



**Republic of Kenya v Speaker, County Assembly of Nakuru & another; Mutai (Exparte Applicant)
(Judicial Review E015 of 2024) [2024] KEHC 16132 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16132 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW E015 OF 2024
JM NANG'EA, J
DECEMBER 19, 2024**

BETWEEN

THE REPUBLIC OF KENYA APPLICANT

AND

THE SPEAKER, COUNTY ASSEMBLY OF NAKURU 1ST RESPONDENT

COUNTY ASSEMBLY OF NAKURU 2ND RESPONDENT

AND

HON WILLIAM MUTAI EXPARTE APPLICANT

RULING

1. The Ex-parte Applicant by Chamber Summons dated 19th September, 2024 sought and was granted leave to apply for Judicial Review Order in the nature of Certiorari to bring into this court and quash the Respondents' decision made on 17th September, 2024 to remove him as the Majority Leader in the 2nd Respondent. Among other court directions, the Ex-parte Applicant was also required to file and serve his substantive application within a period set. The application was subsequently brought by means of a Notice of Motion dated 30/9/2024 seeking the same Judicial Review Order of Certiorari and a further order that the costs of the Motion be borne by the Respondents.
2. The application is supported by the Ex-parte Applicant's affidavit sworn on 30th September, 2024.
3. The Ex-parte Applicant avers that in a meeting of members of the 2nd Respondent belonging to the United Democratic Alliance Party (UDA) held on 19th September, 2024, he was nominated as the Majority Leader in the 2nd Respondent in place of Honourable Alex Lang'at.
4. The decision was formally communicated to the 1st Respondent vide UDA's Majority Whip's letter dated 10th September, 2024. The decision was in turn duly communicated to the 2nd Respondent's



- members on 11th September, 2024 whereupon the members present adopted the resolution. The Ex-parte Applicant then formally assumed his position as the 2nd Respondent's Majority Leader.
5. The Ex-parte Applicant further deposes that the 1st Respondent communicated to members of the 2nd Respondent about receipt of the court order staying the decision ousting Hon. Alex Lang'at. Without according the Ex-parte Applicant an opportunity of being heard, the 1st Respondent allegedly arbitrarily or unilaterally directed that Hon. Alex Lang'at to resume his erstwhile position as UDA's Majority Leader in the 2nd Respondent. The Ex-parte Applicant laments that the decision reeked of bad faith, is illegal and amounts to abuse of power in derogation of the right to fair hearing and administrative action guaranteed in Articles 47 and 50 of *the Constitution* of Kenya 2010, hence the application for the Court's intervention.
 6. The Respondents put in an affidavit in reply through the 1st Respondent who avers that on 11th September, 2024 the 2nd Respondent received a letter dated 10th September 2024 from the Majority Whip conveying a decision to remove the then Majority Leader, the said Honourable Alex Lang'at. On the same date he announced the change to the 2nd Respondent sitting as the whole house which change was effected immediately. Later on 17th September, 2024 the 1st Respondent confirms to have received the contested court order from the Political Parties Tribunal staying the decision of the Majority Party to remove its former Majority Leader. He again communicated the order to the 2nd Respondent's plenary sitting.
 7. The 1st Respondent therefore deposes that he did not himself make any decision capable of being quashed as prayed, adding that he could not disobey a lawful court order. The Respondents suggest that since the Ex-parte Applicant was a party to the PPDT case in which the order was issued, he ought to have challenged the order in those proceedings or lodge appeal to the High Court.
 8. Learned Counsel for the parties filed Written Submissions. Counsel for the applicant underscore the averments in the Applicant's affidavit evidence that the 1st Respondent is act of endorsing the court's order staying his appointment without hearing him is malicious, unfair and an abuse of the power. Citing the decisions in Republic vs The Chief Magistrate's Court at Milimani Law Court; Director of Public Prosecutions & 2 Others (Interested Parties; Ex-parte Applicant; Pravin Galot [2020] eKLR and an Indian Case of Dalmia Jain Airways Limited vs Sukumar Mukherjee AIR 195, Cal. 193, the Ex-parte Applicant contends that the High Court supervisory power over Subordinate Courts ought to be exercised sparingly in appropriate cases. These decisions emphasize that this court's supervisory jurisdiction over the lower courts is not invoked to correct mere errors. Grave dereliction of duty or flagrant abuse of fundamental principles of law and justice should be demonstrated, for this court to intervene. The court is told that in the instant matter such intervention is necessary for the reason that the Political Parties Disputes Tribunal (PPDT) that issued the impugned order occasioned grave injustice to the Ex-parte Applicant.
 9. Counsel for the Ex-parte Applicant make further reference to Judicial Review Proceedings in JR 6 of 2020 (Esther Victor Wanjiku Mahore vs Mary Wambui Githinji & 3 Others (2021) eKLR where the Court of Appeal while making reference to other decided cases took the view that in Judicial Review proceedings, the Court is only concerned with the process leading to the contested decision. The Court asks itself inter alia whether the body making such decision had jurisdiction or whether the principles of natural justice, for instance the right to be heard, was adhered to.
 10. The Ex-parte Applicant also pitches tent on the Ugandan Case of Pastoli vs Kabale District Local Government Canal & Others (2008) 2 EA 300 at pages 300 – 304. That court whose decision would only be persuasive to this court observed that Judicial Review proceedings require the applicant "to



show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.”

11. In *Kenya National Examination Council vs Republic Ex-parte Geoffrey Gathenji & 9 Others Nairobi Civil Appeal No. 266 of 1996* further relied upon by the Ex-parte Applicant, it was observed that Judicial Review Orders like Certiorari are only available against public bodies. In the instant case it is contended that the 1st Respondent acted ultra vires and thus perpetrated an illegality by causing removal of the Ex-parte Applicant from his position unheard. The Ex-parte Applicant’s advocates buttress their submissions by alluding to the case of Republic vs Minister for Lands & Another Ex-parte Catherine Mateta Musinga (2021) eKLR which it was found that;-

“Where a party has not been heard, a decision made is in breach of the rules of natural justice and is null and void ab initio”.

12. The Respondents’ advocates submit in reply inter alia that their clients rightly enforced the PPDT order in furtherance of the rule of law. It is contended that by obeying a lawful order, the Respondents did not infringe the Ex-parte Applicant’s right to fair administrative action guaranteed under Article 47 of *the Constitution* and the *Fair Administrative Action Act*. Reliance is placed on the South Africa’s Constitution Court’s Case pitting the President of the Republic of South Africa and South African Rugby Football Union (the SARFU case) 2000. The Court observed in that case that courts only interfere if the right alleged to have been infringed is an administrative one relating to public policy and not legislative or otherwise.
13. The above legal position is reiterated in the local case of Garissa county Government vs National Land Commission & 3 Others (2016) eKLR also cited and relied upon by the Respondents’ Legal Counsel. Counsel submit that disobeying court orders renders the culprit liable to punishment for contempt of court and therefore everyone is duty bound to obey lawful court orders to enhance the authority and dignity of the court (see Econet Wireless (Kenya) Ltd vs Minister for Information & Communication of Kenya & Another (2005) KLR 828 the Respondents quote as underscoring the essence of obeying court orders).
14. The Respondents contend that the application is sub judice in terms of the provisions of the *Civil Procedure Act* and Rules made thereunder given that the same dispute is before the PPDT. It is also pointed out that the Ex-parte Applicant ought to have exhausted all the dispute resolution mechanisms including the PPDT forum before invoking this court’s jurisdiction by dint of Section 9(2) of the *Fair Administrative Action Act*.
15. The court is in the premises urged to find that the application is frivolous and is for striking for not disclosing a reasonable cause of action.
16. Having read through the rival affidavit evidence against the application and submissions proffered, the main issue arising for determination is whether the Respondents unlawfully failed to accord the Ex-parte Applicant the right of being heard before the PPDT’s order was enforced, in violation of the principles of natural justice. One of these principles decrees that one should not be condemned or made to suffer prejudice without being offered a reasonable chance of hearing. Indeed this is one of the most sacrosanct rights under *the Constitution*’s Bill of Rights. Article 25(c) of *the Constitution* recognizes the right to fair hearing as one of only four rights that cannot be abrogated or derogated from under any circumstances. Article 47 of *the Constitution* embodies the right to fair administrative action that must be accorded by public bodies before a drastic decision is taken against a concerned individual.



17. The Ex-parte Applicant's grievance is that the Respondents implemented the PPDT order staying his appointment as the 2nd Respondent's Majority Leader. With respect to the Ex-parte Applicant, this action by the Respondents cannot, by any stretch of the imagination, be characterized as illegal, irrational and/or procedurally improper as held in the Ugandan Pastoli Case supra. Every law abiding person including corporate bodies has the duty to obey court orders in the interests of the rule of law. As suggested by the Respondents, the Ex-parte Applicant was also obliged to exhaust the avenue provided by the PPDT before seeking redress in this court. This is in line with the Doctrine of Exhaustion of remedies before escalation. In *Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others* (2015) eKLR the Court of Appeal captured the spirit of this doctrine that requires that where there are mechanisms for redress of complaints at lower levels the fora should be exhausted first.
18. The respondents cannot in the circumstances be faulted for obeying a lawful court order. The Ex-parte Applicant's remedies lie in the PPDT and, if dissatisfied with its decision, he could approach this court as appropriate. This court accordingly finds and holds that the Respondents did not infringe the Ex-parte Applicant's right to fair hearing and/or fair administrative action under Articles 47 and 50 of *the Constitution*.
19. In the end, the application is dismissed.
20. Regarding costs, both sides correctly submit that in law costs generally follow the event unless for reasons to be stated, the court otherwise directs. It is noted that both the Ex-parte Applicant and the 1st Respondent are members of the 2nd Respondent. The 1st Respondent's office and the 2nd Respondent are public bodies. Owing to these special circumstances the parties will bear their own costs of the application.
21. Ruling accordingly.

J. M. NANG'EA , JUDGE.

RULING DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER, 2024

in the presence of:

The applicant's advocate, Mr. Kimiti

The respondents' advocate, Ms Karungu

Court Assistant, Lepikas

J. M. NANG'EA, JUDGE

