



**Huka v United Democratic Alliance & another; Konso (Interested Party) (Complaint E014 (NRB 'A') of 2023) [2024] KEPPDT 500 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEPPDT 500 (KLR)

**REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL  
COMPLAINT E014 (NRB 'A') OF 2023  
G. GATHU, PRESIDING MEMBER & S MUSAU, MEMBER  
JANUARY 26, 2024**

**BETWEEN**

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

**AND**

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

**MARSABIT COUNTY ASSEMBLY SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**AND**

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

**RULING**

**Introduction**

1. This Tribunal delivered a ruling on 7<sup>th</sup> September 2023. The upshot of the ruling was that the Complainant's Complaint was struck out. Vide a Notice of Motion application dated 7<sup>th</sup> September 2023, the Complainant now seeks the following orders:-
  1. Spent;
  2. Spent;
  3. THAT the Honourable Tribunal be pleased to review, vary and / or set aside the decision, judgment and orders of the tribunal issued on 7th September, 2023.
  4. THAT the Meru Bench having exhibited glaring hints a biased schedule in determining the issues encompassing this matter, the complaint herein be placed before the full Bench of the Political Parties Disputes Tribunal for determination.
  5. THAT the court be pleased to grant such other or further orders as may be appropriate;



6. THAT the costs of the Application be provided for.
2. The application is supported by the affidavit of the Complainant sworn on 7<sup>th</sup> September 2023. The Complainant filed written submissions dated 8<sup>th</sup> November 2023.
3. The 1<sup>st</sup> Respondent did not file any response to the application. The 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn by Chare Mato on 21<sup>st</sup> September 2023 and also filed written submissions dated 27<sup>th</sup> November 2023. The Interested Party is also opposed to the application. It filed a Replying Affidavit sworn by Halkano Konso on 3<sup>rd</sup> November 2023 and also filed written submissions dated 4<sup>th</sup> December 2023.

#### **The Complainant's case**

4. The Complainant's case is that the Complaint complied with section 40(2) of the *Political Parties Act*. He states that the letters dated 18<sup>th</sup> July 2023 were delivered to the Secretary General of the 1<sup>st</sup> Respondent. He further states that a screenshot evidencing delivery of the said letters was only made available on 7<sup>th</sup> September 2023 as the minority leader was away in Australia.

The Complainant thus urges the Tribunal to grant the orders sought.

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

5. The 2<sup>nd</sup> Respondent submits that the Complainant has not met the threshold for review. It states that there is no new evidence which the Complainant has produced and further that the Complainant has not demonstrated any mistake or error apparent on the face of the record to warrant review of the Tribunal's ruling on 7<sup>th</sup> September 2023.
6. The 2<sup>nd</sup> Respondent therefore urges the Tribunal to dismiss the application.

#### **The Interested Party's case**

7. The Interested Party states that the Tribunal's determination of 7<sup>th</sup> September 2023 was multifaceted. Thus, failure to prove delivery of the letters dated 18<sup>th</sup> July 2023 were not the only reason that led to the determination. It therefore argues that whether or not the screenshot had been available, nothing would have turned on the same. The Interested Party further argues that the Complainant has not demonstrated any mistake or error apparent on the face of the record and that there is no other reason to review the determination of the Tribunal.

#### **Issues for determination**

8. The Tribunal has keenly considered the present application, the responses thereto and the parties' submissions and determined the issues for determination as:-
  - i. Whether the Complainant has met the threshold for review.
  - ii. Whether the orders sought should be granted.



## Analysis and Determination.

### Whether the Complainants have met the threshold for review.

9. Under section 41(4) of the *Political Parties Act*, the *Civil Procedure Act* and the rules made thereunder apply to proceedings before this Tribunal. The said section states thus:-

“The Tribunal shall apply the rules of evidence and procedure under the *Evidence Act* (Cap. 80) and the *Civil Procedure Act* (Cap. 21), with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.”

10. Review is provided for under section 80 of the *Civil Procedure Act* as well as Order 45 rule 1 of the Civil Procedure Rules. Section 80 of the *Civil Procedure Act* provides thus:-

Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

11. Order 45 Rule 1 of the Civil Procedure Rules provides that:-

Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

12. The import of the foregoing provisions is that a party seeking to have a ruling or order reviewed should show that:-

- a. There has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed; or
- b. the order made, or on account of some mistake or error apparent on the face of the record; or
- c. any other sufficient reason.

13. The Complainants' application is premised on discovery of new and important matters of evidence. The new and important matter of evidence is a screenshot showing delivery of letters to one "Gathoni UDA". The Complainants state that the said screenshot was not available earlier as it was in the hands of the minority leader who had travelled to Australia and who only made the screenshot available on 7<sup>th</sup> September 2023.



14. Does the said screenshot amount to discovery of new and important matters of evidence? In the case of D. J. Lowe & Company Ltd –vs- Bonquo Indosuez, Nairobi Civil Application No.217 of 1998, the Court of Appeal sounded a caution in such applications and stated that:-

“Where such a review application is based on fact of the discovery of fresh evidence the court must exercise greatest of care as it is easy for a party who has lost, to see the weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing.”

15. The new evidence is a screenshot and the reason given for not availing it earlier is that the leader of minority who had it in his possession had travelled to Australia. It is a matter of notoriety, of which this Tribunal is entitled to take judicial notice of, that a screenshot is not an item for which one must be present for it to be shared. The reason given as to why it was not shared earlier is obviously not plausible.
16. Moreover, the screenshot refers to the letters being sent to one “Gathoni UDA”, The number of the said “Gathoni UDA” is not indicated. Moreover, while she is indicated to be the Personal Assistant of the Secretary General of the 1<sup>st</sup> Respondent, no evidence in that regard. The Complainant also claims to have served the letters via the office email but no email was exhibited.
17. As such, the Tribunal finds that no new and important matter of evidence has been adduced. Moreover, no mistake or error apparent on the face of the record has been pointed out.

#### **Whether the orders sought should be granted**

18. Given the foregoing analysis, it follows that the orders for review cannot be granted. However, the Complainant’s application has an additional prayer that is unrelated to review. The said prayer prays that:-

“the Meru Bench having exhibited glaring hints a biased schedule in determining the issues encompassing this matter, the complaint herein be placed before the full Bench of the Political Parties Disputes Tribunal for determination. “

19. Section 80 (b) of the *Civil Procedure Act* is explicit that an application for review should be made to the court or, in this instance, the Tribunal which passed the order or decree sought to be reviewed. The said prayer can therefore not be granted in the absence of special circumstances. In any event, no evidence was led as to the alleged bias.
18. Be that as it may, the Tribunal also noted that the prayer has nothing to do with review. The principles to be followed in determining such a prayer are different from those to be considered in an application for review. This essentially makes the application omnibus. Ringera J in Pyaralalmhandbheru Rajput Vs Barclays Bank And Others Civil Case No. 38 of 2004 stated that;

“There is no doubt the application is an all-cure, omnibus application. It is a wide net cast over a large body of water, and out of all the lake or sea, creatures caught in it, there will be one or two edible crabs or fish. It is not quite so. An omnibus application is incapable of proper adjudication by the court for each of the reliefs sought apart from being governed by different rules, is also subject to long established and different judicial principles which counsel need to bring to the attention of, and the court needs to consider before granting



the entire relief sought. This alone makes the plaintiff's application incurably defective, and a candidate for striking out."

20. The inclusion of the said prayer makes the Complainant's application omnibus and a candidate for striking out.
21. The upshot of the foregoing is that the Notice of Motion dated 7<sup>th</sup> September 2023 is without merit and is dismissed with each party bearing its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JANUARY 2024.**

**GAD GATHU - (PRESIDING MEMBER)**

**MUZNA JIN - (MEMBER)**

**STEPHEN MUSAU - (MEMBER)**

