



Chepngeny & another v Political Parties Disputes Tribunal & 3 others; Devolution Empowerment Party & another (Interested Parties) (Constitutional Petition E009 of 2024) [2024] KEHC 13230 (KLR) (30 October 2024) (Judgment)

Neutral citation: [2024] KEHC 13230 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CONSTITUTIONAL PETITION E009 OF 2024**

JK SERGON, J

OCTOBER 30, 2024

IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF ARTICLES 1(1), 1(3), 2(1), 2(2), 2(4), 10, 19, 20(1), 20(2), 20(3)(8), 20(4), 21(1), 21(3), 22, 23(1), 23(3), 24 (1), 27(1), 36, 37, 38(1), 38(3), 47, 48, 91, 92, 165(3), 165(6), 165(7), 232(1)(E), 258, 259(1), 259(3) AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE POLITICAL PARTIES ACT AND IN THE MATTER OF THE POLITICAL PARTIES DISPUTE TRIBUNAL COMPLAINT NUMBER E007 OF 2024

BETWEEN

SOLOMON CHEPNGENY 1ST PETITIONER

EVERTON WAFULA KHAEMBA 2ND PETITIONER

AND

THE POLITICAL PARTIES DISPUTES TRIBUNAL 1ST RESPONDENT

PAMELA GAKII GITOBU 2ND RESPONDENT

THE REGISTRAR OF POLITICAL PARTIES 3RD RESPONDENT

THE NATIONAL EXECUTIVE COMMITTEE, THE DEVOLUTION EMPOWERMENT PARTY 4TH RESPONDENT

AND

THE DEVOLUTION EMPOWERMENT PARTY INTERESTED PARTY



**MILTON MUGAMBI IMANYARA, THE SECRETARY - GENERAL,
DEVOLUTION EMPOWERMENT PARTY INTERESTED PARTY**

Expulsion of a member from a political party without granting the member an explanation and a hearing is a violation of the member's political rights and the right to fair administrative action

The petition challenged the constitutionality of ex parte interim orders issued by the Political Parties Disputes Tribunal on July 18, 2024, which stopped a planned Special National Delegates Convention of the Devolution Empowerment Party. The petitioners contended that the orders, along with Gazette Notice No. 5805 of May 9, 2024 and the purported expulsion of the 2nd interested party as Secretary-General, violated their constitutional rights to political participation, fair administrative action, and association. The High Court found the Tribunal's actions unlawful, declared the impugned Gazette Notice and orders null and void, and directed the convening of a Special Delegates Convention.

Reported by John Ribia

Jurisdiction – jurisdiction of the High Court – judicial review jurisdiction over the processes in a Tribunal where no appeal had been filed - whether the High Court had the jurisdiction to determine a judicial review application challenging the proceedings before the Political Parties Disputes Tribunal - Constitution of Kenya articles 47 and 165(6); Political Parties Act (Cap7D) section 91; section 40.

Constitutional Law – fundamental rights and freedoms – political rights – right to fair administrative action – expulsion from a political party without being granted reasons or a hearing - whether the expulsion of a member from a political party without granting the member an explanation and a hearing was a violation of the member's right to fair administrative action - Constitution of Kenya article 47.

Brief facts

The petition arose from a dispute within the Devolution Empowerment Party regarding the legitimacy of party leadership and internal processes. The 2nd interested party, Milton Mugambi Imanyara, was gazetted as Secretary-General of the Party through Gazette Notice No. 7487 of July 23, 2024. Prior to that, Gazette Notice No. 5805 of 9 May 2024 had purported to announce changes to the Party's officials without grassroots elections or approval by party delegates, prompting objections from party members, including the petitioners.

In response to internal concerns about leadership composition and lack of inclusivity, the 2nd interested party issued a notice convening a Special National Delegates Convention scheduled for July 20, 2024 to address party governance and elections. However, the 1st respondent, the Political Parties Disputes Tribunal (PPDT), issued ex parte interim orders on July 18, 2024 stopping the Convention, following a complaint by the 2nd respondent, Pamela Gakii Gitobu. The petitioners argued that the 2nd respondent was neither a *bona fide* party member nor entitled to initiate the complaint, and that the Tribunal exceeded its jurisdiction by acting on a speculative dispute. They claimed that the actions taken infringed upon their constitutional rights to association, political participation, and fair administrative action.

The respondents argued that the PPDT had proper jurisdiction under section 40 of the Political Parties Act to hear disputes involving party members. They contended that the petition improperly challenged an interim judicial decision and that the petitioners should have pursued appellate remedies under section 41(2) of the Political Parties Act instead.

Issues

- i. Whether the High Court had the jurisdiction to determine a judicial review application challenging the proceedings before the Political Parties Disputes Tribunal.
- ii. Whether the expulsion of a member from a political party without granting the member an explanation and a hearing was a violation of the member's right to fair administrative action.



Held

1. Under section 40 of the Political Parties Act, the jurisdiction of the Political Parties Disputes Tribunal was limited to among other things the determination of disputes between the members of a political party and disputes between a member of a political party and the political party.
2. There was no dispute to be adjudicated on by the 1st respondent because the 2nd respondent was not a member of the 1st interested party. Even if there was to be a dispute, then such a dispute could only arise out of the meeting and that the 1st respondent's jurisdiction only extended to a dispute that arose from the deliberations made in the meeting held by the 1st interested party and not anticipated disputes as alleged in the complaint by the 2nd respondent. There was no evidence presented before the 1st respondent to the effect that the 1st interested party held a meeting which led to a dispute that necessitated adjudication by the 1st respondent.
3. Section 4B of the Political Parties Act provided for the expulsion from a party shall only occur where a member contravened a party's constitution and only if the member was given the right to be heard and even if that was the case, the 4th respondent by purporting to have expelled the 2nd interested party for his position in the 1st interested party violated article 47(1) and (2) of the Constitution and the Fair Administrative Act which provided that such a person must be given reasons where a person's rights and fundamental freedoms were likely to be affected by an administrative action.
4. The petitioner could no longer exercise his political rights courtesy of the actions of the 2nd respondent, whose actions had been given a legal imprimatur by the 1st respondent, therefore he had no other recourse other than the High Court. The instant petition was properly before the High Court. The doctrine of exhaustion did not apply.

Petition allowed.

Orders

- i. *Declaration issued that the proceedings of the 1st Respondent Tribunal in PPDTTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party and, the orders issued therefrom by the 1st Respondent Tribunal on July 18, 2024 were unconstitutional, null and void.*
- ii. *Declaration issued that Gazette Notice No. 5805 of May 9, 2024 issued by the 3rd respondent was unconstitutional, null and void.*
- iii. *Declaration issued that the 4th respondent, being a body established courtesy of article 91 of the Constitution and the Political Parties Act, and funded, partly, by public funds, was under an obligation to adhere to fair administrative action rules as provided for in articles 47 and 232(1)(e) of the Constitution.*
- iv. *Declaration issued that the expulsion of the 2nd interested party as the Secretary-General of the 1st interested party was unconstitutional, null and void.*
- v. *Declaration issued that within the intendment of articles 47(2) of the Constitution, the 1st respondent was bound to provide written reasons for an order curtailing the exercise of fundamental rights and freedoms and that such an order could not be issued ex parte.*
- vi. *Declaration issued that within the intendment of article 10 of the Constitution the respondents were bound by the key national values and principles, to have regard to rule of law, democracy and participation of the people, integrity, transparency and accountability.*
- vii. *Declaration was made that within the intendment of article 24(1) of the Constitution, the 1st respondent could not limit the exercise of the petitioners' rights under article 36 and 38 of the Constitution except by law and then only to the extent that the limitation was reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom and taking into account all relevant factors.*



- viii. *Declaration issued that within the intendment of article 27(1) of the Constitution the petitioner and indeed, the 2nd interested party and other members of the Party have a right to equal protection before the law.*
- ix. *Declaration made that within the intendment of article 47(1) of the Constitution, the respondents were bound to provide administrative action that was lawful, reasonable and procedurally fair.*
- x. *Declaration was made that the ex parte injunction by the 1st respondent was unconstitutional, illegal, null and void.*
- xi. *An order of certiorari was issued to terminate and quash the proceedings of the 1st respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party.*
- xii. *An order of certiorari was issued to quash the orders issued by the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party on July 18, 2024.*
- xiii. *An order of mandamus was issued directing the 2nd interested party to proceed and convene a Special National Delegates Convention of the 1st interested party with a view of appointing interim national party officials to supervise free and fair elections to elect national party officials within thirty (30) days of this order.*
- xiv. *Each party should bear their own costs.*

Citations

Cases

1. Crown Paints (Kenya) Limited v Dry Associates Limited (Civil Appeal 181 of 2019; [2023] KECA 1383 (KLR)) — Applied
2. Director of Public Prosecutions v Justus Mwendwa Kathenge, Attorney General & Chief Magistrate’s Court (Civil Appeal 201 of 2014; [2016] KECA 98 (KLR)) — Applied
3. Kabundu & 3 others v Public Service Commission & 6 others; Amani National Congress Party & 10 others (Interested Parties) (Constitutional Petition E250 of 2020; [2022] KEHC 128 (KLR)) — Applied
4. KENNEDY OTIENO ODIYO, JOSEPH OCHIENG OTIENO, MARTIN ODUOGO OYIEKO, TUKIKO OTIEWO OWUOR, TERESA CHIENG AMIMO & 8 others v KENYA ELECTRICITY GENERATING COMPANY LIMITED (Civil Case 71 of 2009; [2010] KEHC 282 (KLR)) — Applied
5. Milton Mugambi Imanyara v the Chairman, National Disciplinary Committee-Devolution Empowerment Party and 2 Others (HCCHRPET E054 of 2024) — Applied
6. Mwangi & 8 others v Dzuya & 7 others (Petition E004 of 2023) — Applied
7. Owners Of The Motor Vessel “Lillian S v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989; [1989] KECA 48 (KLR)) — Applied
8. Rich Productions Limited v Kenya Pipeline Company & Public Procurement Oversight Authority (PPOA) (Petition 173 of 2014; [2014] KEHC 4539 (KLR)) — Applied
9. SAMUEL KAMAU MACHARIA vs KENYA COMMERCIAL BANK LIMITED, KENYA COMMERCIAL FINANCE COMPANY LIMITED (? 1263 of 1992; [2003] KEHC 725 (KLR)) — Applied
10. Speaker of the National Assembly v Karume (Civil Application 92 of 1992; [1992] KECA 42 (KLR)) — Applied
11. Youth Enterprise Development Fund Board & Chairman, Youth Enterprise Development Fund Board v Moriasi Arabu Josiah (Civil Application 189 of 2020; [2020] KECA 421 (KLR)) — Followed
12. Giella v Cassman Brown (EA 1968) — Applied

Statutes



1. Civil Procedure Act (cap 21 sub leg) — In general — Cited
2. Constitution of Kenya, 2010 (const2010) — article 47(2); article 165(6) — Cited
3. Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 201 (Sub Leg) — rule 15 — Cited
4. Fair Administrative Action Act — In general — Cited
5. Leadership And Integrity Act — In general — Cited
6. Political Parties Act (CAP 7D) — section 91; section 40 — Cited

Advocates

Kembeba for Petitioner

Ken Ogutu for 2nd Respondent

JUDGMENT

1. The Petitioners filed the Petition dated July 26, 2024 seeking for the following orders;
 - (i). A declaration that the proceedings of the 1st Respondent Tribunal in PPDT/C/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party and, the orders issued therefrom by the 1st Respondent Tribunal on 18 July 2024 are unconstitutional and therefore, null and void.
 - (ii). A declaration that Gazette Notice No. 5805 of 9th May 2024 issued by the 3rd Respondent herein is unconstitutional and therefore, null and void.
 - (iii). A declaration that the 4th Respondent, being a body established courtesy of Article 91 and the *Political Parties Act*, and funded, partly, by public funds, is under an obligation to adhere to fair administrative action rules as provided for in Article 47 and 232(1) (e) of *the Constitution*.
 - (iv). A declaration that the said expulsion of the 2nd Interested Party as the Secretary-General of the 1st Interested Party is unconstitutional and therefore, null and void.
 - (v). A declaration that Gazette Notice No. 5805 of 9th May 2024 issued by the 3rd Respondent herein, is unconstitutional and therefore, null and void.
 - (vi). A declaration that within the intendment of Articles 47(2) of *the Constitution*, the 1st Respondent is bound to provide written reasons for an order curtailing the exercise of fundamental rights and freedoms and that such an order cannot be issued ex parte.
 - (vii). A declaration that within the intendment of Article 10 of *the Constitution* the Respondents are bound by the key national values and principles, to have regard to rule of law, democracy and participation of the people, integrity, transparency and accountability.
 - (viii). A declaration that within the intendment of Article 24(1), the 1st Respondent cannot limit the exercise of the Petitioners' rights under Article 36 and 38 of *the Constitution* except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom and taking into account all relevant factors.
 - (ix). A declaration that within the intendment of Article 27(1) of *the Constitution* the Petitioner and indeed, the 2nd Interested Party and other members of the Party have a right to equal protection before the law.



- (x). A declaration that within the intendment of article 47(1) of *the Constitution*, the Respondents are bound to provide administrative action that is lawful, reasonable and procedurally fair.
 - (xi). A declaration that the ex parte injunction by the 1st Respondent is unconstitutional and therefore, illegal, null and void.
 - (xii). An order of judicial review in the form of certiorari do issue from this Court to terminate and quash the proceedings of the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party.
 - (xiii). An order of judicial review in the form of certiorari do issue from this Court to quash the orders issued by the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party on 18 July 2024.
 - (xiv). An order of judicial review in the form of mandamus do issue from this court directing the 2nd Interested Party to proceed and convene a Special National Delegates Convention of the 1st Interested Party with a view of appointing interim national party officials to supervise free and fair elections to elect national party officials within thirty (30) days of this order.
 - (xv). There be an order as to costs.
2. The facts giving rise to the filing of this petitioners are as follows; That vide Gazette Notice No. 7487 of 23rd day of July 2024, the Registrar of Political Parties gave notice of change of party officials of the 1st Interested Party herein and the 2nd Interested Party herein was gazetted as the Secretary-General of the 1st Interested Party herein.
 3. That the 1st Interested Party never held any grassroots elections, but the Registrar of Political Parties (3rd Respondent) purported to issue a notice of change of particulars that had a new list of party officials that had not been approved by delegates or members of the 1st Interested Party.
 4. That the members of the 1st Interested Party, including the Petitioners herein, raised issues with the 2nd Interested Party and other party officials regarding the change of particulars that seemed to apportion party leadership to mostly members of two communities in Kenya, i.e., Ameru and Aembu in total violation of the Party Constitution and *the Constitution* of Kenya.
 5. That the said change of particulars necessitated a meeting of the party members to chart the way forward and that the procedure for the meeting is laid down in *the Constitution* of the 1st Interested Party.
 6. That based on Article 7 (1) (4) of provisions of the 1st Interested Party's Constitution and his position as established in the gazette notices, the 2nd Interested Party herein as the Secretary General of the Devolution Empowerment Party, formerly called the Restore and Build Kenya Party, issued a notice for a Special Session of the National Delegates Convention of the 1st Interested Party herein stating that the special session would be held on 20th day of July 2024 at a venue that would be decided and communicated to the members entitled to attend at least seven (7) days before the scheduled meeting.
 7. That having received communication about the meeting the Petitioners set out to Nairobi on the day announced in the notice by the 2nd Interested Party herein only to be told that the meeting had been stopped by an order issued by the Political Parties Dispute Tribunal (1st Respondent) on 18 July 2024.



8. Having been aggrieved by the notice, the 2nd Respondent herein had written to the 1st Interested Party herein citing Article 7.1.3 of the 1st Interested Party's Constitution and arguing that the notice was illegal and arguing that article 7.1.3. of Constitution of the 1st Interested Party states that the 2nd Interested Party herein may only convene a Special Session of the National Delegates Convention pursuant to a decision of the National Executive Committee or the Supreme Council, or upon receipt of a written requisition from at least one third of the delegates attending the preceding National Delegates Convention and arguing that none of those conditions precedent had been satisfied.
9. That based on the foregoing, the 2nd Respondent moved to the Political Parties Dispute Tribunal, the 1st Respondent herein, stating that by disregarding the constitutionally mandated procedures for convening a Special Session, the 2nd Interested Party herein had undermined the democratic principles upon which the party was founded and that by bypassing the constitutionally mandated procedures, the 2nd Interested Party could exclude or disenfranchise certain members from participating in the decision making process.
10. That pursuant to this complaint, the 1st Respondent herein in the case number PPDT/C/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party issued the following orders:
 - (i) That the Notice of Motion application dated 15 July 2024 be and is hereby certified urgent for consideration ex-parte in the first instance only.
 - (ii) That the Complaint together with the Notice of Motion application dated 15 July 2024 be served upon all the Respondents immediately.
 - (iii) That the Respondents file and serve their response(s) to the Application.
 - (iv) That the Notice of Motion Application be listed for mention on 1 August 2024 at 2.30 p, to check on compliance and for further directions as to the hearing of the Application.
 - (v) That pending the hearing and determination of the Application, this Honourable Tribunal hereby issues an interim order for injunction restraining the Respondents from holding the Special Session of the National Delegates Convention of the 2nd Respondent scheduled for 20 July 2024.
11. That the 2nd Respondent herein, without presenting any evidence or documentation indicating or proving that she is a member or delegate of the Devolution Empowerment Party moved to the 1st Respondent tribunal and was given audience as a member with a dispute against the Party.
12. That under section 40 of the *Political Parties Act*, the jurisdiction of the Tribunal is limited to among other things, the determination of disputes between the members of a political party and disputes between a member of a political party and the political party.
13. That there was no dispute to be adjudicated on by the 1st Respondent because the 2nd Respondent is not a member of the 1st Interested Party. THAT even if there were to be a dispute, then such a dispute could only arise out of the meeting and that the 1st Respondent's jurisdiction only extends to a dispute that arises from deliberations made in meetings held by the 1st Interested Party herein and not, anticipated disputes as alleged in the complaint by the 2nd Respondent.
14. That according to Article 7(6) of the 1st Interested Party's Constitution, the Supreme Council shall be the final arbiter in all disputes arising in the party and it shall have powers to enforce its decisions including imposing fine, suspension of members, officials or committees or termination of



- membership. It follows that the Supreme Council should have determined the dispute at hand. THAT there is no evidence presented before the 1st Respondent to the effect that the 1st Interested Party held a meeting which led to a dispute that necessitated adjudication by the 1st Respondent herein.
15. The petitioners were adamant that in the present case, the 1st Respondent having issued orders which curtailed the Petitioner's right to participate in the activities of the 1st Interested Party's National Delegates Convention by issuing an order stopping which order is not based on any law and limits the Petitioner's right to form and join an association under Article 36 and the right to participate in political activities under Article 38 of *the Constitution*.
 16. The petitioner stated that Article 165(6) of *the Constitution* provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. Therefore, this court has the supervisory powers to quash the order issued by the 1st Respondent regarding the holding of a Sessions of the National Delegates Convention of the 1st Respondent.
 17. The petitioners are adamant that to the extent that section 4B of the *Political Parties Act* provides expulsion from a party shall only occur where a member contravenes a party's constitution and only if the member is given the right to be heard and that even if though that is the case, the 4th Respondents by purporting to have expelled the 2nd Interested Party from his position in the 1st Interested Party, have violated Article 47(1) and (2) which mandate fair administrative action and the giving of reasons where a person's rights and fundamental freedoms are likely to be affected by an administrative action, have been violated.
 18. The petitioners stated that to the extent that the 1st Respondent made an order to the effect that 1st and 2nd Interested Parties not to hold the National Delegates Convention without giving any written reasons yet the order violates the Petitioner's rights and fundamental freedoms under Article 36, 27, 38 and 47(1) of *the Constitution*, the provisions of Article 47(2) of *the Constitution* which provides that 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, have been violated.
 19. The petitioners stated that to the extent that the 1st Respondent stopped the staging of the National Delegates Convention, the 1st Respondent has made it impossible for the 1st Interested Party to have a democratically elected governing body and to respect the rights of all persons to participate in the political processes of a party thus, violating the provisions of Article 91(1) of *the Constitution* which provides that every political party shall have a democratically elected governing body; abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party; respect the right of all persons to participate in the political process.
 20. The petition was accompanied by the supporting affidavit of Solomon Chepngeny the 1st petitioner and a member of the Devolution Empowerment Party and authorised by the 2nd petitioner to swear the affidavit.
 21. The petitioner avers that having been advised by his Advocate on record which advice he verily believes that article 47(2) of *the Constitution* provides that 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. However, the 1st Respondent made an order to the effect that 1st and 2nd Interested Parties should not hold the National Delegates Convention without giving any written reasons, yet the order violated his rights and other members' rights and fundamental freedoms under Article 36, 27, 38 and 47(1) of *the Constitution*.



22. The petitioner avers that considering he can no longer exercise his political rights courtesy of the actions of the 2nd Respondent, whose actions have been given a legal imprimatur by the 1st Respondent, he has no other recourse other than this Court.
23. The petitioner avers the respondents have in total disregard to his fundamental rights and freedoms and members constitutional rights in general intend to muzzle his as well as the party members' rights as protected by *the Constitution*.
24. The 1st respondent filed grounds of opposition dated 9th August, 2024 based on the following grounds;
- (i) By naming the Political Parties Disputes Tribunal as a Respondent in these proceedings, the Petition challenges the judicial decision of the Tribunal in a manner that is at odds with the adversarial nature of our legal system. A judicial decision of a Tribunal such as the 1st Respondent herein can only be challenged by way of an application for review before the same court, or appeal to a higher court, and not by way of a constitutional petition.
 - (ii) The petition is an attempt to circumvent the jurisdiction of the 1st Respondent which is clothed with the statutory jurisdiction to determine disputes arising within political parties and appeals from decisions of the Registrar of Political Parties (the 3rd Respondent). These proceedings are also an attempt to short-circuit the statutory appellate process which is available to any litigant who is not satisfied with the judicial decisions of the 1st Respondent.
25. Pamela Gakii Gitobu the 2nd Respondent herein and a member and official of the Devolution Empowerment Party, the 1st Interested Party herein filed a replying affidavit in response to the Petition.
26. She avers that contrary to the Petitioners' allegations that she is not a member of the 1st Interested Party, she is a duly registered member and an official of the 1st Interested Party.
27. She avers that the petitioners had made heavy weather of her citation of Article 7.1.3 instead of Article 7.1.4 of the 1st Interested Party's Constitution in my Complaint against the Interested Parties filed before the 1st Respondent. However, an erroneous citation of a legal provision is merely a technicality that does not alter the essence of the grievance in her Complaint. Specifically, her Complaint before the 1st Respondent being that the 2nd Interested Party issued a Notice for a Special Session of the National Delegates Conference without complying with the 1st Interested Party's Constitution.
28. She avers that she is aware that pursuant to the 1st Interested Party's Constitution, the 1st Interested Party's Secretary General may only convene a Special Session of the National Delegates Convention pursuant to a decision of the National Executive Committee or the Supreme Council, or upon receipt of a written requisition from at least one third of the delegates attending the preceding National Delegates Convention.
29. She avers that she is aware that the proceedings relating to her complaint in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party have been stayed by this Honourable Court and that upon advice from her advocates verily believes that the decision to stay the said proceedings is erroneous for the following reasons:
- (i) Pursuant to section 40(1)(a) and (b) of the *Political Parties Act*, the 1st Respondent has first instance jurisdiction to hear and determine my Complaint and not this Honourable Court. (ii) This court only has appellate or supervisory jurisdiction to hear and determine matters arising from the 1st Respondent pursuant to section 41(2) of the *Political Parties Act* and Article



165 of *the Constitution*, upon a reasoned decision by the 1st Respondent. The Petitioners in the current Petition are not parties in the Complaint before the 1st Respondent. Therefore, they lack the locus standi to file this Petition seeking orders staying a matter in which none of them is a party. The Petition herein is essentially an appeal arising from the ex parte directions interim orders of the 1st Respondent, and as such, the appellate, supervisory or judicial review jurisdiction of this Honourable Court has not been properly invoked since there is no reasoned decision by the 1st Respondent.

- (iii) The Petitioners ought to have made an application for joinder as Interested Parties in PPDTTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party before the 1st Respondent if they have any interest in my Complaint.
 - (iv) That this Honourable Court ought to lift the stay orders staying the proceedings in PPDTTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party in order to allow those proceedings to run their full course and for justice to be administered.
 - (v) That the 1st Respondent properly exercised its discretion in granting ex parte interim orders for purposes of preserving the subject matter of my Complaint. This discretion is critical for the administration of justice.
30. She avers that based on the foregoing, the instant appeal, which is disguised as a Petition and filed against her is without any basis, incompetent and brought in bad faith and that the wider interests of justice will best be served if the Petition is dismissed with costs.
31. The 3rd respondent filed grounds of opposition dated 21st August, 2024 in response to the petition based on the following grounds; (i) THAT Article 169 of *the Constitution* as read together with Sections 39 and 40 of the *Political Parties Act*, CAP 7D establishes the Political Parties Disputes Tribunal and stipulates its jurisdiction (ii) THAT the jurisdiction of this Honourable Court is ousted by dint of Section 41 (2) of the *Political Parties Act*, CAP 7D.
32. Solomon Chepngeny the petitioner and authorized by the co-petitioner filed a further replying affidavit in response to the 1st and 3rd Respondent's Grounds of Opposition dated 9 August 2024 and 21 August 2024, respectively.
33. He avers that the 1st and the 3rd Respondents have responded to the Petition by way of grounds of opposition and that he had been advised by his advocates on record that according to Rule 15 (1) and (2) of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* the rules provide for ways of responding to a Constitutional Petition and therefore the failure to respond to the Petition by way of replying affidavit rendered the averments in the Petition uncontroverted. He cited the case of *Kennedy Otiemo Odiyo & 12 Others v. Kenya Electricity Generating Company Limited* [2010] eKLR the court held as follows:- "The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition address only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the applicant in its supporting affidavit. Thus what was deponed to was not countered nor rebutted by the respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant's supporting affidavit, means that the respondents have no claim against the applicant."



34. He avers that this court should disregard the said Grounds of Opposition for not being in conformity with *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.
35. He avers that this case is merited, and the 1st Respondent is a proper party as envisioned by *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* which enjoins state organs to respect and protect fundamental rights and freedoms.
36. He avers that the Petition is not a review or appeal to the Political Parties Dispute Tribunal Complaint Number E007 of 2024, Pamela Gakii Gitobu versus Milton Mugambi Imanyara, the Secretary-General Devolution Empowerment Party and the Devolution Empowerment Party, since he is not a party to those proceedings.
37. The 1st interested party filed a replying affidavit in response to the petition which was sworn by Haron Mutwiri Abuana the Executive Director of the 1st Interested Party, the Devolution Empowerment Party who is well seised of the facts and issues arising in the matter, and being duly authorized by the 1st Interested Party, he is competent to swear this affidavit on its behalf and on behalf of the 4th Respondent.
38. He avers that based on the advice of their advocates on record, the petitioners have, on their own motion, unlawfully and illegally joined the 1st and 2nd Interested Parties in the suit, violating established legal principles for the joinder of interested parties.
39. He avers that the 1st Respondent did not contravene the Petitioners' right to fair administrative action by granting the ex parte interim orders, that ex parte interim orders are not final, they serve solely to preserve the subject matter of the dispute until an inter partes hearing can be held and it is not possible that the Petitioners' right to fair administrative action could have been violated given that they are not parties in the Complaint before the Tribunal in the first place. He reiterated that the 1st Respondent did not issue final orders which denied the Interested Parties herein, who are the Respondents in the 2nd Respondent's Complaint before the 1st Respondent, from submitting their responses to the Complaint rather the 1st Respondent issued the ex parte interim orders to preserve the subject matter of the dispute and directed that Interested Parties respond to the application and the Complaint.
40. He avers that the decision by this court to issue ex parte interim and conservatory orders against the 1st Respondent for issuing ex parte interim orders is a case of judicial overreach. This Honourable Court should have let the proceedings before the 1st Respondent to run their full course before this court can entertain proceedings, and not hijack proceedings at the interim stage. In any event, there are no reasons to justify this Honourable Court's intervention in the proceedings before the 1st Respondent in the guise of exercise of supervisory jurisdiction.
41. He avers that he was aware that the Notice for a Special Session of the National Delegates Convention issued by the 2nd Interested Party was invalid, null and void. Not only did he issue the notice while under suspension, but the notice was also not based on a decision by the National Executive Committee or the Supreme Council, nor was it issued upon receiving a written requisition from at least one-third of the delegates from the previous National Delegates Convention in accordance with the 1st Interested Party's Constitution.
42. He avers that the Complaint before the Political Parties Disputes Tribunal ought to be dispensed with first before the supervisory jurisdiction of this Court can be invoked. The instant Petition is in the nature of an appeal against an ex parte interim orders of the 1st Respondent and to the extent that the instant Petition seeks remedies relating to a dispute that is pending hearing before the 1st Respondent.



43. He avers that contrary to the 1st Petitioner's assertion that the 2nd Respondent is not a member of the 1st Interested Party, the said allegation is untrue, the 2nd Respondent is not only a member but also an official of the 1st Interested Party.
44. He avers that the 1st Petitioner's assertion that Article 7(6) of the 1st Interested Party's Constitution mandates the 1st Interested Party's Supreme Council to be the final arbiter in all disputes arising in the party, the said provision does not oust the jurisdiction of the 1st Respondent under the [Political Parties Act](#). Therefore, whereas the 1st Interested Party's Constitution provides for internal dispute resolution mechanisms with the Supreme Council being the final arbiter, nothing bars an aggrieved party from filing a suit before the 1st Respondent.
45. He avers that based on advice by their advocates on record, the Petitioners' allegations on violation of [the Constitution](#) do not meet the threshold in *Anarita Karimi Njeru v Republic* [1979] eKLR which require a Petitioner should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.
46. Milton Mugambi Manyara the 2nd interested party filed a replying affidavit, he avers that he is Member No. RBK008 of the Devolution Empowerment Party, the 1st Interested Party herein.
47. He avers that the Registrar of Political Parties, the 3rd Respondent herein, issued Gazette Notice No. 7487 of 23rd day of July 2021 which issue gave notice of change of party officials of the 1st Interested Party herein and, in the said notice, he was gazetted as the Secretary General of the 1st Interested Party herein.
48. He avers that he had raised issue with the manner that the party has been run by the 4th Respondents severally. Because of his protestations and the demand for elected leaders, the 4th Respondents sought to sideline him and to suspend him from the party. He avers that that the 4th Respondents have resisted efforts to change party officials through elections and where such change has occurred, it has been personalized and done by a few senior party officials.
49. He avers that the 4th Respondent herein has been operating the party in an unlawful manner and his actions and effort to change the particulars of the party in this manner have been resisted by members, himself included.
50. He avers that the 3rd Respondent's Gazette Notice No. 5805, dated the 9th day of May 2024, was unlawful and irregular and as the Secretary-General of the 1st Interested Party herein, and according to the Party Constitution and the Nominations and Elections Rules, the party is obligated to hold elections from the grassroots to the national level every five years. Members have been complaining about the lack of elections from the grassroots to the national level.
51. He avers that the conduct of the party officials, save for the 1st Interested Party, and list of officials that were presented by the 3rd Respondent in Gazette Notice 5805 of 9 May 2024 demonstrated both the abuse of the Party Constitution, Nomination and Election of the party, the Laws of Kenya specifically, Chapter Six of [the Constitution](#), and the [Leadership and Integrity Act](#).
52. He avers that because of Gazette Notice 5805 of 9 May 2024 by the 3rd Respondent and the fact that the officials of the 1st Interested Party reflected nepotism, tribalism and marginalization of non-Aembu and non-Ameru party leadership, he received complaints from party members and party delegates entitled to attend the National Delegates Convention asking for elections to elect party leaders and to address the issues of the party such as the fact that the party had lost its national outlook and ignored other regions in the country.



53. He avers that in compliance with Article 7(1)(4) of provisions of the 1st Interested Party's Constitution and his position as established in the 3rd Respondent's Gazette Notice No. 7487 of 23rd day of July 2021 which designated him as Secretary General of the Devolution Empowerment Party, formerly called the Restore and Build Kenya Party, he issued a notice for a Special Session of the National Delegates Convention of the 1st Interested Party herein stating that the special session would be held on 20th day of July 2024 at a venue that would be decided and communicated to the members entitled to attend at least seven (7) days before the scheduled meeting. THAT in issuing the said notice, he was guided by the provisions of the Interested Party's Constitution.
54. He avers that since the party has never held any grassroots elections, but the 3rd Respondent purported to issue a notice of change of particulars that had a new list of party officials that had not been approved by delegates or members of the 1st Interested Party, it was an obligation on his part to call for the said Special National Delegates Convention to discuss party leadership issues and to hold elections for new party leaders elected and endorsed by the party membership. The said change of particulars necessitated a meeting of the party members to chart the way forward and that the procedure for the meeting is laid down in *the Constitution* of the 1st Interested Party.
55. He avers that having been aggrieved by the notice, the 2nd Respondent herein had written to the 1st Interested Party herein citing Article 7.1.3 of the 1st Interested Party's Constitution and arguing that the notice he issued was illegal and arguing that Article 7.1.3 of Constitution of the 1st Interested Party states that he could only convene a Special Session of the National Delegates Convention pursuant to a decision of the National Executive Committee or the Supreme Council, or upon receipt of a written requisition from at least one-third of the delegates attending the preceding National Delegates Convention and arguing that none of those conditions precedent had been satisfied.
56. He avers that the section cited by the 2nd Respondent in her complaint to the 1st Interested Party, i.e., Article 7.1.3. of the 1st Interested Party's Constitution, provides for the holding of an ordinary session of the National Delegates Convention and which meeting is held at least once every five years at a place and date determined by the Secretary-General in consultation with the National Executive Committee. The notice of the meeting is sent at least 14 days before the date the meeting is to be held.
57. He avers that he has never been suspended from the Devolution Empowerment Party, the 1st Interested Party herein and that at all material times, he has been the Secretary-General of the 1st Interested Party.
58. He avers that on 29 January 2024, he received a letter from the 1st Interested Party about an intention to commence disciplinary action against him. The letter was signed by Kiautha Arithi, the Chairman of the Disciplinary Committee.
59. That aggrieved by the invitation to the disciplinary committee, he moved to the High Court in HCCHRPET E054 of 2024 *Milton Mugambi Imanyara v the Chairman, National Disciplinary Committee-Devolution Empowerment Party and 2 Others* which court issued orders to the effect that pending hearing of the petition, that no disciplinary action or meeting shall be taken against him.
60. Even with the said court orders, the 4th Respondents went ahead and held a meeting purporting to have suspended him in the meeting held on 17 October, 2023. As such, any deliberations from the said meeting and which have the endorsement of the 3rd Respondent have no basis in the law and are in contempt of court orders.
61. He avers that the 2nd Respondent, in her complaint to the 1st Respondent, argued that he had bypassed the constitutionally mandated procedures in the 2nd Interested Party's Constitution and therefore,



- the planned Special National Delegates Convention would exclude or disenfranchise certain members from participating in the decision-making process.
62. He avers that in her complaint to the 1st Respondent, the 2nd Respondent did not show any grievance to warrant the intervention of the 1st Respondent and did not even state any section of the 1st Interested Party Constitution that had been violated to warrant a complaint before the 1st Respondent Tribunal.
 63. He avers that he had been advised by his Advocates on record, that the issuance of interim orders by the 1st Respondent was an act of discretion and therefore, an exercise of administrative power and that the 1st Respondent is under an obligation to ensure that such discretion is done within the purview of Article 47 and the *Fair Administrative Action Act* and that the 1st Respondent failed during the inquiry to comply with the requirement of natural justice by issuing ex parte orders that affected the constitutional rights of the 1st Interested Members without giving them a hearing and reasons for the decisions.
 64. This Court directed the parties to file their written submissions and the parties complied.
 65. The petitioners filed their submissions, they contended that the 1st Respondent issued orders which curtailed the Petitioners' rights to participate in the activities of the 1st Interested Party's National Delegates Convention by issuing an order stopping the Convention which order is not based on any law.
 66. The petitioners argued that the said orders limited the Petitioners' right to associate under Article 36 of *the Constitution* and right to participate in the political affairs of a party including the election of leaders under Article 38 of *the Constitution* and Article 24(1) which prohibits the limitation of rights except by law.
 67. The petitioners reiterated that in the instant case, the orders given by the 1st Respondent had far reaching ramifications on the fundamental rights and freedoms of the petitioners and other members of the 1st Interested Party herein and therefore had to be supported by justifications that are reasonable and justifiable in an open and democratic society.
 68. The petitioners cited the case of *Director of Public Prosecutions v Justus Mwendwa Kathenge & 2 others* [2016] eKLR, where the Court went ahead and stated that the remedy of a temporary injunction cannot be claimed as a matter of right, neither can it be denied arbitrarily by the court.
 69. They argued that for this reason that the test in *Giella v Cassman Brown* (1973) EA 358 must be applied, i.e., a party seeking a temporary injunction has to establish a prima facie case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.
 70. The Petitioners argued that the Special National Delegates Convention was intended to end the squabbles within the party that have rendered the party unable to deliver its mandate as provided for under the *Political Parties Act*. As such, the orders given by the 1st Respondent failed to take this into cognizance and did not meet the test established under the case *Giella v Cassman Brown*.
 71. The Petitioners reiterated that the interim injunction failed to meet the test in the case *Giella v Cassman Brown* because the order was not based on any facts but assumptions and apprehensions and it was an abuse of discretion and the abuse of the powers given to courts of law by Article 23 of *the Constitution* and Order 40 of the Civil Procedure Rules, section 63 of the *Civil Procedure Act* and as enumerated and elucidated upon in *Giella v Cassman Brown*. As such, the interim order of injunction was unfounded



- and was an abuse of discretion by the 1st Respondent warranting to have this court's supervisory jurisdiction invoked.
72. The Petitioners argued that the 1st Respondent in its ruling violated the right to be heard by issuing an interim order that was prejudicial to the members of the 1st Interested Party in as far as the exercise of their rights under Articles 36 and 38 of *the Constitution* is concerned.
73. The Petitioners further argued that National Delegates Convention was intended to address the issues that have bedeviled the 1st Interested Party in that the Party had been operating with interim officials for over five years contrary to its Constitution and contrary to the dictates of the *Political Parties Act* and Article 91 of *the Constitution*.
74. The Petitioners argued that the Respondents have violated the provisions of Article 47(2) which provide that if a right or fundamental freedom of a person has been or is likely to be affected by an administrative action, then that person has the right to be given written reasons for the action.
75. However, in the present case, the 1st Respondents have not, nor did they give reasons for stopping the planned Special National Delegates Convention without giving the Petitioners or other members of the 1st Interested Party who are adversely affected by the ex parte order an opportunity to be given written reasons for their exclusion from the proceedings or the reasons that led to the order that stopped the planned Special National Delegates Convention.
76. The 2nd Respondent filed her submissions, she contended that the substance of the petition pertains to the Orders of the Regional Political Parties Disputes Tribunal, the 1st Respondent, from Meru, Isiolo, Tharaka-Nithi, Marsabit, and Embu in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary- General, Devolution Empowerment Party and Devolution Empowerment Party.
77. In addition, all the Respondents and Interested Parties are based either in Meru or Nairobi. Despite these facts, the Petitioners filed the Petition in Kericho, a jurisdiction totally unrelated to the alleged violations.
78. This filing does not comply with the territorial jurisdiction requirement set forth in Rule 8, which is essential for the proper administration of justice. Rule 8 of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, which states as follows: "1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place. 2) Despite sub rule (1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party."
79. The 2nd respondent reiterated that she is indeed a member and an official of the 1st Interested Party, holding the position of National Chairperson of the Youth Convention and therefore the Petitioners' claim that the 1st Respondent erred in giving audience to the 2nd Respondent is unfounded. The 2nd respondent contends that filing the instant petition is an attempt to hinder the 2nd Respondent's pursuit of justice before the 1st Respondent.
80. The 2nd respondent reiterated an erroneous citation of a provision of the 1st Interested Party's constitution is merely a technicality that does not alter the essence of the 2nd Respondent's Complaint before the 1st Respondent and when determining the Complaint, the 1st Respondent ought to be guided by the Article 159(2)(d) of *the Constitution* which demands justice to be administered without undue regard to procedural technicalities. She cited the case of *Moriasi Arabu Josiah v Youth Enterprise Development Fund Board & another* [2020] eKLR where the Court held as follows: "On this issue, I refer to this Court's previous decision in *Crown Paints (K) Limited vs Dry Associates Limited* (Supra)



where the Court in agreeing on the defect by filing an application under the wrong provisions of the law nonetheless found that that was a mere technicality to be overlooked for the sake of substantive justice pursuant to Article 159(2)(d) of *the Constitution* of Kenya.”

81. The 2nd Respondent contended that the 1st Respondent acted within its discretionary powers to ensure that the subject matter of the dispute was preserved pending the inter partes hearing of the 2nd Respondent’s application. The issuance of ex parte interim orders by the 1st Respondent was not only legally permissible but also necessary to uphold the principles of justice and fairness.
82. Article 47 of *the Constitution* of Kenya, which guarantees the right to fair administrative action, must be interpreted in light of the overarching principles of justice, including the prevention of irreparable harm and the protection of rights that may be jeopardized or defeated by lack of interim or ex parte orders.
83. The 2nd Respondent further argued that the 1st Respondent’s decision to issue ex parte interim orders was a measured response to the need to safeguard the status quo, allowing for a fair adjudication process without prejudicing any party.
84. It is also argued that the 1st Respondent’s orders did not constitute a final determination of the dispute between the parties but were temporary measures aimed at preventing any potential injustice that could arise if the subject matter dissipated before inter partes hearing.
85. The 2nd respondent submitted that the stay proceedings relating to the 2nd Respondent’s Complaint in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party by this Honourable Court is erroneous.
86. She said she wrote to the 1st Interested Party in an attempt to resolve a dispute between her and the 1st and 2nd Interested Parties but did not get any response. Consequently, she filed a Complaint against the 1st and 2nd Interested Parties before the 1st Respondent pursuant to sections 40(1)(a) and (b) of the *Political Parties Act*, which provision gave the 1st Respondent jurisdiction to hear and determine disputes between members of a political party, and disputes between a member of a political party and the political party.
87. It is therefore their submission that by the nature of the dispute as outlined above that the 1st Respondent has first instance jurisdiction to hear and determine the 2nd Respondent’s Complaint and not this Honourable Court.
88. It is argued that this court only has appellate or supervisory jurisdiction to hear and determine matters arising from the 1st Respondent pursuant to section 41(2) of the *Political Parties Act* and Article 165 of *the Constitution*, upon a reasoned decision by the 1st Respondent.
89. In *Mwangi & 8 others v Dzuya & 7 others (Petition E004 of 2023)* [2023] KEHC 25041 (KLR) (25 October 2023) (Ruling) the court held as follows: “I have seen section 40 (1) of the Political Parties Tribunal, the same provides that a dispute between members of a political party must first be heard by the Internal Dispute Resolution body of a political party, then if not resolved it be filed at the Political Parties Tribunal for determination and the dissatisfied party then can appeal to the High Court.”
90. Finally the 2nd Respondent submitted that instead of filing the instant appeal under the guise of a Petition, the Petitioners ought to have made an application for joinder as Interested Parties before the 1st Respondent in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-



General, Devolution Empowerment Party and Devolution Empowerment Party if indeed they have any genuine interest or grievance worthy of ventilation, or in the outcome of the Complaint.

91. The 3rd Respondent filed its submissions and stated that the factual background giving rise to the petition set in motion an invitation to delve into whether this court has jurisdiction. They stated that it is their view that the Petitioners clothed the matters before this court as constitutional issues so as to gain access to this court and cited the case of *Samuel Kamau Macharia & Another Vs. Kenya Commercial Bank Limited & Other* (2012) eKLR, the Supreme Court of Kenya had this to say with regards to the source of Court's jurisdiction.
- “ A court's Jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by the law. It cannot expand its jurisdiction through craft or innovation” They further submitted that it is settled in law where the court has no jurisdiction. it is required to down its tools as it was held in *Owners of Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Limited* (1989) eKLR
92. They submitted that it is trite law that where there is a clear procedure for redress of a certain grievance, that prescribed procedure should be strictly followed. They cited the case of *Speaker of National Assembly v James Njenga Karume* [1992] KLR 21 in which the Court of appeal stated that: "Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures."
93. They further argued that Article 169 of *the Constitution* contemplates establishment of tribunals and their jurisdiction.
94. It is argued that the jurisdiction of the Political Parties Disputes Tribunal as provided under Section 40 of the *PPA* includes determination of appeals from decisions of the Registrar under the Act. Further. Section 41 (2) of the *PPA* stipulates thus - " An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to the Court of Appeal and the decision of the Court of Appeal shall be final."
95. They reiterated that flowing from the cited constitutional and statutory provisions, the Petition squarely constitutes issues that fall within the ambit of a specific body the PPDT, therefore, this Honourable Court lacks the requisite jurisdiction to determine the issues in the instant Petition. The only way for the Petitioner to appear before this court is through an appeal under section 41 (2) of the PPA.
96. They urged this Court to be persuaded by the reasoning of Lady Justice Mumbi Ngugi in *Rich Productions Limited vs. Kenya Pipeline Company & Another* [2014] where she pronounced herself as follows: " The reason why *the Constitution* and the law establish different institutions and mechanisms for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. Suffice to say that it cannot exercise such jurisdiction in circumstances where the parties before it seek to avoid the mechanisms and processes provided by law, and convert the issue in dispute into a constitutional issue when it is not"
97. They also argued that the orders being sought by the Petitioner are with respect to issues that are presently before the 1st Respondent pending conclusive determination by dint of Section 40 of the PPA. They reiterated that there are no exceptional circumstances before this Court that would warrant this Court to entertain the present suit.



98. The 4th Respondent and the 1st Interested Party filed joint submissions. They contended that the Petition is essentially an appeal against the ex parte interim orders issued by the Political Parties Disputes Tribunal (the 1st Respondent) on 18th July 2024, in PPDTC/E007/2024, Pamela Gakii Gitobu v. Milton Mugambi Imanyara, the Secretary-General of the Devolution Empowerment Party, and the Devolution Empowerment Party. To the extent that the Petitioners are not parties to the dispute before the 1st Respondent, then the instant Petition is a clear abuse of court process.
99. It is argued that the orders issued by the 1st Respondent were granted to preserve the subject matter of the Complaint filed by Pamela Gakii Gitobu (the 2nd Respondent) pending inter partes hearing of an application for interim orders hence the Petitioners ought to have applied to be joined as Interested Parties in the Complaint before the 1st Respondent. Instead, they filed this appeal disguised as a Petition in an attempt to undermine the proceedings before the 1st Respondent.
100. They also contended that the 4th Respondent is not a proper party in this Petition and is incapable of suing or being sued. Only the political party, as a corporate entity, can be sued in legal disputes. Suing the organs, committees, or branches of a political party is improper, as they are not legal entities and they lack separate legal personality. The Petitioners were therefore engaging this Honourable Court in a futile academic exercise which would involve giving orders against an amorphous entity, which orders would be incapable of execution.
101. They contended that the Petitioners' unilateral joinder of the Interested Parties violates *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* ("the Mutunga Rules"), is illegal and unlawful.
102. They argued that an appeal cannot lie against the ex parte interim orders issued by a court or tribunal in the exercise of judicial discretion. This is because for there to be an appeal, there must be a reasoned Ruling or Judgment made by the court or tribunal whose orders are being appealed against. The 1st Respondent's ex parte interim orders only preserved the subject matter of the dispute and directed that Interested Parties respond to the Application. As such, the 1st Respondent complied with Article 47 of *the Constitution* and section 5 of the Fair Administrative Action when it gave directions to the Interested Parties to file their responses to the 2nd Respondent's application.
103. They also contended that the 1st Respondent herein did not issue final orders which denied the Interested Parties herein, who are the Respondents in the 2nd Respondent's Complaint, from submitting their responses to the Complaint. Instead, the ex parte interim orders only preserved the subject matter of the dispute and directed that Interested Parties respond to the Application.
104. They submitted that the question of validity or otherwise of the proposed special session of the 1st Interested Party's National Delegates Convention is an internal affair of the 1st Interested Party which is incapable of being determined by this Honourable Court. It is also not a question of violation of *the constitution*. Therefore, the decision by the Petitioners to bring this issue for adjudication before this Honourable Court violates the subsidiarity principle and the doctrine of exhaustion.
105. It is argued that the subsidiarity principle and doctrine of exhaustion are fundamental principles of law that matters should be handled by the smallest, lowest, or least centralized competent mechanisms of dispute resolution. They cited the case of *Kabundu & 3 others v Public Service Commission & 6 others; Amani National Congress Party & 10 others (Interested Parties)* (Constitutional Petition E250 of 2020) [2022] KEHC 128 (KLR) where the court held as follows: "The petitioners are members of a political party or parties. If they find difficulties in the manner of administration of the funds within their party or parties, then the law and the very parties provide for internal disputes resolution mechanism which



the petitioners ought to utilise. The petitioners cannot invite the court to manage the internal affairs of political parties.” (Emphasis Ours)

106. The 2nd interested party filed submissions in support of the petition, they argued that the 1st Interested Party has never held any elections in the last five years, then the officials that appear in the 3rd Respondent’s Gazette Notice No. 5805, dated the 9th day of May 2024 were not elected as per the 1st Interested Party’s Constitution or its Nomination and Elections Rules. As such, they were not validly elected to represent the party membership as leaders.
107. The 2nd interested party argued that it follows that the list supplied by the 3rd Respondent vide Gazette Notice No. 5805 of 9 May 2024 was a creation of the Party Leader or NEC and did not follow the dictates of the 1st Interested Party’s Constitution, the *Political Parties Act* and *the Constitution* of Kenya. Therefore, Gazette Notice No. 5805 of 9 May, 2024 was illegal because the process that led to it was illegal.
108. The 2nd interested party submitted that based on the importation of the illegal Gazette Notice No. 5805, of the 9th day of May, 2024 he has the powers conferred by the 1st Interested Party’s Constitution under Article 7.1.4. to convene a Special National Delegates Convention to deliberate on the affairs of the 1st Interested Party and to elect party officials as mandated by *the Constitution*, the *Political Parties Act* and the 1st Interested Party’s Constitution and its Nominations and Elections Rules.
109. The 2nd interested party submitted that the 2nd Respondent, in her complaint to the 1st Respondent, had argued that the 1st Interested Party herein, had bypassed constitutionally mandated procedures in the 2nd Interested Party’s Constitution and therefore, the planned Special National Delegates Convention could exclude or disenfranchise certain members from participating in the decision-making process.
110. He further argued that in the dispute before the 1st Respondent, the 2nd Respondent failed to show that there was a dispute between herself and 2nd Interested Party but relied on spurious accusations to claim that holding of a Special National Delegates Convention would lead to the breakdown of the party.
111. The 2nd interested party contended that the letter sent by the 1st Respondent to the 1st Interested Party cited a wrong provision of the 1st Interested Party’s Constitution and even if there were to be a dispute, then no dispute had arisen because the meeting called upon by the 2nd Interested Party was a Special National Delegates Convention provided for under Article 7.1.4. of the 1st Interested Party’s Constitution and in any event, the 2nd Interested Party was acting within the powers conferred by the 1st Interested Party’s Constitution and as such, one could not claim that there was a dispute to be adjudicated upon.
112. The 2nd interested party argued that the orders issued by the 1st Respondent were unlawful and were an abuse of discretion. As stated in *Giella v Cassman Brown*, an interim order of injunction can only be issued by a court of law if the application before it shows a prima facie case with a probability of success, that the applicant will suffer irreparable injury that cannot be adequately compensated by an award of damages and the court should make the order based on a balance of convenience.
113. The 2nd interested party contended that Article 24(1) of *the Constitution* provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.
114. He argued that Article 24(1) of *the Constitution* is binding on the Respondents. However, the 1st Respondent allowed proceedings before it, and issued orders which curtailed the exercise of the 2nd



- Interested Party's powers to convene the 1st Interested Party's National Delegates Convention by issuing an order stopping the said convention which order is not based on any law and limits the 1st Interested Party' members' right to political choices under Article 38 of *the Constitution* and right to form and join an association under Article 36 of *the Constitution*.
115. Before considering the merits of the Petition, it is important to first determine the question relating to the preliminary issues touching on jurisdiction. This court has already outlined in detail the arguments put forward by the parties over the preliminary issue relating to jurisdiction.
 116. It has been argued by the Respondents that this court lacks jurisdiction to determine the issues raised in the instant petition and that the only way the Petitioners can appear before this court is by way of an Appeal under Section 41 (2) of the *Political Parties Act*.
 117. Under Section 40 of the *Political Parties Act*, the jurisdiction of the Tribunal is limited to among other things the determination of disputes between the members of a Political Party and disputes between a member of a Political Party and the Political Party.
 118. With respect, I am persuaded by the Petitioner that there was no dispute to be adjudicated on by the 1st Respondent because the 2nd Respondent is not a member of the 1st Interested Party.
 119. This court is also persuaded by the arguments of the Petitioner that even if there was to be a dispute, then such a dispute could only arise out of the meeting and that the 1st Respondent's jurisdiction only extends to a dispute that arises from the deliberations made in the meeting held by the 1st Interested Party herein and not anticipated disputes as alleged in the Complaint by the 2nd Respondent.
 120. This court is also satisfied that there is no evidence presented before the 1st Respondent to the effect that the 1st Interested Party held a meeting which led to a dispute that necessitated adjudication by the 1st Respondent.
 121. This court is further convinced that Section 4B of the *Political Parties Act* provides for the expulsion from a party shall only occur where a member contravenes a party's constitution and only if the member is given the right to be heard and even if that is the case, the 4th Respondent by purporting to have expelled the 2nd Interested Party for his position in the 1st Interested Party violated Article 47 (1) and (2) of the Fair Administrative Act which state that such a person must be given reasons where a person's rights and fundamental freedoms are likely to be affected by an administrative action.
 122. It is also apparent that the Petitioner can no longer exercise his political rights courtesy of the actions of the 2nd Respondent, whose actions have been given a legal imprimatur by the 1st Respondent therefore, he has no other recourse other than this Court.
 123. I therefore find that the instant Petition is properly before this court. In the circumstances of this case the doctrine of exhaustion does not apply. Consequently, the preliminary is overruled.
 124. Having determined the preliminary issue, this court now turns its attention to the merits of the Petition. It is apparent that the Respondents concentrated their energy on attacking the jurisdiction of the court giving little attention to the merits of the Petition. This court has already set out the arguments put forward by the parties in support and against the Petition.
 125. Having considered the material placed before this Court and rival submissions plus the authorities cited by both sides, I am convinced that the Petition dated 26th July, 2024 is meritorious. It is allowed giving rise to issuance of the following Orders:-



- (i). A declaration is issued that the proceedings of the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party and, the orders issued therefrom by the 1st Respondent Tribunal on 18 July 2024 are unconstitutional and therefore, null and void.
- (ii). A declaration is issued that Gazette Notice No. 5805 of 9th May 2024 issued by the 3rd Respondent herein is unconstitutional and therefore, null and void.
- (iii). A declaration is issued that the 4th Respondent, being a body established courtesy of Article 91 and the *Political Parties Act*, and funded, partly, by public funds, is under an obligation to adhere to fair administrative action rules as provided for in Article 47 and 232(1) (e) of *the Constitution*.
- (iv). A declaration is issued that the said expulsion of the 2nd Interested Party as the Secretary-General of the 1st Interested Party is unconstitutional and therefore, null and void.
- (v). A declaration is made that the Gazette Notice No. 5805 of 9th May 2024 issued by the 3rd Respondent herein, is unconstitutional and therefore, null and void.
- (vi). A declaration is issued that within the intendment of Articles 47(2) of *the Constitution*, the 1st Respondent is bound to provide written reasons for an order curtailing the exercise of fundamental rights and freedoms and that such an order cannot be issued ex parte.
- (vii). A declaration is issued that within the intendment of Article 10 of *the Constitution* the Respondents are bound by the key national values and principles, to have regard to rule of law, democracy and participation of the people, integrity, transparency and accountability.
- (viii). A declaration is made that within the intendment of Article 24(1), the 1st Respondent cannot limit the exercise of the Petitioners' rights under Article 36 and 38 of *the Constitution* except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom and taking into account all relevant factors.
- ix. A declaration is issued that within the intendment of Article 27(1) of *the Constitution* the Petitioner and indeed, the 2nd Interested Party and other members of the Party have a right to equal protection before the law.
- (x). A declaration is made that within the intendment of Article 47(1) of *the Constitution*, the Respondents are bound to provide administrative action that is lawful, reasonable and procedurally fair.
- (xi). A declaration is made that the ex parte injunction by the 1st Respondent is unconstitutional and therefore, illegal, null and void.
- (xii). An order of judicial review in the form of certiorari do issue from this Court to terminate and quash the proceedings of the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party.
- (xiii). An order of judicial review in the form of certiorari do issue from this Court to quash the orders issued by the 1st Respondent Tribunal in PPDTC/E007/2024 Pamela Gakii Gitobu v Milton



Mugambi Imanyara, the Secretary-General, Devolution Empowerment Party and Devolution Empowerment Party on 18 July 2024.

- (xiv). An order of judicial review in the form of mandamus do issue from this court directing the 2nd Interested Party to proceed and convene a Special National Delegates Convention of the 1st Interested Party with a view of appointing interim national party officials to supervise free and fair elections to elect national party officials within thirty (30) days of this order.
- (xv). A fair order on costs is that each should bear their own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 30TH DAY OF OCTOBER, 2024

J. K. SERGON

JUDGE

In the Presence of :-

C/Assistant – Rutoh

Ombaya for the 4th Respondent & 1st Interested Party

Kembeba for the Petitioner

Ken Ogutu for 2nd Respondent

