



**Kioni & 3 others v National Disciplinary Committee of the Jubilee Party  
& 2 others (Civil Appeal E630, E635, E736, E750, E764 & E008 of 2023  
(Consolidated)) [2024] KEHC 11395 (KLR) (Civ) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11395 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E630, E635, E736, E750, E764 & E008 OF 2023 (CONSOLIDATED)**

**JN MULWA, J**

**SEPTEMBER 30, 2024**

**AS CONSOLIDATED WITH CIVIL APPEAL NUMBERS**

**E635 OF 2023, E736 OF 2023, E750 OF 2023,**

**E764 OF 2023 AND E008 OF 2023**

**BETWEEN**

**JEREMIAH KIONI ..... 1<sup>ST</sup> APPELLANT**  
**DAVID MURATHE ..... 2<sup>ND</sup> APPELLANT**  
**KAGWE GICHOHI ..... 3<sup>RD</sup> APPELLANT**  
**JUBILEE PARTY ..... 4<sup>TH</sup> APPELLANT**

**AND**

**NATIONAL DISCIPLINARY COMMITTEE OF THE JUBILEE  
PARTY ..... 1<sup>ST</sup> RESPONDENT**  
**JOSHUA KUTUNY ..... 2<sup>ND</sup> RESPONDENT**  
**KANINI KEGA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before this Court for determination are a total of six (6) appeals, emanating from various decisions arrived at by the Political Parties Tribunal (the PPDT). Pursuant to the directions by this Court, the Appeals were deemed consolidated, with Civil Appeal No. E630 of 2023 constituting the lead file.



2. The Appeals are particularized as follows: Civil Appeal No. E630 of 2023, Civil Appeal No. E635 of 2023, Civil Appeal No. E736 of 2023, Civil Appeal No. E750 of 2023, Civil Appeal No. E764 of 2023 and Civil Appeal No. E008 of 2023. The respective Appellants being Jeremiah Kioni, David Murathe, Kagwe Gichohi, Jubilee Party, Nelson Efedha Akwaka and Richard Mong'are Barake wherein hereafter and for ease of reference, the Court will refer to them as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Appellants respectively.
3. The Respondents in the collective Appeals are: the National Disciplinary Committee of the Jubilee Party, Joshua Kutuny, Kanini Kega, the Office of the Registrar of Political Parties, Nelson Dzuya, Wanjiku Nduati, Robert Wanga, Mutembei Marete, Teresiah Jerusah Michael, Waithaka Ngaruiya, Adan Keynan, Kinoti Gatobu, Fatuma Dullo, Samuel Arama, Advice Mundalo, Maitu Sabina Wanjiru Chege, the Political Parties Disputes Tribunal, Rachael Nyamai, Ann Nderitu wherein hereafter and for ease of reference, the Court will refer to them as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> Respondents respectively.

## **Background**

4. At the onset, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants herein were at all material times officials of the 4<sup>th</sup> Appellant The Jubilee party holding the positions of Secretary General, National Vice Chairperson and Treasurer, respectively. Nevertheless, pursuant to a notice dated 02.02.2023 a National Executive Meeting (NEC) was held amongst the members of the 4<sup>th</sup> Appellant, thereby resulting in a resolution made on 10.02.2023 in effect suspending the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants and subjecting them to a disciplinary process before the 1<sup>st</sup> Respondent. Subsequently, the 4<sup>th</sup> Respondent vide the letter dated 13.02.2023 proceeded to ratify the NEC resolution of 10.02.2023 and to effect the requisite changes to the 4<sup>th</sup> Appellant.
5. Being aggrieved by the above turn of events, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants moved the 17<sup>th</sup> Respondent herein The Political Parties Disputes Tribunal (PPDT) by way of PPDT Appeal No. E001 of 2023 seeking to quash the aforementioned letter by the 4<sup>th</sup> Respondent, on the premise that it was founded on a nullity; namely, the notice of 2.02.2023 and the NEC meeting and resolutions of 10.02.2023. Upon hearing the parties thereon, the PPDT declared the said letter a nullity but determined that it lacked jurisdiction to consider the prayers sought in respect of the aforementioned notice and NEC resolutions as no honest attempt at Internal Dispute Resolution Mechanisms (IDRM) had been demonstrated. The parties were therefore encouraged to pursue IDRM.
6. Subsequently, the 1<sup>st</sup> Appellant lodged a complaint with the 1<sup>st</sup> Respondent as against the 2<sup>nd</sup> and 5<sup>th</sup> Respondents, as pertains to the aforementioned notice. Soon thereafter, disciplinary proceedings were undertaken against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants before the 1<sup>st</sup> Respondent, pursuant to a complaint lodged by the 5<sup>th</sup> Respondent on 26.04.2023 in his capacity as the National Chairperson of the 4<sup>th</sup> Appellant, at all material times.
7. The said proceedings culminated on 10.05.2023 and 15.05.2023 respectively, with the 1<sup>st</sup> Respondent's decision to expel the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, and to simultaneously suspend the 3<sup>rd</sup> Appellant from office for a period of two (2) years. It is apparent from the record that concurrent proceedings took place before the Internal Dispute Resolutions Committee (IDRC) thereby resulting in delivery of a judgment on 07.06.2023 by the IDRC, in essence declaring the NEC notice and resolution of 02.02.2023 and 10.02.2023 respectively as properly arrived at.



8. Following the above events, another NEC meeting was held on 19.05.2023 giving rise to a resolution on like date by and large ratifying the abovementioned decision by the 1<sup>ST</sup> Respondent, and which resolution was subsequently ratified by the 4<sup>th</sup> Respondent.
9. Consequently, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants moved the PPDT by way of PPDT Complaint No. E010 of 2023 vide the complaint dated 25.05.2023 to challenge the validity of the notice dated 02.02.2023 and the NEC resolution of 10.02.2023 resulting therefrom, as well as the validity of all other decisions/resolutions emanating therefrom. Likewise, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants separately lodged PPDT Complaint No's E009 of 2023, E012 of 2023 and E011 of 2023 all challenging the proceedings before the 1<sup>st</sup> Respondent; as well as PPDT Appeal No. E003 of 2023 challenging the letter by the 4<sup>th</sup> Respondent arising from the NEC resolution of 19.05.2023. The above matters were heard together before the 17<sup>th</sup> Respondent. In the end, the PPDT by way of majority decisions rendered on 10.07.2023, dismissed the respective matters. It is noteworthy that dissenting the opinions were rendered by a minority of the PPDT in each of the matters.

### **The Appeals**

10. The respective majority decisions triggered the six (6) appeals, seeking to challenge the various PPDT decisions in the manner hereunder:
  - a. Civil Appeal No. E630 of 2023 jointly lodged by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Appellant lies against the majority decision in PPDT Complaint No. E010 of 2023
  - b. Civil Appeal No. E635 of 2023 jointly lodged by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Appellant and Civil Appeal No. E008 of 2023 jointly lodged by the 5<sup>th</sup> & 6<sup>th</sup> Appellant are both challenging the majority decision arising from PPDT Appeal No. E003 of 2023
  - c. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Appellant separately lodged Civil Appeal No. E736 of 2023, Civil Appeal No. E750 of 2023 and Civil Appeal No. E764 of 2023 which lie against the majority decisions rendered in PPDT Complaint No. E009 of 2023, E012 of 2023 and E011 of 2023 respectively.
11. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants filed the memoranda of appeal dated 12.07.2023 separately in Civil Appeal No. E630 of 2023 and Civil Appeal No. E635 of 2023. The memorandum of appeal in respect to the lead file E630 OF 2023 contains the following grounds of appeal:
  1. The Majority members of the Tribunal were partial and biased against the Appellants herein and thereby violated the Appellants' right to a fair hearing and fair administrative action.
  2. The Majority decision of the PPDT was illegally signed and leaked to the public at large before delivery in violation of the [Judicial Service Act](#) and the Judicial Code of Conduct and was accordingly a nullity.
  3. The Majority members of the Tribunal ignored the entirety of the Appellants' written submissions and thereby misdirected themselves and made the wrong decision.
  4. The Majority decision of the PPDT failed and/or neglected to determine fundamental grievances submitted by the Appellants in PPDT Complaint No. 10 of 2023 and thereby condemned the Appellants unheard on the said issues including:
    - a. Whether the TNDC decision of 18<sup>th</sup> May 2023 and the IDRC decision of 7<sup>th</sup> June 2023 were made in compliance with the Jubilee Party Constitution and the law.



- b. Whether the TNDC decision of 10<sup>th</sup> May 2023 was made in compliance with the Jubilee Constitution and the law.
  - c. Whether the ratification decision of 19<sup>th</sup> May 2023 was made in compliance with the Jubilee Constitution and the law.
  - d. Whether the firm of Kamotho Njomo & Co. Advocates was properly instructed on behalf of the Jubilee Party.
5. The Majority decision of the PPDT ignored material evidence of grave breaches of *the Constitution* of the Jubilee Party in the manner of convening meetings of the party and authority of the National Disciplinary Committee to preside over disputes of the Party and thereby ratified illegalities and irregularities for expediency.
  6. The Majority decision of the PPDT was otherwise replete with strained interpretations, factual assumptions and abstract theorization of the Jubilee Party Constitution and was accordingly an expedient and unjust decision unfounded in law.
  7. The Majority decision of the PPDT ignored overwhelming evidence of illegalities that ex facie showed that the IDRC decision of 7<sup>th</sup> June 2023 was illegally concocted to defeat the complaint before them. As a court of law and justice, the Tribunal abdicated its obligation to investigate all illegalities brought to its attention and thereby made the wrong decision.
  8. The Majority decision of the PPDT otherwise wrongly declined to determine the legality of all issues germane to the fair and just determination of the dispute which were materially intertwined with and fully canvassed in the complaint before them and thereby made the wrong decision.
  9. The Majority members of the PPDT erred in law in failing to determine the legality of the IDRC decision of 7<sup>th</sup> June 2023 as an issue that was ripe for determination before them having been raised by the Respondents and canvassed by all parties to the dispute.
  10. The Majority decision of the PPDT neglected and/or evaded addressing the foundational basis of the complaint on technical grounds and assumptions of fact and law and thereby made an unjust decision with disproportionately draconian consequences.
  11. The Majority decision otherwise sanctioned a disproportionately draconian and unreasonable decision relative to the alleged infractions giving rise to the same and thereby acted irrationally and unreasonably.
  12. The Majority decision of the PPDT elevated assumptions and strained interpretations without lawful basis over unequivocal evidence and plain provisions of *the Constitution* and applicable laws and thereby made the wrong decision.
  13. The Majority decision of the PPDT ignored binding decisional laws of the High Court and its own precedents on the issues before them and thereby made a wrong decision.
  14. The Majority decision of the PPDT is otherwise bad in law, violates cardinal principles of *the Constitution* of Kenya 2010, the Fair Administrative Actions Act, the *Judicial Service Act*, the Judicial Code of Conduct, principles of natural justice and *the Constitution* of the Jubilee Party.
  15. The Majority decision of the Tribunal was irrational and unreasonable in so far as it ordered payment of costs against the Appellants in a dispute brought in the public interest between members of the same political party.



12. The memorandum of appeal in Civil Appeal No. E635 of 2023 in addition to echoing a majority of the grounds set out hereinabove, contains the following distinct grounds of appeal:
  1. The Majority decision of the PPDT failed and/or neglected to determine fundamental grievances submitted by the Appellants in PPDT Appeal No. E003 of 2023 and thereby condemned the Appellants unheard on the said issues including:
    - a. Whether the Registrar’s decision embodied in her letter dated 19<sup>th</sup> May 2023 was made in compliance with Section 34(a) & (g) of the *Political Parties Act*, the FAAA and *the Constitution* of Kenya, 2010.
    - b. Whether the decision of the Registrar of Political Parties was biased, negligent and/or discriminatory.
    - c. Whether the firm of Kamotho Njomo & Co. Advocates was properly instructed on behalf of the Jubilee Party.
  2. The Majority decision of the PPDT ignored material evidence of bias and bad faith on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (the 4<sup>th</sup> and 19<sup>th</sup> Respondents herein) and the grave breaches of *the Constitution* of the Jubilee Party by the 3<sup>rd</sup> – 5<sup>th</sup> Respondents (the 1<sup>st</sup> -3<sup>rd</sup> Respondents herein) in the manner of convening meetings of the Jubilee Party and thereby ratified illegalities and irregularities for expediency.
  3. The Majority decision of the PPDT otherwise erred in law by declining to determine the legality of the decision of 7<sup>th</sup> June 2023 introduced by the Respondents to the dispute well after filing of the appeal but which was materially intertwined with the Appeal before them.
  4. The Majority members of the PPDT erred in law in failing to draw adverse inferences to the evasive conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (the 4<sup>th</sup> and 19<sup>th</sup> Respondents herein) to the illegalities of the meeting of 10<sup>th</sup> February 2023 and thereby perpetuated the Registrar’s wrong decisions.
  5. The Majority members of the PPDT ignored overwhelming evidence of the 2<sup>nd</sup> Respondent’s (the 19<sup>th</sup> Respondent herein) biased conduct actuated by bad faith and thereby wrongly excused the 2<sup>nd</sup> Respondent (the 19<sup>th</sup> Respondent herein) from taking personal responsibility for her conduct actuated by bad faith in violation of *the Constitution*. The impugned decision has accordingly set a dangerous precedent in the administration of the affairs of the 1<sup>st</sup> Respondent (the 4<sup>th</sup> Respondent herein) herein and is inimical to public interest.
13. On its part, Civil Appeal No. E008 of 2023 which was lodged by the 5<sup>th</sup> and 6<sup>th</sup> Appellants vide the memorandum of appeal dated 17.07.2023 and amended on 20.11.2023 seeks to specifically challenge the majority decision in PPDT Appeal No. E003 of 2023 on the premise of the following grounds:
  1. That the decision of the Political Parties Disputes Tribunal is erroneous, fraught with bias and compromised by political machinations.
  2. That the Political Parties Disputes Tribunal erred in fact and law by failing to appreciate that Kanini Kega, Sabina Chege, Rachael Nyamai & Joshua Kutuny had constantly acted against the party position and are actively caucusing with the ruling and/or other rival parties contrary to the Jubilee Party’s Constitution.
  3. That the decision of the Political Parties Disputes Tribunal violates the political rights of members of the Jubilee Party.



4. That the Political Parties Disputes Tribunal erred in fact and law by failing to find that the actions by Kanini Kega, Sabina Chege, Rachael Nyamai & Joshua Kutuny amounted to grave violations of the Jubilee Constitution.
  5. That the Tribunal erred in law and fact by holding that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents are bona fide officials of Jubilee Party and failing to consider that they are current officials of UDA (United Democratic Alliance) ruling party where they serve as Government officials.
  6. That the decision of the Political Parties Disputes Tribunal violates the constitutional principle of fair administrative action as provided under Article 47 of *the Constitution*.
  7. That the decision of the Political Parties Disputes Tribunal was arrived at in error by failure to consider the legality/illegality of the internal dispute resolution committee delivered on the 7<sup>th</sup> of June 2023.
  8. That the Political Parties Disputes Tribunal erred in fact and law by failing to consider whether the National Delegates Conference decision of 22<sup>nd</sup> May 2023 was made in compliance with the Jubilee Party Constitution.
  9. That the Political Parties Disputes Tribunal erred in fact and law by failing to consider whether the ratification of the 18<sup>th</sup> of May 2023 was done in accordance with *the constitution* of the Jubilee Party.
14. Whereas, Civil Appeal No. E736 of 2023 lodged by the 1<sup>st</sup> Appellant vide the memorandum of appeal dated 03.08.2023 challenges the majority decision of the Tribunal in PPDT Complaint No. E009 of 2023 premised on the following grounds:
1. The majority members of the Tribunal ignored the entirety of the Appellant's affidavits, documents, written and oral submissions and relied on conjectures factual assumptions and general theorization thereby reaching a wrong decision.
  2. The majority members of the Tribunal erred in law and fact in failing to hold upon sufficient evidence that the Jubilee Party National Disciplinary Committee was discriminatory, biased and partial in its disciplinary process.
  3. The majority members of the Tribunal erred in law and fact in failing to hold the complainant was discriminated against in conformity with the binding authority of the High Court in *Isaac Mwaura Maigua v Jubilee Party & 3 Others [2021] eKLR*.
  4. The majority members of the Tribunal erred in law and fact in failing to hold that the Charge Sheet, Summons and Hearing Notice against the Appellant were defective as they related to a different complaint before the Jubilee Party National Disciplinary Committee and that no service or adequate service was done on the complaint.
  5. The majority members of the tribunal erred in law and fact in failing to hold that the hearing before the Jubilee Party National Disciplinary Committee lacked procedural fairness and was tainted with procedural irregularities.
  6. The majority members of the Tribunal erred in law and fact in failing to make a finding that the Jubilee Party National Disciplinary Committee did not conform to the provisions of Article 49 and 50 of *the Constitution*, the Fair Administration Action Act, Jubilee Party Constitution, the Jubilee Party National Disciplinary Committee Rules and the Rules of Natural Justice and thereby denied the Appellant a fair hearing.



7. The majority members of the Tribunal erred in law and fact in failing to make a finding that the Jubilee Party National Executive Committee that sat on 19<sup>th</sup> May 2023 to consider the decision of the Jubilee Party National Disciplinary Committee dated 10<sup>th</sup> May 2023 was not properly constituted.
  8. The majority member of the Tribunal erred in law and fact in failing to make a finding that the persons who made up the Jubilee Party National Executive Committee that sat on 19<sup>th</sup> May 2023 were conflicted.
  9. The majority members of the Tribunal erred in law and fact in failing to make a finding that the Jubilee Party National Executive Committee that sat on 19<sup>th</sup> May 2023 breached the Appellants' rights by making a decision to expel him from the party without according him a hearing.
  10. The majority members of the Tribunal erred on law and fact in failing to make a finding that the Appellant was not afforded enough time, chance and resources to prepare and present his defence.
  11. The majority members of the Tribunal failed and or neglected to determine whether the evidence presented against the Appellant in the Jubilee Party National Executive Committee was credible and sufficient to substantiate the charge that had been levelled against the Appellant to the required standard of proof.
  12. The majority members of the Tribunal erred in law and fact in failing to make a finding the delivery of a ruling on a preliminary objection after the delivery of judgment was illegal, irregular, malafide and prejudicial to the Appellant.
  13. The majority members of the Tribunal erred in law and fact in failing to make a finding that the proceedings before the Jubilee Party National Disciplinary Committee were a sham meant to achieve a predetermined outcome.
15. Meanwhile, Civil Appeal No. E750 of 2023 and Civil Appeal No. E764 of 2023 lodged by the 2<sup>nd</sup> and 3<sup>rd</sup> Appellant vide the memoranda of appeal of even date, respectively challenge the majority decision of the Tribunal in PPDT Complaint No. E012 of 2023 and PPDT Complaint No. E011 of 2023 on similar grounds advanced in Civil Appeal No. E736 of 2023. It would further be remiss not to note at this juncture that the 1<sup>st</sup> to 3<sup>rd</sup> Appellants were represented by different counsel in respect of Civil Appeal No. E630 & E635 of 2023 and Civil Appeal No. E736, E750 & E764 of 2023, correspondingly.
16. By directions taken before the court, the appeals were disposed of by way of written submissions of which counsel appearing for the respective parties had an opportunity to highlight. This Court has considered the same and sets them out as hereunder.

## **Submissions**

### **Submissions by the 1<sup>st</sup> to 4<sup>th</sup> Appellants in respect of Civil Appeal No. E630 & E635 of 2023**

17. The said Appellants firstly submit that the majority judgments delivered in the mentioned matters ought to be rendered a nullity, for having been leaked to the public prior to being read on the material date, in breach of Sections 31 and 32 of the Judicial Service (Code of Conduct and Ethics) Regulations, 2020 which express that a judicial officer shall not disclose to any unauthorized person for any purpose, any confidential information that has not been made a matter of public record relating to pending cases.



18. The same subject, the Appellants faulted the PPDT; the 17<sup>th</sup> Respondent herein, for the manner in which it addressed the issue of the leakage upon the same being brought to its attention, thus impeding on their constitutional right to a fair hearing, encapsulated under Article 50 of *the Constitution* of Kenya, 2010.
19. On the merits of the aforementioned appeals, it is the submission by the Appellants that the PPDT abdicated its jurisdictional powers provided for under Section 40 of the *Political Parties Act*, 2011 (the *Political Parties Act*) by declining to consider the merits of the complaint lodged before it in PPDT Complaint No. E010 of 2023 on the grounds that the IDRМ had not been attempted. In submitting so, the Appellants relied on the case John Mworira *Nchebere & Others v the National Chairman Orange Democratic Movement & Others (Nrb PPDT Complaint No. E002 OF 2022)* where the PPDT set out certain specific guidelines for determining whether what constitutes an attempt at IRDM in line with Section 40(2) of the *Political Parties Act* as follows:
- “Our pre-amendment position that a party must demonstrate bona fides (an honest attempt) in pursuing IDRМ remains good law. Furthermore, the party to a dispute should also show that, 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 IDRМ 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.”
20. The Appellants proceeded to submit that contrary to the majority decision arrived at by the PPDT on the above subject, an attempt at IDRМ was demonstrated by the Appellants, vide the complaint letter dated 20.04.2023 addressed to the 1<sup>st</sup> Respondent, coupled with the two (2) decisions dated 18.05.2023 and 7.06.2023 which emanated from the 1<sup>st</sup> Respondent and the IDRC, respectively. That consequently, the Appellants adduced sufficient material to demonstrate an attempt at IDRМ, and hence the PPDT had the requisite jurisdiction to hear and determine the merits of PPDT Complaint No. E010 of 2023 by dint of Section 40 (supra).
21. Regarding the merits of the consolidated appeals, the Appellants referred to Section 78 of the *Civil Procedure Act*, Cap 21 Laws of Kenya which requires a first appellate court to re-evaluate, reassess and re-analyze the record and draw its own conclusions. The Appellants further cited the decision in Peter



M. Kariuki v Attorney General [2014] eKLR where the court echoed the foregoing legal principle in the following manner:-

“We have also, as we are duty bound to do as a first appellate court [to] reconsider the evidence adduced before the trial court and re-evaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence.”

22. The Appellants further contend that while the majority decision of the PPDT was erroneous, the minority decision which proceeded to address the merits of PPDT Complaint No. E010 of 2023 arrived at a correct finding on the issues raised therein. More specifically, the Appellants contend that firstly, the notice of 2.02.2023 convening the NEC meeting of 10.02.2023 was illegally issued by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in contravention of the Constitution of the 4<sup>th</sup> Appellant which stipulates the manner and procedure for issuance of notices and convening NEC meetings, as well as the powers and responsibilities of the various officials of the 4<sup>th</sup> Appellant. That in the present instance, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents acted in excess of their powers by convening the NEC meeting of 10.02.2023 and yet it is the 1<sup>st</sup> Appellant who held the position of Secretary General of the 4<sup>th</sup> Appellant at all material times and who was therefore mandated to issue notices convening meetings of such nature, pursuant to Article 8.2 (5) and (6) and Article 10.5 of the 4<sup>th</sup> Appellant's Constitution. That the minority members of the PPDT thus rightly held that the notice giving rise to the NEC meeting and resolution of 10.02.2023 was in contravention of the Constitution of the 4<sup>th</sup> Appellant and was therefore a nullity ab initio, thereby consequently rendering the NEC resolution a nullity. That furthermore, the NEC meeting was improperly constituted, thereby resulting in an irregular and illegal resolution.
23. Additionally, the Appellants argue that the majority decision of the PPDT overlooked the evidence tendered to demonstrate that the NEC resolution of 10.02.2023 which among others, suspended the 1<sup>st</sup> – 3<sup>rd</sup> Appellants, was made in their absence and without first granting them an opportunity to be heard prior thereto. That this constituted a violation of the Appellants' right to fair administrative action under Section 7(2) of the Fair Administrative Actions Act coupled with their right not to be condemned unheard.
24. Separately and on the issue pertaining to the IDRC proceedings which followed the NEC resolution of 10.02.2023 the Appellants have further faulted the majority members of the PPDT for failing to address the merits thereof, whilst simultaneously supporting the minority decision of the PPDT which declared the entire proceedings a nullity on the grounds that they were founded on the procedural impropriety set out hereinabove.
25. On the premise of the above submissions, the Appellants therefore urge that the majority decision be substituted with the minority decision in PPDT Complaint No. E010 of 2023.
26. Regarding PPDT Appeal No. E003 of 2023, the argument brought forth by the 1<sup>st</sup> – 4<sup>th</sup> Appellants is that the majority members of the PPDT in the said appeal erred in not finding that the 19<sup>th</sup> Respondent Ann Nderitu in her capacity as the 4<sup>th</sup> Respondent. (Registrar of Political Parties), arrived at an erroneous decision vide her letter dated 19.05.2023 ratifying the NEC resolution made on like date and resulting from the outcome of the proceedings before the 1<sup>st</sup> Respondent, thereby expelling the 1<sup>st</sup> and 2<sup>nd</sup> Appellant whilst suspending the 3<sup>rd</sup> Appellant.
27. According to the 1<sup>st</sup> – 4<sup>th</sup> Appellants, the aforementioned letter by the 19<sup>th</sup> Respondent was in essence illegal, null and void for want of compliance with Section 34 of the Political Parties Act, Article 47 of the Constitution and the provisions of the Fair Administrative Actions Act. More specifically,



the Appellants faulted the 4<sup>th</sup> and 19<sup>th</sup> Respondent for (allegedly) failing to undertake independent inquiries and/or investigations with a view to satisfying herself that the documentation presented to her on behalf of the 4<sup>th</sup> Appellant in relation to the NEC resolution of 19.05.2023 was compliant with the law and *the Constitution* of the 4<sup>th</sup> Appellant, thereby aiding the purported illegality perpetuated by the 1<sup>st</sup> Respondent as well as the NEC as concerns the 1<sup>st</sup> – 3<sup>rd</sup> Appellants.

28. The Appellants further argue that the above actions by the Registrar of Political Parties were discriminatory against them, since she overlooked prior concerns raised by the said Appellants as pertains to the legitimacy of the NEC members who attended the meeting resulting in the resolution of 19.05.2023. To support their submissions above, the Appellants place reliance on the decisions in *Republic v 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 respective courts reasoned that the Registrar of Political Parties is required to conduct independent inquiries and ensure compliance with the law, in undertaking his or her functions under Section 34 of the *Political Parties Act*.
29. On the issue whether the firm of Kamotho Njomo & Co. Advocates is properly on record for the 4<sup>th</sup> Appellant, it is the submission by the 1<sup>st</sup> – 4<sup>th</sup> Appellants that should this court find merit in the appeals, it then follows that pursuant to Article 10.5 of *the Constitution* of the 4<sup>th</sup> Appellant, the 1<sup>st</sup> Appellant was the sole person mandated to appoint or instruct counsel on behalf of the 4<sup>th</sup> Appellant.
30. For all the foregoing reasons, this court is urged to allow Civil Appeal No. E630 of 2023 and Civil Appeal No. E635 of 2023 accordingly.

**Submissions by the 1<sup>st</sup> to 3<sup>rd</sup> Appellants submissions in respect of Civil Appeal No. E736, E750 & E764 of 2023.**

31. Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Appellant, condensed his submissions. Addressing the Court on whether the NDC was discriminatory and biased as against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants, counsel contended that the 1<sup>st</sup> Appellant's complaint through his letter dated 20.04.2024 was disregarded whereas the 5<sup>th</sup> Respondent's complaint was quickly taken up and resulted in the expulsion and suspension of the 1<sup>st</sup> to 3<sup>rd</sup> Appellants respectively. It was further argued that the minority decision of the tribunal correctly applied itself to the decision in *Isaac Mwaura Maigua v Jubilee Party & 3 Others* [2021] eKLR when it made a finding that the conduct of the NDC amounted to discrimination as against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants therefore this Court ought to uphold the said minority position on appeal.
32. On whether the hearing before the NDC was procedurally fair, counsel cited the provisions of Article 38 & 47 of *the Constitution* to assert that the NDC sitting to hear complaints exercises quasi-judicial powers and is therefore bound to adhere to the tenets of a fair hearing. That in cognizance of the foretated the NDC has rules known as the Jubilee Party National Disciplinary Committee Regulations 2022 for purposes of the aforementioned. It was thus argued that despite the Regulations the NDC failed to accord the 1<sup>st</sup> to 3<sup>rd</sup> Appellants a procedurally fair process by drawing incompetent charge sheets, failing to follow its own rules on service, failing to follow its own procedure of plea taking and hearing & failing to accord the 1<sup>st</sup> to 3<sup>rd</sup> Appellants enough time to prepare for hearing and failing to give the them a copy of the judgment.
33. On whether the NEC that sat on 19.05.2023 to consider the decision of the NDC was properly constituted, it was posited that *the constitution* of the Jubilee Party NEC members is as gazetted vide Gazette Notice 3195 on 22<sup>nd</sup> March, 2022, and that there is no other gazette notice to contradict the latter. That the notice convening the NEC meeting on 19.05.2023 was signed by Hon. Kanini Kega



- as Ag. Secretary General meanwhile there was no requisite gazette notice designating him to such a position therefore the NEC meeting breached Article 8.2(5) of the Jubilee Party Constitution which requires the NEC be convened by a duly appointed Secretary General. It was further argued that the NEC meeting of 19.05.2023 was attended by strangers to the NEC thereby making the said meeting irregular. This Court was similarly urged to uphold the said minority position on issue in this appeal.
34. Concerning, whether the NEC that sat on 19.05.2023 to consider the NDC decision had a conflict of interest, it was summarily argued that Nelson Dzuya, who served as the Chairperson of the Jubilee Party, participated in the appointment of members of the NDC, sat in the meeting of 10.02.2023 that suspended the Appellants, and decided to subject the latter to disciplinary proceedings; was the complainant, was the sole witness in the complaint and eventually sat in the NEC meeting on 19.05.2023 that ratified the decision of the NDC and thereby a clear text book case of conflict of interest. It was further submitted that Wambui Gichuru and Hon. Fatuma Dullo who were cited as aggrieved parties in the complaint as against 1<sup>st</sup> Appellant equally sat in in the NEC meeting on 19.05.2023 further compounding the question of conflict of interest. The minority decision of the tribunal on the issue and the decision in *Amani National Congress Party v Godfrey Osotsi & Another* [2021] eKLR were called to aid on the same.
  35. In conclusion it was submitted that the majority judgment ignored salient facts and evidence contained in the respective Appellants affidavit material meanwhile proceeded to make findings based on assumptions and conjecture as such the respective appeals ought to be allowed as prayed.
  36. On whether the NEC that sat on 19.05.2023 to consider the decision of the NDC accorded the 1<sup>st</sup> to 3<sup>rd</sup> Appellants a fair hearing, it was summarily argued that when the NEC sat to deliberate on whether to ratify the NDC decision the Appellant were not given a chance to be heard on the same. That the decision of the latter had the effect of affecting the Appellants political rights under Article 38 of *the Constitution* therefore they ought to have been heard to enable them plead their case before the NEC.
  37. It was further argued that the NEC and NDC are two (2) different organs of the Jubilee Party and despite being heard the latter did not exempt the NEC from granting the 1<sup>st</sup> to 3<sup>rd</sup> Appellants a chance to appear before it prior to ratification of the decision of the NDC. As to whether the evidence presented against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants before the NDC substantiated the charges as against them to the required standard of proof, it was argued that the complaint as against Jeremiah Kioni failed to meet the muster on burden of proof meanwhile the NDC shifted the burden of proof from the complainant to the 1<sup>st</sup> to 3<sup>rd</sup> Appellants, contrary to the legal principle of he who alleges must prove, and therefore urging that, the allegations against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants were not proved to the required standard a consequence of which the they were wrongly and illegally sanctioned by the TNDC and the NEC.
  38. In summation, it was argued that the majority members of the tribunal ignored the facts and evidence contained in the affidavits and annexures thereto and proceeded to enter judgment based on assumptions and conjectures not borne out by evidence. The Court was therefore urged to uphold the minority decision of tribunal.

#### **Submissions by the 5<sup>th</sup> – 6<sup>th</sup> Appellants**

39. Submitting in Civil Appeal No. E008 of 2023 arising from PPDT Appeal No. E003 of 2023, the aforementioned Appellants contend that the majority decision in the mentioned appeal before the PPDT was fraught with bias, owing to its prior circulation on the social media platform Meta (formerly Facebook) prior to its delivery; giving rise to questions as to the integrity of both the PPDT and the resulting decision. The Appellants cited the decision in *Ernst & Young LLP v Capital Markets*



Authority & Kenya Reinsurance Corporation Ltd [2017] KEHC 8510 (KLR) where the court described the test of bias in the following manner:

“...Is there a real possibility that a reasonable person, properly informed and viewing the circumstances realistically and practically, could conclude that the decision-maker might well be prone to bias?”

40. Still on the subject of bias, the said Appellants submit that there was collusion between the PPDT and the Registrar of Political Parties while acting in her capacity as the 4<sup>th</sup> Respondent, given that the gazettment of the new officials of the 4<sup>th</sup> Appellant was done on the same date as that of delivery of the impugned judgment, contrary to Section 9(1) of the Public Officers Ethics Act, Cap. 183 Laws of Kenya on the integrity of public officers, as read with Section 16 of the said Act which stipulates that a public officer shall not act as an agent for or further the interest of any political party.

It is the submission by the said Appellants that the majority decision by the PPDT therefore contravened their rights to fair administrative action and to a fair hearing, provided for under Articles 47 and 50, of *the Constitution* of Kenya, 2010 respectively.

41. It is equally the submission by the Appellants that the majority decision by the PPDT did not consider the legality or lack thereof, of the notice dated 2.02.2023 convening the NEC meeting of 10.02.2023, arguing that the aforesaid notice emanated from the 2<sup>nd</sup> Respondent herein who was at all material times the Deputy Secretary General, whereas in fact the 1<sup>st</sup> Appellant was the person properly mandated by *the Constitution* of the 4<sup>th</sup> Appellant to issue such notice, being that he was the Secretary General at all material times. That consequently, the disciplinary process that followed as against the 1<sup>st</sup> – 3<sup>rd</sup> Appellants was founded on a procedural impropriety, thus making it a nullity.
42. It is ultimately the submission by the said Appellants that for the foregoing reasons, the majority decision rendered in the above-cited appeal before the PPDT ought to be set aside, citing the decision in *Rawal v Judicial Service Commission & another; Okoiti (Interested Party); International Commission of Jurists & another (Amicus Curiae)* [2016] KECA 717 (KLR) in which the Court of Appeal rendered itself thus:

“*The Constitution* guarantees a litigant trial by an independent and impartial court. For present purpose, *the Constitution* guarantees the applicant the right to be heard by an independent and impartial court made up of seven judges. If one were to be partial, it matters not that the other six are not, the constitutional guarantee will have been violated. The Court is constituted by all the judges sitting, not some of them only. That is the reason why, we believe, the judgment of the House of Lords in *Re Pinochet*(supra) was vitiated purely by the fact that one and only one of the judges was reasonably perceived to have been biased.”

### **Submissions by the 1<sup>st</sup> Respondent**

43. In opposing Civil Appeal No. E630 of 2023, Civil Appeal No. E635 of 2023, the 1<sup>st</sup> Respondent in the appeals upon setting out the scope of the PPDT’s jurisdiction under Section 40 of the *Political Parties Act* coupled with various decisions that have addressed the subject of jurisdiction; including the case of *Republic v Chairman, Political Parties Disputes Tribunal & 2 others Ex Parte Susan Kihika Wakarura* [2017] eKLR and *Republic v Business Premises Rent Tribunal & Another Ex- Parte Albert Kigera Karume* [2015] eKLR amongst others; argues that in order for the PPDT to assume jurisdiction in the matters, the Appellants ought to have demonstrated either an attempt at IDR or tendered a finding/outcome arising from the IDR process.



44. In submitting so, the 1<sup>st</sup> Respondent borrowed from the decisions rendered in *Sammy Ndung'u Waity v Independent Electoral & Boundaries Commission & 3 others* [2019] eKLR and *Hezron J. Opiyo Asudi & another v Peter Anyang' Nyongo & 6 others* [2017] eKLR where the respective courts restated the above principle. That in the present instance, the 1<sup>st</sup> to 3<sup>rd</sup> Appellants did not demonstrate any real attempt at or participation in the IDR process, prior to lodging PPDT Complaint No. E010 of 2023 and that in any event, at the time of lodging the said Complaint, the IDR process which took place within the 4<sup>th</sup> Appellant's IDR had not concluded.
45. Addressing the Court on Civil Appeal No. E736 of 2023, Civil Appeal No. E750 of 2023 and Civil Appeal No. E764 of 2023, it was submitted that the 1<sup>st</sup> to 3<sup>rd</sup> Appellants were accorded a fair hearing during the course of the proceedings before the 1<sup>st</sup> Respondent and in line with the internal disciplinary process stipulated in *the Constitution* of the 4<sup>th</sup> Appellant, the Disciplinary Committee Regulations - 2022; and in the manner set out by the Court in the case of *Victoria Mutai & 28 others v Kirinyaga University* [2020] eKLR thus:
- a. "The right to be given notification of a hearing.
  - b. The right to be given indication of any adverse evidence.
  - c. The right to be given the opportunity to respond to the evidence, the right to an oral hearing,
  - d. The right to question the complainant."
46. That in addition to receiving copies of the complaints made against them, the 1<sup>st</sup> to 3<sup>rd</sup> Appellants were at all material times represented by able counsel who participated in the disciplinary process to its conclusion.

It is equally the submission by the 1<sup>st</sup> Respondent that the subject of leakage of the impugned judgment was raised before and considered by the PPDT. That in any event, the mere question whether the judgment was signed before or following delivery would do nothing to change its outcome, with reference being made to the case of *Chrispinus Lawrence Wanayama v Public Service Commission & Another* (2007) eKLR where the Court of Appeal reasoned thus:

"A subsequent event or even altering the law even with retrospective effect is not sufficient ground to warrant a review."

47. That in the premises, the administrative process of the PPDT should be allowed to proceed accordingly in addressing the issue of the alleged leakage and that if the Appellants deem themselves dissatisfied with the outcome thereof, they are at liberty to pursue the proper procedures for seeking redress. Otherwise, this court is urged to dismiss the appeals accordingly, with costs.

#### **Submissions by the 4<sup>th</sup> Appellant; the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

48. The mentioned parties filed collective submissions on all six (6) appeals. They submit that contrary to the averments being raised by the Appellants in the respective appeals, there is nothing on record to connote malice or bias on the part of the PPDT in delivering its various decisions.
49. The mentioned parties further submit that the impugned judgment(s) cannot be termed as a nullity simply on account of the purported leakage, since the respective parties had already been heard and their submissions filed at the time of the said purported leakage. Reference was made inter alia to the decision in *Republic v Media Complaints Commission; Yattani (Interested Party); Nation Media*



Group & 2 others (Exparte) (Judicial Review Application [E056 of 2022](#)) [2023] KEHC 17568 (KLR) (Judicial Review) (18 May 2023) where the court reasoned as follows:

“From the reading of the explanation and clarification, it is clear that the erroneously sent draft unsigned judgment was still under deliberation by the Respondents, before arriving at a final decision/Judgment. The same does not amount to a judgment. Moreover, the Respondent shared with the parties a Summary Judgment, Full Final Judgment, and Dissenting Judgment and I am satisfied by the explanation and clarification given by the Respondent of the occurrence in sending the wrong document/attachment in the 8<sup>th</sup> March 2022 8:55am email. The Respondents actions do not amount to procedural impropriety, and this ground as relied on by the Applicants fails.”

50. Regarding the issue whether the PPDT had jurisdiction to entertain PPDT Complaint No. E010 of 2023, the mentioned parties support the decision arrived at in the said matter; namely, that the PPDT lacked jurisdiction to consider the subject of legality or otherwise of the NEC meeting held on 10.02.2023 by dint of Section 40 of the [Political Parties Act](#) which sets out the scope of the PPDT’s jurisdiction. That this is primarily due to the fact that the 1<sup>st</sup> – 3<sup>rd</sup> Appellants failed to exhaust the IDR process available to them, as required under Section 40 (2) of the [Political Parties Act](#) before moving the PPDT on the issue of the NEC meeting of 10.02.2023.
51. In this regard, the mentioned parties cite inter alia the decisions in *Okiya Omtatah Okoiti & another v Kenya Power and Lighting Company Limited (KPLC) & 4 others* [2020] eKLR and [Letangule & another v Chief Executive Officer - National Health Insurance Fund & 2 others \(Cause E330 of 2023\)](#) [2023] KEELRC 2330 (KLR) (2 October 2023) (Ruling), where the respective courts concurred that where there is clear provision requiring exhaustion of remedy before coming to court, a party must first seek redress in the manner provided by statute before moving the courts.
52. Furthermore, and on the subject of the NEC, the argument being brought forth by the mentioned parties is that the meetings held by the NEC on both 10.02.2023 and 19.05.2023 had the requisite quorum and that the NEC vide the meeting and resolution made on 19.05.2023 acted well within its powers and mandate, in adopting the decision of the 1<sup>st</sup> Respondent thereby expelling and suspending the 1<sup>st</sup> – 3<sup>rd</sup> Appellants. The parties rely on the case of [Kariuki v Anunda & 3 others \(Civil Appeal E404 of 2022\)](#) [2023] KEHC 20087 (KLR) (Civ) (6 July 2023) (Judgment) where the court held as follows:
- “I find that the said resolutions were ratified by the NDC which is the highest authority of the party mandated with authority to elect from among eligible members of the party officials of the party.”
53. The parties likewise echo earlier submissions made to the effect that the 4<sup>th</sup> Respondent exercised its functions vide the letter dated 19.05.2023 in line with the law and Constitution of the 4<sup>th</sup> Appellant. It is a further argument by the respective parties that the firm of Kamotho Njomo & Company had proper instructions to act for the 4<sup>th</sup> Appellant in the appeals, pursuant to letters of instruction emanating from the 3<sup>rd</sup> Respondent and resolutions by the NEC. In closing, this court was urged to dismiss the six (6) appeals with costs to the Respondents, and to uphold the respective decisions by the PPDT.

#### **Submissions by the 4<sup>th</sup> and 19<sup>th</sup> Respondents**

54. On their part, the 4<sup>th</sup> and 19<sup>th</sup> Respondents have restricted their submissions to Civil Appeal No. E635 of 2023. In addressing the question whether the majority judgment delivered in PPDT Appeal No.



E003 of 2023 was biased and in breach of the law, the said Respondents submit that no such bias existed at any material time or at all, adding that if at all a leakage of the impugned judgment occurred as alleged, then the PPDT is equipped to follow the necessary procedures in addressing such issue internally. On the subject whether there was collusion between the said Respondents and the PPDT in respect of the referenced judgment and the Gazette Notice issued on 12.07.2023, they submit that the said allegations raised particularly by the Appellants in Civil Appeal No. E008 of 2023 consist of mere assumptions and theoretical issues.

55. As concerns the issue whether the letter dated 19.05.2023 and issued by the 19<sup>th</sup> Respondent in her capacity as the 4<sup>th</sup> Respondent contravened Section 34 of the *Political Parties Act* and the relevant legal provisions cited earlier on, it is the submission by the abovementioned Respondents that the existing functions were discharged independently and in compliance with the law, upon reviewing the totality of the documentation tendered before the 19<sup>th</sup> Respondent. The Respondents further submit that Section 34 (supra) in no way requires the 19<sup>th</sup> Respondent in her capacity as the 4<sup>th</sup> Respondent to undertake an investigation through conducting a hearing of witnesses in a non-existent complaint; adding that she did not preside over or participate in the proceedings which resulted in the suspension and/or expulsion of the 1<sup>st</sup> – 3<sup>rd</sup> Appellants from the 4<sup>th</sup> Appellant.
56. That ultimately, the Appellants have failed to demonstrate the manner in which the 19<sup>th</sup> Respondent through her role as the 4<sup>th</sup> Respondent, acted outside of her functions and powers set out under Section 34 (supra). The decision in *Charles Nyandusi, Juliana Jebet, Patrick Mosoti Agisi & Jerry Kenyansa v Registrar of Political Parties & Jubilee Party* [2017] KEHC 6474 (KLR) was cited, wherein the court held thus:

“While Section 11 of the Act deals directly with mergers, Section 34 deals generally with the functions of the office of the Registrar. These are administrative duties. Fair administrative action is envisaged under Article 47 of *the Constitution*. Thus one would pose and ask what transpired before the Registrar. There is no evidence of any complaint before the Registrar that could have triggered an investigation or hearing and a determination made...”

57. Ultimately, the said Respondents’ submission is that there is no evidence or indication of bias on the part of the PPDT, or any evidence to suggest that the Registrar of Political Parties while acting in her capacity as the 4<sup>th</sup> Respondent, acted in contravention of her statutory powers and functions. The Respondents further added that both the majority and minority members of the PPDT rightly found in the above-referenced PPDT Appeal No. E003 of 2023 that the 19<sup>th</sup> Respondent ought to be struck out of the proceedings by virtue of the fact that she was acting in her official capacity as the 4<sup>th</sup> Respondent, and not in a personal capacity. Otherwise, the Respondents urge that the six (6) appeals be dismissed in their totality, with costs.

### **Analysis and Disposition**

58. This Court has considered the original records, the records of appeal and the material canvassed in respect of the six (6) appeals. The duty of this Court as a first appellate court is to re-evaluate the evidence and draw its own conclusions, but always bearing in mind that it did not have the opportunity to see or hear the witnesses testify. See *Peters v Sunday Post Limited* (1958) EA 424; *Selle and Another v Associated Motor Boat Co. Limited and Others* (1968) EA 123 and *Williams Diamonds Limited*



v Brown (1970) EA 1. The Court of Appeal in Ephantus Mwangi and Another v Duncan Mwangi Wambugu (1982) – 88) 1 KAR 278 stated as follows on the subject:

“A court of appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have acted on wrong principles in reaching the findings he did.”

59. Upon consideration thereof, this court identified various key issues arising for determination, emanating from the lead file (Civil Appeal No. E630 of 2023) and whose outcome will consequently determine the course and status as pertains to the remaining Appeals. However, before proceeding to set out and give an analysis on those issues, this court deems it necessary to highlight and briefly address certain preliminary issues which equally arose in a few of the Appeals.

60. The first preliminary issue touches on the leakage or purported leakage of the judgment(s) delivered by the PPDT and the impact/effect thereof on the validity of such judgment(s).

From a study of the record, it is apparent that the issue of leakage arose primarily in PPDT Appeal No. E003 of 2023 on the date of delivery of the impugned judgment on 11.07.2023. The proceedings before the PPDT indicate that the same was brought to its attention and was owned up to by the PPDT members, regrettably so.

61. Going by the record, the PPDT invited the respective counsel to submit on the issue. Counsel for the Appellants indicated that he had written a letter to the PPDT dated 11.07.2023 seeking reasons for the leakage, Counsel for the respective Respondents took the position that while they were unaware of any such leakage, the purported leakage constituted an administrative issue to be addressed by the PPDT internally; otherwise, it had no direct impact on the decision. Upon hearing the parties, the PPDT assured them that the matter would be dealt with administratively, and therefore proceeded to read its judgment.

62. From a study of the record, it is noted that the PPDT did not refute the plausibility of a leakage having occurred either on the previous date or on the date of delivery of the decision in PPDT Appeal No. E003 of 2023. Suffice it to say that, this court did not come across any credible evidence or evidence at all, to shed light as to the manner and extent of such leakage. While the Appellants alleged that the leakage took place on the social media platforms, no specific details were offered to shed clarity. Be that as it may, this court is of the view that whether or not a leakage occurred is an issue best left for the PPDT to handle administratively and not necessarily by this court.

63. The second preliminary issue concerns itself with the legal representation as pertains to the 4<sup>th</sup> Appellant, the Jubilee Party in these Proceedings.

From the record, it is apparent that the 4<sup>th</sup> Appellant was represented by two (2) different firms of Advocates at all material times in both in PPDT Complaint No. E003 of 2023 and PPDT Appeal No. E003 of 2023; namely the firms of Awele Jackson & Co. Advocates, and Kamotho Njomo & Co. Advocates respectively. The contestation of representation was similarly raised before the PPDT. However the PPDT elected not to substantively dwell on the issue, upon acknowledging that it was the likely result of division in the factions of the 4<sup>th</sup> Appellant.

64. Upon consideration of the record, this court noted that separate letters of instructions were issued to the respective firms of advocates; one dated 26.05.2023 and signed by the 1<sup>st</sup> Appellant in his capacity as Secretary General and the other dated 29.05.2023 and signed by the 3<sup>rd</sup> Respondent in his capacity as Acting Secretary General



That notwithstanding, this Court concurs with the reasoning by the PPDT regarding the plausible different factions that may exist in the 4<sup>th</sup> Appellant and may explain the different legal representatives on record. In the circumstances, this court will not delve into determining the merits of that particular issue and leaves it to the relevant appointing parties to resolve it internally.

65. Having settled the matter on the aforementioned issues, the Court has reviewed the totality of the material canvassed in respect of all six (6) appeals and is of the reasoned inference that in determination of issues saliently arising in Civil Appeal No. E630 and E635 of 2023, the same would perceptibly have a logical effect and or outcome in limine on the germane issues arising out of Civil Appeal No. E008, E736, E750 & E764 of 2023. To the foregoing, the Court has identified the following as the key issues arising for consideration and determination in respect of the all six (6) appeals: -

Issues for Determination

- a. Whether an attempt was made by the 1<sup>st</sup> to 3<sup>rd</sup> Appellants at IDRМ in order to invoke the jurisdiction of the PPDT;
- b. Whether the notice dated 02.02.2023 convening the NEC meeting of 10.02.2023 was legally constitutionally and properly issued;
- c. Whether the NEC meeting held on 10.02.2023 was properly constituted;
- d. In view of the above, what constitutes the outcome of Civil Appeal No. E008, E736, E750 & E764 of 2023; and
- e. Who should bear the costs of the consolidated appeals

**a. Whether an attempt was made by the 1<sup>st</sup> to 3<sup>rd</sup> Appellants at IDRМ in order to invoke the jurisdiction of the PPDT?**

66. Upon re-examining the record, it is apparent that this issue primarily arose in PPDT Complaint No. E010 of 2023. The record shows that the same was lodged by the 1<sup>st</sup> to 4<sup>th</sup> Appellants vide the complaint dated 25.05.2023 by and large challenging the validity of the notice issued on 2.02.2023 convening the NEC meeting of 10.02.2023 and subsequent proceedings, which issues shall be addressed in detail later in this decision.
67. That said, upon considering the complaint, the majority members of the Tribunal found that the Appellants had not demonstrated any reasonable attempt at first pursuing IDRМ in order to invoke the jurisdiction of the PPDT pursuant to Section 40(2) of the *Political Parties Act*. The said members of the PPDT further reasoned that their jurisdiction could only be invoked after it was shown that the IDRМ process had either failed or concluded. They equally reasoned that notwithstanding the fact that the 1<sup>st</sup> Appellant had lodged a complaint with the 1<sup>st</sup> Respondent, they did not provide any particulars thereof upon request. That while the IDRМ process eventually proceeded before the 1<sup>st</sup> Respondent thereby resulting in the expulsion and/or suspension of the 1<sup>st</sup> to 3<sup>rd</sup> Appellants, the said Appellants on their part did not demonstrate any keen attempt at participating in the IDRМ process by their conduct.
68. In the absence of any such demonstration therefore, the majority members vide their judgment delivered on 10.07.2023 rendered the complaint premature and in breach of earlier orders made by the PPDT in PPDT Appeal No. E001 of 2023 (where the PPDT had directed the Appellants to refer



all disputes relating to the NEC meeting of 10.02.2023 to the IDR process available to them. The PPDT therefore proceeded to strike out the complaint with costs to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

69. Suffice to say that, the minority members of the PPDT by way of their dissenting opinion, reasoned that while it may be true that the 1<sup>st</sup> Appellant did in fact lodge a complaint dated 20.04.2023 with the 1<sup>st</sup> Respondent only to later abandon it, the said complaint nonetheless proceeded before the 1<sup>st</sup> Respondent sue moto, upon which it found vide the ruling delivered on 18.05.2023, that the complaint did not disclose any disciplinary issues against the 2<sup>nd</sup> and 5<sup>th</sup> Respondents; but that in any event, the 1<sup>st</sup> Respondent lacked jurisdiction to hear the same. That consequently, the complaint was registered with the IDRC and determined on 7.06.2023 with the IDRC rendering that the NEC meeting and resolution of 10.02.2023 was properly convened.
70. Be that as it may, the minority members of the PPDT opined that in view of the foregoing circumstances, an attempt at IDR was demonstrated by the 1<sup>st</sup> to 3<sup>rd</sup> Appellants, and hence the PPDT had the requisite jurisdiction in the matter. It is on those grounds that the minority members proceeded to address the merits of the complaint.
71. Upon re-examination of the record, this court observed that it is not in dispute that following issuance of the notice on 2.02.2023 convening the NEC resolution of 10.02.2023 and resulting in a ratification letter dated 13.02.2023 by the 4<sup>th</sup> Respondent effecting the changes arising from the resolution, the 1<sup>st</sup> to 4<sup>th</sup> Appellants lodged PPDT Appeal No. E001 of 2023 challenging the aforesaid ratification letter. The outcome of the proceedings is that while the PPDT allowed the Appellants' prayer seeking to nullify the 4<sup>th</sup> Respondent's letter dated 13.02.2023 it reasoned that it lacked jurisdiction to make a determination on the issues pertaining to the notice and NEC resolution of 2.02.2023 and 10.02.2023 respectively, in the absence of an attempt at invoking the IDR process.
72. Upon further re-examination of the record, this court observed that the 1<sup>st</sup> Appellant in particular, lodged a complaint dated 20.04.2023 with the 1<sup>st</sup> Respondent and against the 2<sup>nd</sup> and 5<sup>th</sup> Respondents in relation to the notice of 2.02.2023, in an attempt at compliance with the judgment delivered in the above-referenced PPDT Appeal No. E001 of 2023. It is not disputed that the 1<sup>st</sup> Appellant did not comply with the 1<sup>st</sup> Respondent's request to provide particulars of the complaint, and instead lodged PPDT Complaint No. E010 of 2023. The above raises the question whether the above can be regarded as an 'attempt' at IDR and which will answer the question whether or not the PPDT had jurisdiction to entertain the said complaint.

To begin with, the jurisdiction of the PPDT is established under Section 40 of the *Political Parties Act* in the following manner:

- (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
73. From a reading of the foregoing provision, particularly sub-section 2 of Section 40, it is clear that an attempt must be evidenced to have been made at subjecting a dispute under the aforesaid Act to IDRDM before the jurisdiction of the PPDT can be invoked. What would then constitute an ‘attempt?’ The PPDT in seeking to define the term drew reliance from previous decisions rendered by itself, deriving from the decision in John Mworira *Nchebere & Others v the National Chairman Orange Democratic Movement & Others (Nrb PPDT Complaint No. E002 OF 2022)* where the PPDT set out the following guidelines:
- “Our pre-amendment position that a party must demonstrate bona fides (an honest attempt) in pursuing IDRDM remains good law. Furthermore, the party to a dispute should also show that, 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 IDRDM 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.”
74. It is trite law that decisions emanating from the PPDT would have no binding effect on this court. Be that as it may, from a re-examination of the record, this court is of the view that a reasonable attempt at IDRDM was demonstrated by the Appellants, vide the complaint letter dated 20.04.2023 addressed to the 1<sup>st</sup> Respondent. In any event, the record shows that even in the absence of particulars thereof, the complaint was placed before the 1<sup>st</sup> Respondent and determined by way of the ruling dated 18.05.2023 which ruling then gave rise to the IDRDM proceedings on the same matter, thereby resulting in the decision on 7.06.2023. In the court’s view, these constituted some form of IDRDM.
75. In the premises, this court is satisfied that the Appellants reasonably demonstrated an attempt at IDRDM, and hence the PPDT’s jurisdiction to hear and determine the merits of PPDT Complaint No. E010 of 2023 was properly invoked pursuant to Section 40 (supra). Consequently, this court finds that the majority members of PPDT misdirected themselves on the above issue and in so doing, arrived at an erroneous finding. The said decision is accordingly disturbed.



**b. Whether the notice dated 2.02.2023 convening the NEC meeting of 10.02.2023 was legally procedurally and/or properly issued?**

76. Upon re-examining the record, it is apparent that this issue formed the gist of PPDT Complaint No. E010 of 2023. By way of their complaint dated 25.05.2023 the 1<sup>st</sup> to 4<sup>th</sup> Appellants sought to challenge the validity of the notice dated 02.02.2023 convening the NEC meeting held on 10.02.2023, as well as the validity of all other decisions/resolutions emanating therefrom.
77. From a reading of the said complaint, it is apparent that the said Appellants sought various declaratory orders in respect of the notice of 2.02.2023, the NEC meeting of 10.02.2023 and subsequent proceedings. They similarly sought an order to the effect that the notice of 2.02.2023 and the proceedings/resolutions which followed, be quashed and/or set aside. The gist of the complaint is that under Article 10.5 of *the Constitution* of the 4<sup>th</sup> Appellant, the Secretary General has the sole mandate to convene NEC and National Delegates Conference meetings. That in contravention of the above Article and without the requisite power/authority, the 2<sup>nd</sup> Respondent together with the 5<sup>th</sup> Respondent, purported to issue the notice of 2.02.2023 convening the NEC meeting which was subsequently held on 10.02.2023. That consequently, the NEC meeting and resolution made on 10.02.2023 and subsequent meetings, proceedings and resolutions/decisions, were a nullity.
78. In opposition thereto, the 5<sup>th</sup> Respondent swore a replying affidavit on 29.05.2023 stating inter alia, that the NEC resolution made on 10.02.2023 initially suspending the 1<sup>st</sup> to 3<sup>rd</sup> Appellants was in line with *the Constitution* of the 4<sup>th</sup> Appellant. The 5<sup>th</sup> Respondent in turn supported the entirety of the proceedings that followed thereafter, and urged the PPDT to dismiss the complaint.
- The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents likewise relied on the replying affidavit sworn by the latter on 29.05.2023 equally supporting the notice of 2.02.2023, the NEC meeting and resolution of 10.02.2023 and subsequent proceedings against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants.
79. The respective parties filed written submissions which were later highlighted by their respective counsels, before the PPDT. As earlier mentioned, the majority members of the PPDT vide the judgment delivered on 10.07.2023 rendered that the complaint was premature for want of a demonstrated attempt at IDRM and did not therefore delve into the merits thereof. However, the record shows that by way of their dissenting opinion, the minority members of the IDRM; upon finding that the PPDT had jurisdiction in the matter; considered the merits of the complaint. More specifically, the minority members opined that pursuant to Article 8.2 (5) and (6) as read with inter alia, Articles 10.3,10.5 and 10.6 of *the Constitution* of the 4<sup>th</sup> Appellant, the 2<sup>nd</sup> Respondent had no authority to issue the notice on 2.02.2023 convening the NEC meeting of 10.02.2023 since the 1<sup>st</sup> Appellant who was at all material times the Secretary General of the 4<sup>th</sup> Appellant, was still in office and was therefore the sole official responsible for convening such a meeting.
80. That in the same manner, the 5<sup>th</sup> Respondent being the National Chairperson of the 4<sup>th</sup> Appellant, equally had no power to convene the NEC meeting; but merely to preside over it. The minority members similarly reasoned that the allegations to the effect that the 1<sup>st</sup> Appellant had willfully neglected/declined to convene the meeting were unsubstantiated. The minority members therefore opined that the notice of 2.02.2023 having been illegally issued, was null and void, thus making the NEC meeting/resolution of 10.02.2023 and subsequent proceedings all a nullity, and that the same ought to be set aside in their entirety.
81. From this court's study of the record; particularly *the Constitution* of the 4<sup>th</sup> Appellant and letter dated 26.02.2022, the following are the Articles relevant to the issue at hand:



- a. Article 8.2 establishes the NEC and sets out its composition and functions. Of particular relevance is Sub-Article (5) which provides that the NEC shall meet once every four (4) months, or as need may arise. It goes on to provide that the notice of the meeting shall be sent out by the Secretary General at least seven (7) days before the date of the meeting.
  - b. Article 9 establishes the various party officials, while Article 10 sets out their respective functions. Amongst the functions of the Party Leader under Article 10.1 is the function that he/she may summon or attend any meeting of any organ of the 4<sup>th</sup> Appellant at any time; and is deputized by the Deputy Party Leader. Amongst the functions of the National Chairperson under Article 10.3 are: “to preside over and chair NEC and National Management Committee meetings” and “to oversee all other organs on behalf of the NEC.” The National Chairperson is deputized by the Deputy National Chairperson. Under Article 10.5 the functions of the Secretary General include: “the convening of meetings of the NEC and the National Delegates Committee” and “to be in charge of all correspondences on behalf of the Party (the 4<sup>th</sup> Appellant).” He/she is deputized by the Deputy Secretary General. The National Treasurer’s functions are set out under Article 10.7.
82. Upon this court’s re-examination of the record, it is not in dispute that the 1<sup>st</sup> to 3<sup>rd</sup> Appellants were at all material times the Secretary General, the National Vice Chairperson and the National Treasurer of the 4<sup>th</sup> Appellant, following their respective appointments vide the Gazette Notice published on 22.03.2022
  83. By a further re-examination of the record, it is equally not in dispute that the notice issued on 2.02.2023 convening the NEC meeting of 10.02.2023 was signed by the 2<sup>nd</sup> and 5<sup>th</sup> Respondents in their respective capacities as Deputy Secretary General and National Chairperson of the 4<sup>th</sup> Appellant. This court took the liberty of perusing the said notice and confirmed the position above. The court similarly reconsidered the explanation given by the said persons for issuing the notice, that the 1<sup>st</sup> Appellant who was at all material times the holder of office of Secretary General, declined and/or refused to convene the NEC meeting upon request.
  84. As earlier set out, the provisions of *the Constitution* of the 4<sup>th</sup> Appellant clearly stipulate under Article 10.5 that it is the Secretary General who has the sole mandate of convening meetings of the NEC; this provision is echoed by Article 8.2(5) (*supra*), though the Party Leader may also summon any meeting; otherwise, no other person has been assigned the power to convene a meeting of the NEC.  
  
Upon study of the record, this court did not come across any credible evidence or material to support the assertions by the 2<sup>nd</sup> and 5<sup>th</sup> Respondent that the 1<sup>st</sup> Appellant refused to issue the relevant notice convening the NEC meeting, in order to justify their decision to issue the notice themselves. In the court’s view, the said Respondents had no power or authority whatsoever in issuing the notice of 2.02.2023 themselves, since it is apparent that the 1<sup>st</sup> Appellant was at all material times substantively and lawfully in office. In fact, nothing in the Party Constitution empowers the National Chairperson to issue notices convening meetings of the NEC or at all.
  85. Moreover, it is equally important to mention that notwithstanding the fact that the notice in question purported to convene the NEC meeting of 10.02.2023 whose agenda included a discussion on the fate of the 1<sup>st</sup> to 3<sup>rd</sup> Appellants as officials and members of the 4<sup>th</sup> Appellant, no credible material was tendered to demonstrate service of the said notice upon the abovementioned Appellants in the manner purported by the Respondents or at all. It is thus evident that NEC resolution made on 10.02.2023 resulting from the illegal notice of 2.02.2023 in effect condemned the Appellants unheard,



thus depriving them of their right to fair administrative action under Article 47 of *the Constitution* of Kenya, 2010.

86. Consequently, this court finds and holds that the notice of 02.02.2023 was illegally and improperly issued, thus making it a nullity ab initio.

**c. Whether the NEC meeting held on 10.02.2023 was properly and Constitutionally constituted?**

87. As earlier observed, the NEC of the Jubilee Party is established by dint of Article 8.2 of its Constitution. The same article further goes on to provide for its membership and functions thereof. Article 8.2(6), 10.1 & 10.5 of the Jubilee Party Constitution, provide that only the Party Leader and Secretary General may summon and convene a meeting of the NEC respectively. It is equally undisputed by the parties hereto that the membership of the NEC as gazetted by the Registrar of Political Parties prior to the NEC meeting held on 10.02.2023 was as per the Gazette Notice No. 3194 of 22.03.2022. Therefore, for all intents and purposes, only the gazetted members in the said gazette notice ought to have attended the NEC meeting convened on 10.02.2023.
88. Largely, the 1<sup>st</sup> to 3<sup>rd</sup> Appellants have contended that the minority decision in PPDT No. E010 of 2023 rightly held that the notice giving rise to the NEC meeting and resolution of 10.02.2023 was in contravention of *the Constitution* of the 4<sup>th</sup> Appellant whereas the NEC meeting was improperly constituted thereby resulting in an irregular and illegal resolution. It was further contended that the NEC resolution of 10.02.2023 which among others, suspended the 1<sup>st</sup> to 3<sup>rd</sup> Appellants, was made in their absence and without first granting them an opportunity to be heard prior thereto. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on their part summarily maintained that the meeting held by the NEC on 10.02.2023 had the requisite quorum and the resultant resolution emanating therefrom leading to the disciplinary proceedings as against the 1<sup>st</sup> to 3<sup>rd</sup> Appellant was valid.
89. Revisiting the majority decision in PPDT No. E010 of 2023, as concerns the question at hand, the majority decision took the position that queries regarding the validity, legality and propriety of the Party's NEC held on 10.02.2023 were sufficiently addressed in its decision in PPDT No. E001 of 2023 a consequence of which the complaint in in PPDT No. E010 of 2023 was prematurely before it unless it was sufficiently demonstrated that an honest attempt at IDRM had been made by the 1<sup>st</sup> to 3<sup>rd</sup> Appellant. The minority decision on its part delved in-depth on the issue, by firstly finding that validity of the meeting of 10.02.2023 was fait accompli before the Party's IDRM whereas they were neither bound by the decision of 1<sup>st</sup> Respondent of 18.05.2023 and that of the IDRC of 07.06.2023 therefore the Tribunal was seized of jurisdiction to entertain the 1<sup>st</sup> to 3<sup>rd</sup> Appellant's contestation on the issue. The minority further made a finding of fact that members of the NEC only composed those who were captured in Gazette Notice No. 3194 of 22.03.2022. Meanwhile, aside from its finding as to the propriety of the notice and its service thereof, they concluded that the NEC that sat on 10.02.2023 was not properly composite, a consequence of which the notice of 02.02.2023 and the NEC meeting held on 10.02.2023 was in breach of the law and the 4<sup>th</sup> Appellant's constitution.
90. This Court's observation is that the minority decision correctly observed that the 4<sup>th</sup> Appellant's constitutional provisions as regards the procedure for constituting the NEC meeting and the office bearer's roles is plain and unambiguous. Article 8.2 of the 4<sup>th</sup> Appellant's constitution provides that the NEC shall be the governing body of the party and shall consist of :..... " A. All the National Officials, B. The National Assembly Leader, C. The Senate Leader D. Whip – Senate, E. Whip – National Assembly, F. Parliamentary Caucus Chairperson, G. Parliamentary Group Secretary, H. National MCA Chairperson, I. Executive Director". As can be gleaned from the Gazette Notice No.



3194 of 22.03.2022 which forms part of the record before this Court, the members of the NEC as at 10.02.2023 comprised of twenty-two (22) members, who were;

“ Party Leader H. E. Uhuru Kenyatta

Deputy Party Leader (Strategy) Jimmy Angwenyi

Deputy Party Leader (Operations) Kinoti Gatobu

Deputy Party Leader (Outreach) Naomi Shabaan

Deputy Party Leader (Programmes) Peter Mositet

National Chairperson Nelson Dzuya

Deputy National Chairperson David Murathe

Secretary General Jeremiah Kioni

Deputy Secretary General Joshua Kuttuny

National Treasurer Kagwe Gichohi

Deputy National Treasurer Ruweida Mohamed

National Organizing Secretary Abdulkadir Haji

Deputy National Organizing Secretary Mutava Musyimi

National Director Elections Kanini Kega

National Deputy Director Elections Rachel Nyamai

Women League: National Chairperson Fatuma Gedi

Youth League: National Chairperson Mulembe Mundalo Persons With Disabilities League:

National Chairperson Wanja Maina (Ms.)

Council of Elders: National Chairperson Njenga Mungai

Business Council: National Chairperson Joel Kibe

Parliamentary Secretary Adan Keynan Wehliye

Executive Director Wambui Gichuru (Ms.)” (sic)

91. Further a perusal of the record before this Court and particularly the minutes of the NEC meeting held on 10.02.2023, the persons in attendance were fourteen (14) who were captured as: - Jimmy Angwenyi - Deputy Party Leader (Strategy), Kinoti Gatobu - Deputy Party Leader (Operations), Naomi Shabaan - Deputy Party Leader (Outreach), Peter Mositet - Deputy Party Leader (Programmes), Nelson Dzuya - National Chairperson, Joshua Kuttuny - Deputy Secretary General, Abdulkadir Haji – National Organizing Secretary, Adan Keynan Wehliye - Parliamentary Secretary, Kanini Kega - National Director Elections, Rachel Nyamai - National Deputy Director Elections, Njenga Mungai - Council of Elders National Chairperson, Hon. Fatuma Dullo Adan – Senate leader, Hon. Samuel Arama – National Assembly Chief Whip, Hon. Joseph Githuku Kamau – Senate Chief Whip.
92. The court notes that those who were absent were three (3) with no designation captured alongside their names and one (1) Hon Fatuma Gedi - National Chairperson Women League who was recorded as having resigned. The minority decision of the tribunal was unerring when it took note of the fact that out of the fourteen (14) persons who were present in the meeting of 10.02.2023, were three (3) being Hon. Fatuma Dullo Adan – Senate leader, Hon. Samuel Arama – National Assembly Chief



Whip, Hon. Joseph Githuku Kamau who were not gazetted as NEC members in the Gazette Notice No. 3194 of 22.03.2022 despite the 4<sup>th</sup> Appellants constitution providing that their offices as party officials are constituent members of the NEC.

93. Meanwhile, from the record before this Court there was no material illustration of the fact that the three (3) in attendance on the NEC were never gazetted as members of the 4<sup>th</sup> Appellant NEC, in line with Section 20(1)(a),(c)& (d) of the *Political Parties Act*, which provides that:-

- (1) Where a fully registered political party intends to change or amend—
  - (a) its constitution;
  - (b) its rules and regulations;
  - (c) the title, name or address of any party official;
  - (d) its name, symbol, slogan or colour; or
  - (e) the address and physical location of the head office or county office,
- (2) it shall notify the Registrar of its intention and the Registrar shall, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette.

94. Equally, it was observed therein that the gazetted NEC members who were not in attendance in the meeting held on 10.02.2023 were neither captured as absent with apology, or merely absent without apology, whereas conspicuously the 1<sup>st</sup> to 3<sup>rd</sup> Appellant who were also NEC members were not captured as person absent or absent with apology. In totality of the forestated, the court concurs with the minority decision on the composition of the NEC meeting held on 10.02.2023 that it was in blatant breach of the law and the party constitution, and therefore the resultant resolutions flowing therefrom were a nullity ab initio.

**d. In view of the above, what is the outcome of Civil Appeals No. E008, E736, E750 & E764 of 2023?**

95. It is apposite to note that Civil Appeal No. E008 of 2023 ideally deals with events post the NEC meeting of 19.05.2023 and the consequential events thereafter; whereas Civil Appeals No. E736, E750 & E764 of 2023 materially concerned with the proceedings before the 1<sup>st</sup> Appellant, the NEC meeting of 19.05.2023 and equally the consequential effects thereafter. The gist of the aforesated appeals originated at the onset from the notice dated 02.02.2023 convening the NEC meeting and the resultant NEC meeting held on 10.02.2023. The court finds and holds that all the events thereafter were in breach of the law and the party constitution, and no valid resolution could emanate from the deliberations of the meeting of 10.02.2023 on accord of this Court's earlier concurrence with the minority decision. To quote the decision verbatim, "all processes that were undertaken by any party organ in furtherance of any of the resolutions leading to the TNDC decision of 10<sup>th</sup> and 15<sup>th</sup> May 2023 against the 1<sup>st</sup> to 3<sup>rd</sup> Complainant herein and the NEC ratification thereof on 19<sup>th</sup> May 2023 are all a nullity and of no consequence whatsoever. Therefore, we need not say more under the issue".

96. It is trite that a Court ought not countenance an illegality once brought to its attention. And herein, for all intents and purposes, given the flawed nature of the notice dated 02.02.2023 and the resultant NEC meeting held on 10.02.2023, logic would dictate the subsequent proceedings as against the 1<sup>st</sup> to 3<sup>rd</sup> Appellants before the 1<sup>st</sup> Respondent were a nullity in themselves. Any resultant action emanating from the subsequent decisions are equally tainted with illegality of the former. As a consequence the



court finds that it would be moot to consider merits or otherwise of Civil Appeals No. E008, E736, E750 & E764 of 2023.

**e. Who should bear the costs of the consolidated Appeals?**

97. An award of costs is anchored on Section 27 of the *Civil Procedure Act*. The Court of Appeal in *Punchlines Limited v Joseph Mugo Kibaria & 10 others* [2018] eKLR discussed this provision at length, stating inter alia as follows: -

“As for costs, the substantive law governing an award of costs is enshrined in section 27 of the *Civil Procedure Act* (CPA). It provides:

.....

98. The High Court in the *Party of Independent Candidates of Kenya versus Mutula Kilonzo & 2 others, HC EP No. 6 of 2013*, had this to say on the issue of costs:-

“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given discretion .... But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, is a rule which should not be departed from without the demonstration of good grounds for doing so.”

99. The Court of Appeal held in the case of “*In Devram Dattan versus Dawda* [1949] EACA 35, the predecessor of this court held, inter alia, “that it is trite law that the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case. Being a judicial discretion, the law demands that it must be exercised judiciously.

100. There is no dispute or doubt that the disputes giving rise to the consolidated appeals arose from the Jubilee Part leadership wrangles among its members. Applying the principles enunciated from the superior courts decisions, and upon exercise of the court’s discretion, the court finds it fair and just that each party bears own costs in the appeals.

101. Disposition

- a. HCCA No. E630 of 2023 (the lead appeal) and HCCA. No. E635 of 2023 are allowed in their entirety save on the matter of costs.
- b. The majority decision in complaints No. E003, E009 E110, E011 and E012 are set aside.
- c. In respect to HCCA.No. E736/2023, E750/2023, E764/2023 the complaints before the PPDT having been post the impugned notice dated 2/02/2023; the meeting dated 10/02/2023 and the resultant NEC resolutions, and the court having declared the said meetings as a nullity, the court finds that they have been overtaken by events and therefore moot.
- d. Each party to the consolidated appeals shall bear own costs.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JANET MULWA**

**JUDGE**

