



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 10 OF 2017

SIMON KAMAU.....1<sup>ST</sup> COMPLAINANT

SAMUEL MACHARIA.....2<sup>ND</sup> COMPLAINANT

VERSUS

JUBILEE PARTY.....1<sup>ST</sup> RESPONDENT

RAPHAEL TUJU.....2<sup>ND</sup> RESPONDENT

JANE WANJIRU.....3<sup>RD</sup> RESPONDENT

JOEL IRUNGU.....4<sup>TH</sup> RESPONDENT

JUDGMENT

**Introduction**

1. This matter was filed before the PPDT (**hereinafter “the Tribunal”**) by way of a complaint dated 3<sup>rd</sup> March 2017 and received at the Registry on the same day, on 3<sup>rd</sup> March 2017. Also filed was a Notice of Motion dated 3<sup>rd</sup> March 2017, certified urgent and supported by an affidavit of Simon Kamau (**hereinafter “the Complainant”**). In the complaint, Complainant sought for four main orders, namely: -

- a) An order declaring the purported censure and the subsequent removal of the Complainants illegal, irregular, null and void.
- b) A declaration that the decision of the 2<sup>nd</sup> Respondent to call for elections was ultra vires, null and void.
- c) An order reinstating the Complainants into office of the interim Chairperson and Secretary of the 1<sup>st</sup> Respondent’s party in Murang’a County.

- d) An order restraining the Respondents from harassing the Complainants in any way when exercising their official mandate.
2. In the Notice of Motion, on the other hand, the Complainants sought for 3 principle prayers, namely: -
- a) The certification of this application as urgent.
- b) An order staying the implementation of the Respondents' decision of removing the Complainants from the offices of the interim chairperson and secretary of the 1<sup>st</sup> Respondent's party offices in Murang'a pending the hearing and determination of this suit.
- c) An order staying any election or selection or delegations of persons to hold the offices of the interim chairperson and secretary of the 1<sup>st</sup> Respondent's party offices in Murang'a pending the hearing and determination of this suit.
- d) An order allowing Complainants to continue carrying out their duties as the interim chairperson and secretary of the 1<sup>st</sup> Respondent's party offices in Murang'a pending the hearing and determination of this suit.
3. The matter was first placed before the Tribunal on 3<sup>rd</sup> March 2017 when the *ex parte* Notice of Motion was certified as urgent and the interim orders granted. While these orders subsisted, the 2<sup>nd</sup> Respondent gave a written press release on 26<sup>th</sup> March in which he indicated that he had removed the Complainants from the office. This prompted the Complainants to file the contempt of court application in which they sought for the punishment of the 2<sup>nd</sup> Respondent and the preservation of their rights.
4. In the course of these events, also, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed a Preliminary Objection objecting to the jurisdiction of the Tribunal on the basis that the Complainants had not invoked the 1<sup>st</sup> Respondent's disputes resolution mechanism as required by the law.

### **Complainants' Arguments**

5. It is the Complainants' contention that the decision of the 3<sup>rd</sup> and 4<sup>th</sup> Respondent of 21<sup>st</sup> February 2017 of removing the Complainants from the position of the interim chairperson and secretary of the 1<sup>st</sup> Respondent party in Murang'a contravened the *Political Parties Act, 2011*. The said *Act* requires the decisions and the actions of a political party to comply with the *Constitution of Kenya, 2010*.
6. The Complainants also averred that, despite complaining against their censure, the 2<sup>nd</sup> Respondent went ahead and ordered the removal Complainants' from the office on 27<sup>th</sup> February 2017 thus sanctioning the illegality of the censure decision of 21<sup>st</sup> February. In this regard, the Complainants explained that the act did not only contravene the *Political Parties Act* but also the 1<sup>st</sup> Respondent party constitution, which empowers only the party leader or the deputy party leader to cause the appointment or removal of interim officials.
7. As a consequence, the Complainants explained, the said actions had caused confusion among the 1<sup>st</sup> Respondent's party members as to the position of Complainants in the party and accordingly prayed to this Tribunal to hold in their favour.

***Respondents' Arguments***

8. In reply, the Respondents, through their various replying affidavits, asserted that the Complainants were removed from the positions they held because they were not discharging their mandate in accordance with the law. By this, the Respondents meant that the Complainant were using their positions to advanced their selfish interests as oppose to foster the 1<sup>st</sup> Respondent's political ideals.
9. The Respondents also accused the Complainants of engaging in gross misconduct as could be demonstrated by acts such as misuse of office, lack of respect and intimidation of fellow members and other stakeholders, failing to disclose monies received for the purposes of supporting the activities of the 1<sup>st</sup>

Respondent and teaming up with unknown people to illegally sign a lease of Kshs. 35,000 as the 1<sup>st</sup> Respondent's party, which was way above the normal rent rates of Kshs. 15,000.

10. The Respondents further averred that that the Complainants were not ambushed by the meeting that was held on 21<sup>st</sup> February 2017 since they, Complainants, were properly notified of the meeting, which meeting they had attended. The Respondents also explained the purpose of the meeting, which was to discuss, among other things, the Complainants' gross misconduct, incapacity to conduct a meeting professionally, lack of transparency and accountability in the manner in which 1<sup>st</sup> Respondent's monies were being used and lack of respect for members.
11. In addition, in the course of the proceedings at the meeting, the Complainants admitted having received twice Kshs. 55,000 being a total of Kshs. 110,000 from Hon. Irungu Nyakera, an aspirant, but did not disclose the same to members.
12. At the meeting, the Respondents contended, a vote of no confidence was passed that resulted into the removal of the Complainants and the subsequent endorsement of new officials to take charge as the chairperson and secretary general of the 1<sup>st</sup> Respondent, respectively.
13. In their affidavit, also, the Respondents gave an undertaking promising to remedy the impression created by the press release issued on 26<sup>th</sup> March 2017. In the said press release, 2<sup>nd</sup> Respondent had declared he had removed Complainants from the office contrary to the orders and directions of the Tribunal dated 3<sup>rd</sup> March 2017.

### ***Proceedings***

14. From the submissions by both the Claimant and the Respondents, it is not in contention that there was a meeting on 21<sup>st</sup> February 2017, which the Complainants themselves also attended.

*Issues for Determination*

15. What therefore remains in contention are two issues; first, whether the Tribunal had jurisdiction to entertain this matter. The second one is whether the Complainants were accorded a fair hearing before being removed from their positions as interim chairperson and secretary of the 1<sup>st</sup> Respondent party in Murang'a branch, respectively.

*Analysis*

16. Regarding the issue of this Tribunal's jurisdiction, we hasten to point out that it is a trite law that a court has no business entertaining a matter once it establishes that it lacks jurisdiction. The locus classicus statement of Hon. Justice Nyarangi JA in *The MV "Lilian S"* case still holds good and as a Tribunal, we stand guided by it. The good Judge opined, "*Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.*"

17. Our understanding of the foregoing is that a court of law must first satisfy itself of jurisdiction before proceeding to entertain a claim placed before it, which we hereby do. *Section 40* of the *Political Parties Act, 2011 (as revised in 2016)* outlines the jurisdiction of the Tribunal and gives it the mandate, in paragraph (b) of the said provision, to resolve disputes arising between a member of a political party and a political party. This is the nature of dispute between the Complainants and the Respondents. Nonetheless, we are alive to the fact before the Tribunal can assume jurisdiction over a dispute of this nature; such a dispute ought to have been referred to an internal dispute resolution of a political party.

18. In the instant case, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents convened a meeting on the 21<sup>st</sup> February 2017 with the agenda to discuss, among other matters, the gross misconduct of the Complainants followed by the passing of a vote of no

confidence against them. This indeed happened and the Complainants were removed and replaced by Peter Wachira and Charles Njoroge, who took up the position of the interim chairperson and secretary general, respectively.

19. We also noted that 2<sup>nd</sup> Respondent had declared through a press release that he had removed Complainants from the office contrary to the orders and directions of the Tribunal dated 3<sup>rd</sup> March 2017. This raises the question; what other internal dispute resolution mechanism would the Complainants refer their complaint to considering that the Respondents had initiated a dispute resolution method when they convened the meeting of 21<sup>st</sup> March 2017 and the 2<sup>nd</sup> Respondent even gave a press release to that effect?
20. To our mind, the two acts; the Murang'a County meeting held on 21<sup>st</sup> March 2017 that witnessed the passage of the vote of no confidence against the Complainants and the 2<sup>nd</sup> Respondent's press release of 26<sup>th</sup> March 2017 were enough evidence of the Respondents' preferred style of dealing with the allegations against the complainants internally. To this end, we hold the view that it would superfluous and unnecessary waste of time to again require the Complainants to invoke an internal dispute resolution. For that reason, this Tribunal has the jurisdiction to entertain this matter and as such, the Preliminary Objection dated 22<sup>nd</sup> March 2017 is hereby dismissed.
21. That being the case, we now turn our attention to the second issue, which is whether the Complainants were accorded a fair hearing before being removed from their positions as interim chairperson and secretary of the 1<sup>st</sup> Respondent party in Murang'a branch, respectively. This issue implicates the fair administrative action rights.
22. The requirement for fair administrative action is one of the essential fundamental human rights enshrined in the Bill of Rights of the *Constitution of Kenya, 2010*. *Article 47* of the *Constitution* in this respect requires every person who is a

subject of an administrative action to be accorded an expeditious, efficient, lawful, reasonable and procedurally fair opportunity.

23. This demands that an individual must be given written reasons for the actions if such person's fundamental rights and freedoms are likely to be adversely affected by an administrative action. *Article 50 (1) k* in this respect specifically demands that one must be accorded the opportunity to adduce and challenges evidence. The case of *Stephen Nendela vs. County Assembly of Bungoma and 4 Others [2014] eKLR* at *paragraph 28* and *29* explains that accused person does not refer to a person accused in a criminal trial only, but also any person accused of any allegation which if proved against such a person, the consequence will be prejudicial to him.
24. In order to actualise this vital condition, the Fair Administration of Actions Act, 2015 has been enacted with the goal to *"provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal and promote efficient administration."*
25. In this respect, *section 4 (1) (2) (3) and (4)* of the *Fair Administration of Actions Act, 2015* carefully and saliently particularises the activities that must be undertaken by the administrator of actions in order to conform with the requirements of *Article 47* of the *Constitution of Kenya, 2010*.
26. Subsection 1 stipulates that *"Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair"* while *Subsection 2* provides that *"Every person has the right to be given written reasons for any administrative action that is taken against him."*
27. *Subsection 3* to this end requires the administrator of actions to ensure the service of prior and adequate notice of the nature and reasons for the proposed administrative action, an opportunity to be heard and make representations in that regard, notice of the right to legal representation, where applicable, making

available the information, materials and evidence to be relied upon in making the decision or taking the administrative action et cetera.

28. **Subsection 4** on the other hand obligates the administrator of actions to accord the person against whom the administrative action is taken the chance to attend the proceedings, in person or in the company of an expert of his choice, be heard, cross examine persons giving adverse evidence against him and request for an adjournment of the proceedings, where necessary to ensure fair hearing.
29. In this regard, it is crucial to point out that the dispute at hand has arisen from the activity of a political party, the 1<sup>st</sup> Respondent, in relation to its members and specifically, the officials of the party. The 1<sup>st</sup> Respondent took removed the Complainants without subjecting them a disciplinary mechanism. In other words, the Respondents acted without taking into consideration the Complainants' rights to be heard, adduce and challenge evidence labelled against them.
30. As a political party, the Respondents were required to act in accordance with the law and respect the fundamental rights and freedoms of its members in whatever decision they, Respondents, made. The 1<sup>st</sup> Respondent's party constitution recognises this vital fact and requires the disciplinary process initiated against any of its member to be determined in accordance with the *Constitution of Kenya, 2010* and other laws.
31. This meant that the Respondents ought to have given the Complainants the reasonable opportunity to be heard and make a defence to the allegations or charges made against them in accordance with the rules of natural justice and fair play. However, to deny the Complainants the right to answer to the charges facing them clearly flew on the face of the well established principle and the right to fair administrative action.

32. Indeed, from the evidence adduced before this Tribunal, the Complainants attended the meeting held on the 21<sup>st</sup> March 2017 where their conduct was discussed and a vote of no confidence passed against them resulting into their removal from their positions and subsequent replacement by new officials.
33. It is trite that a political party member facing an administrative action must be entitled to fair administrative action. This Tribunal is under sacred obligation to ensure that the 1<sup>st</sup> Respondent's actions does exactly that and comply with the provisions of the *Constitution of Kenya, 2010* and the *Fair Administrative of Actions Act, 2015* in relation to fair administrative action.
34. We are guided by the decision of the High Court in *Republic v Truth, Justice and Reconciliation Commission Ex-Parte Beth Wambui Mugo [2016] eKLR* at paragraph 60 where it was held that:

*The minimum ingredients of fair hearing are provided in Article 47 of the Constitution. I say the minimum because under Article 20 of the Constitution every person is entitled to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom and in applying a provision of the Bill of Rights, a court is enjoined inter alia develop the law to the extent that it does not give effect to a right or fundamental freedom and to adopt the interpretation that most favours the enforcement of a right or fundamental freedom. Article 47 of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by*

*administrative action, the person has the right to be given written reasons for the action.*

35. For the reasons advanced above, we find that the Complainants' rights to fair administrative action were when they hounded out of the office and replaced without being subjected to a disciplinary mechanism. For that reason, we hold that the Complainants have succeeded to establish sufficient grounds to warrant granting them orders sought via their application dated 3<sup>rd</sup> March 2017.

*Orders*

36. In the premises, we allow this Complaint and make the following orders:

- a) The Complainants were not accorded a fair hearing as contemplated by the party constitution and law.*
- b) We set aside the decision of the 1<sup>st</sup> Respondent of the meeting dated 21<sup>st</sup> March 2017 that culminated in the removal of the Complainants as the interim party officials for the position of chairperson and secretary general Murang'a County branch, respectively.*
- c) Accordingly, this Tribunal also nullifies the appointment of the new officials in those respective positions.*
- d) No order will be made as to costs in order to foster party unity and growth of party democracy. Orders accordingly.*

**DATED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JUNE 2017**

**Kyalo Mbobu (Chairman) .....**

**Paul Ngotho (Member).....**

**Desma Nungo (Member).....**