



**Mucheke v Secretary General, United Democratic Alliance & another; Wambui (Interested Party)  
(Constitutional Petition E049 of 2023) [2023] KEHC 25920 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25920 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CONSTITUTIONAL PETITION E049 OF 2023  
PM MULWA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**HON. GODFREY WAIYAKI MUCHEKE ..... PETITIONER**

**AND**

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

**SPEAKER, KIAMBU COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HON. PAUL MACHARIA WAMBUI ..... INTERESTED PARTY**

**RULING**

1. The petitioner filed this petition on 15<sup>th</sup> August 2023 seeking the following prayers
  - i. A declaration that the removal of the Petitioner from the office of Leader of majority of Kiambu County is illegal and unconstitutional on account of breach of Article 47 (1) and 50 (1) of *the Constitution*.
  - ii. An Order of Certiorari be issued to quash the decision by the Respondents contained in a letter dated 11 August 2023 to appoint the interested party herein as the Leader of majority of Kiambu County Assembly.
  - iii. An Order reinstating the petitioner to the position of the Leader of majority of Kiambu County Assembly.
  - iv. A permanent injunction be issued to restrain the respondents from removing the Petitioner from the position of Leader of majority of Kiambu County Assembly without following due process.



- v. Cost of the Petition
2. A Notice of Motion, dated the same as the petition, was concurrently filed with the petition on 15<sup>th</sup> August 2023. The applicant/petitioner sought for the following orders:
  - i. That the application be certified urgent and be heard ex-parte in the first instance during the court's vacation period.
  - ii. That pending the hearing and determination of this application inter parties, this Honourable Court issues an order suspending the decision of the respondents of removing Hon. Godfrey Waiyaki Mucheke as the Leader of Majority of the County Assembly of Kiambu.
  - iii. That Pending the hearing and determination of this application inter parties, this Honourable Court issues an order barring Hon. Paul Macharia Wambui from holding the office of Leader of Majority of the County Assembly of Kiambu.
  - iv. Inter parties
    - i. That pending the hearing and determination of the Petition, this Honourable Court issues an order suspending the decision of the respondents of removing Hon. Godfrey Waiyaki Mucheke as the Leader of Majority of the County Assembly of Kiambu.
    - ii. That Pending the hearing and determination of the complaint, this Honourable Court issues an order barring Hon. Paul Macharia Wambui from holding the office of Leader of Majority of the County Assembly of Kiambu.
3. The Notice of Motion is supported by the affidavit of the Petitioner which substantially replicates the contents of the Petition.
4. Upon service of the petition on the Respondents and the Interested Party, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 29<sup>th</sup> August 2023. The preliminary objection is against the entire suit on the ground that this Honourable court has no jurisdiction in view of section 40 (1) (2) of the [Political Parties Act](#) and section 9 (2) of the Fair Administrative Actions Act.
5. The Interested Party filed a Notice of Motion dated 29<sup>th</sup> August 2023 seeking for the following orders;
  - i. That pending the hearing and determination of the application herein the Honorable Court be pleased to set aside the conservatory orders issued ex parte on 16<sup>th</sup> August 2023.
  - ii. That the Honorable Court be pleased to strike out the Petition herein dated 15<sup>th</sup> August 2023 and all attendant applications.
  - iii. That costs of and incidental to this application be provided for.
6. The aforesaid motion is supported by the affidavit of Paul Macharia Wambui sworn on the even date.
7. Directions were given on 31<sup>st</sup> August 2023, and the court ordered that the three applications be canvassed together through written submissions.
8. Parties filed and exchanged their written submissions. The Petitioner's submissions are dated 11<sup>th</sup> September 2023. In brief the petitioner submitted that Articles 22, 50 and 165 (3) of [the Constitution](#) vest in the High Court the jurisdiction over matters concerned with alleged breach, denial, violation or threat of any right and fundamental freedom, and the power to grant relief. In supporting this proposition, the Petitioner cited several cases including Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd. (1989), Apex Steel Limited vs Elijah Ongwengi - where Justice Odunga cited with



- approval the case of Uganda General Trading Co. Ltd vs N T Patel Kampala HCCC No. 351 of 1964 [1965] EA 149 and Ngunjiri Wambugu v Inspector General of Police, & 2 others [2019] eKLR.
9. With regard to conservatory orders, the petitioner asserts that the application meets the grant of conservatory orders as set out in the case of Board of Management of Uhuru Secondary School vs City County Director of Education and 2 Others (2015) eKLR.
  10. It was the 1<sup>st</sup> Respondent's contention that the present dispute being a party dispute, it is subject to the jurisdiction of the Political Parties Disputes Tribunal in the first instance, by virtue of section 39 and 40 of the *Political Parties Act*. Therefore, they urge this court not to be drawn into the internal political affairs of a political party by entertaining the dispute.
  11. Counsel cited a number of decisions to buttress his arguments and show that the court lacked jurisdiction - Adan Ali Wako Vs. Nura Diba Billa and 2 others (2017) eKLR and Asura Ochieng Vs ODM (2011) eKLR.
  12. It was also submitted that the petitioner's suit is bad in law as it offends the doctrine of exhaustion because of the statutory provisions in *Political Parties Act*. In this regard, the 1<sup>st</sup> Respondent placed reliance on the case of William Odhiambo Ramogi & 3 others v Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested Parties) (2020) Eklr.
  13. Counsel therefore urged the court to down its tools citing the precedent setting case of The Owners of Motor Vessel "Lillian S" vs Caltex Oil Kenya Ltd [1989] KLR.
  14. On whether the Petitioner is entitled to the reliefs sought, counsel submitted that the removal or replacement of Leader of Majority was within the leadership of the County Assembly and the political parties and that resolution was a political decision governed by County Assembly Standing Orders which are internal rules governing conduct of internal processes and courts should exercise utmost restraint in such matters since the jurisdiction of the court is hampered/curtailed by existence of Alternative Disputes Resolution Mechanisms under the *Political Parties Act*. He thus prayed for dismissal of the petition.
  15. The Interested Party submitted that the preliminary objection by the 1<sup>st</sup> Respondent is merited and ought to be allowed. He reiterated that this Court has no jurisdiction to determine the instant Petition as it emanates from a political dispute. He relied on the Owners of Motor Vessel "Lillian S" vs Caltex Oil Kenya (supra).
  16. He further argued that under section 40 (1) of the *Political Parties Act* and section 9 (2) of the Fair Administrative Actions Act, disputes ought to be resolved through internal party mechanism and if not, they ought to be referred to Political Parties Disputes Tribunal (PPDT). To buttress this argument, he relied on Geoffrey Muthinia & Another vs Samuel Muguna Henry & 1756 others (2015) eKLR.
  17. He further submitted that the doctrine of exhaustion must be given preference and allow the respective political parties to sort out their own issues. According to him the Petitioner seeks to use the Court to avert the doctrine of exhaustion. He cited the case of William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR.
  18. On the conservatory orders issued, counsel submitted that the Petitioner did not disclose all material facts of the case. Counsel stated that the applicant was only under the obligation to disclose matters that were material to the granting of the orders sought.
  19. I have considered the applications together with the preliminary objections and rival affidavits. I have also considered the submissions by learned counsel for the parties.



20. I shall first deal with the issue of the Preliminary Objection which was raised with respect to the jurisdiction of the court.
21. In the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors [1969] EA 696 the court held that: -

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration ...”
22. In the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989], it was held that;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law draws tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction... Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
23. The Respondents and the Interested Party have urged this court to hold that the question of the removal of a Majority Party Leader in a County is a political process and an internal matter which lay within the mandate of the Political Parties Dispute Tribunal.
24. This court has been called upon to find that it has no jurisdiction to deal with the matter before it.
25. Upon perusal of the pleadings filed in court by the various parties herein, submissions by counsels and authorities cited, in my view, the key issue for my determination is on the the removal of the Petitioner as leader of majority and election of the Interested Party to replace him.
26. The jurisdiction of the High Court under Article 165(3) of *the Constitution* is to inquire into the legality of any act done or said to be done pursuant to *the Constitution* or under the law.
27. Section 39 of The *Political Parties Act* establishes the Political Parties Tribunal which in turn has the following powers under Section 40(1) of the Act: -
  - 1.) The Tribunal shall determine –
    - a.) disputes between the members of a Political Party.
    - b.) disputes between a member of a political party and a political party.
    - c.) disputes between Political Parties
    - d.) disputes between an independent candidate and a political party.
    - e.) disputes between coalition parties, and
    - f.) appeals from decisions of the Registrar of the Political Parties under this Act.



- 2.) Notwithstanding sub-section (1), the Tribunal shall not hear or determine a dispute under paragraphs (a),(b),(c) or unless the dispute has been heard and determined by the Internal Political Party Dispute Resolution Mechanism.
28. The reason behind the establishment of the Political Parties Tribunal was better captured in the case of Stephen Asura Ochieng vs Orange Democratic Movement Petition No.289 of 2011 where the court said:
- “The intention behind the establishment of the Political Parties Tribunal was to create a specialized body for the resolution of inter-party and intra-party disputes. The creation of the Tribunal was in line with the provisions of Article 159 of *the Constitution* which provides for the exercise of judicial power by Courts and Tribunals established under *the Constitution* and for the use of alternative dispute resolution mechanisms ...”
29. The position of leader of majority and minority in the County Assembly is created by section 10(1) of the County Government Act, 2012 which provides that each Assembly shall have a leader of the Majority Party and one of Minority Party. These leaders are elected by members of their parties in the Assembly in accordance with standing orders of the Assembly.
30. Section 10 of the Act further provides for the formation of coalitions either pre or post elections and in both cases, coalition agreements must be deposited with the Registrar. The section is also clear that coalition agreements must set out matters specified in the 3<sup>rd</sup> Schedule to the Act. One of the matters coalition agreements must include, according to Sections 2(k) and (m), is Dispute Resolution Mechanism and Procedures, and the procedure for appeal to the Tribunal respectively.
31. In this case, the removal of the Petitioner was done by members of his party under the Standing Orders of the Assembly which is a political process. Once elected leader of majority, the Petitioner was bestowed with a political trust by his own party members and if they thought he had lost that trust, they could exercise their right under standing orders and replace him. This is an internal process that is permitted by rules of procedure within the County Assembly. Therefore, it is my understanding that the Petitioner ought to have first activated the internal dispute resolution mechanism and if unhappy with the outcome, there is an avenue for appeal.
32. That being the case in this petition, the question is whether this court should intervene, hear this petition and stop the removal of the Petitioner from his position as Leader of Majority in the Assembly and the election of the Interested Party into that position. It is true *the Constitution* protects the Petitioner’s political rights under the Bill of Rights. It is also true that those rights are enforceable under Article 22 of *the Constitution* and the Petitioner has a right to access the court under Article 22, while Article 258 allows the Petitioner to approach the court when he thinks there is a threat to *the Constitution*.
33. However, the court is also alive to the fact that the same Constitution has created institutions which must be allowed to function and carry out their mandate, including the Political Parties Dispute Tribunal. The removal of the petitioner being a political process where members of his own party in the Assembly expressed their will to replace him, the Political Parties Disputes Tribunal was established to deal with such disputes as the Petitioner’s.
34. The Political Parties Disputes Tribunal would not function if courts were to assume jurisdiction and deal with matters meant for it. If that were to be the case, Article 159(2)(c) of *the Constitution* would not have any relevance in this country regarding alternative disputes resolution.



35. For these reasons, it is my considered view that this court lacks the jurisdiction in this matter as the same falls within the mandate of the Political Parties Dispute Tribunal. Therefore, the Preliminary Objection by the 1<sup>st</sup> Respondent succeeds and is hereby allowed. The petition herein is hereby struck out. Each party will bear their own costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 29<sup>TH</sup> DAY OF NOVEMBER 2023.**

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**P. MULWA**

**JUDGE**

In the presence of:

Mr. Ondago h/b for Mr. Peter Wanyama - for the Petitioner

Mr. Sanare - for the 1st Respondent

N/A - by the 2nd Respondent

Mr. Adrian Kamotho - for the Interested Party

