complainant has not sued the Kenya Kwanza Coalition or his own party. Moreover, the 2<sup>nd</sup> Respondent is not a party envisaged under section 40 (1) of the [Political Parties Act](#).
14. The Complainant makes a striking argument that it does not make sense to sue all the members of a coalition whilst one has a problem with one or two of the members and that it is perfectly in order for an individual member of a political party to personally sue another political party in his or her own capacity.



15. However, the Complainant's aforesaid argument cannot be what parliament intended at section 40 (1) (b) of the *Political Parties Act*. The intention of parliament is crucial in interpreting a statute. In *Cusack –vs- Harrow London Borough Council* (2013) 4 ALL ER 97, the court stated thus:-
- “Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose.”
16. Lord Nicholls in *Secretary of State for the Environment, Transport and the Regions and Another Ex Parte Spath Holme Limited, R v.*[2000] UKHL 61, stated that:
- “Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration.”
17. Indeed, the intention of parliament at section 40(1) (b) of the *Political Parties Act* may be discerned from considering recent amendments to the *Political Parties Act*. The said provision was amended vide the Political Parties Amendment Act No. 2 of 2022. 18. Prior to the amendment, the provision read as below:
- “disputes between a member of a political party and a political party”(emphasis is ours)
18. After the amendment, the provision currently reads that:-
- “disputes between a member of a political party and the political party” (emphasis is ours.)
19. By removing the article of speech “a” and replacing it with “the”, it does seem that the intention of parliament in introducing the amendment was to expressly bar an individual from suing a Political Party of which he is not a member of. This makes even more sense when you consider the limit on jurisdiction at section 40 (2) of the *Political Parties Act* due to the myriad of resultant challenges in requiring an individual who is not a member of a Political Party to submit to the jurisdiction of its IDRMs yet the individual is not bound by the Political Party's rules and regulations not being a member of the Political Party.
20. The Complainant's argument would perhaps have been more compelling if the Complainant had sued his own political party together with the 1<sup>st</sup> Respondent. This would have created a nexus between the Complainant and the 1<sup>st</sup> Respondent and given the Complainant sufficient locus standi as members of one coalition, the Kenya Kwanza Coalition.
21. What then is the Tribunal to do when faced with such a situation? The Complainant has referred the Tribunal to Order 1 rule 9 which states that:
- “No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”
22. Indeed, while no suit should be defeated by reason of misjoinder or non-joinder, the question is whether this applies where a Tribunal lacks jurisdiction on account of a party's locus standi.



23. The Court of Appeal has held that Order 1 rule 9 of the Civil Procedure Rules may not apply where a party lacks locus. Chesoni JA (as he then was) in *Lochab Brothers vs Furfural Co. Ltd* (1983) eKLR stated thus:-

“As it is stated in the Supreme Court Practice (1982) p 207, para 15/6/2, which is similar to our order I rule 9, that order has not altered the legal principles with regard to parties to action, and, in no way qualifies the necessity for having before the court the proper parties necessary for determining the point at issue.”

24. Moreover, Order 1 rule 10 (2) of the Civil Procedure Rules provides thus:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

25. It therefore seems that the court has discretion to order the striking out or addition of any party in a suit. This discretion should be exercised judiciously. Noting that we have already found that this Tribunal does not have jurisdiction over this dispute on account of the Complainant’s failure to show a bonafide attempt at IDR, there is no need for the Tribunal to delve into the question of whether to exercise this discretion in favour of the Complainant.

26. In the circumstances, we uphold the Preliminary Objections dated 7<sup>th</sup> August 2023 in so far as section 40 (2) of the *Political Parties Act* is concerned.

#### **Final Orders**

19. The final orders of the Tribunal shall be:-

- a. This Complaint is hereby struck out.
- b. Each party shall bear its own costs.

**DATED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**GAD GATHU ..... (PRESIDING MEMBER)**

**MUZNA JIN..... (MEMBER)**

**STEPHEN MUSAU ..... (MEMBER)**

