



**Maina v Registrar of Political Parties & another; Maendeleo Chap Chap (Interested Party)
(Civil Appeal E303 of 2022) [2022] KEHC 11269 (KLR) (Civ) (30 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11269 (KLR)

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

CIVIL

CIVIL APPEAL E303 OF 2022

JK SERGON, J

MAY 30, 2022

BETWEEN

MARTIN MUGO MAINA APPELLANT

AND

REGISTRAR OF POLITICAL PARTIES 1ST RESPONDENT

AZIMIO LA UMOJA ONE KENYA COALITION PARTY 2ND RESPONDENT

AND

MAENDELEO CHAP CHAP INTERESTED PARTY

(Being an appeal from the judgment and decree of the Political Parties Dispute Tribunal at Nairobi A. Hon. Dema Nungo(Chairperson); Hon. Dr. Kenneth Mutuma (Member); Flora M. Machanga-Mutweta(Member) and Hon. Ruth wairimu Muboro (Member) dated signed and delivered on 10th May 2022 in Nairobi A PPDT no. E060 of 2022 as consolidated with Nairobi B PPDT no. E016 of 2022)

JUDGMENT

1. On May 10, 2022, the Political Parties Disputes Tribunal hereinafter referred to as the “Tribunal” rendered its ruling whereof it struck out the Appellant’s consolidated complaints nos PPDT Nairobi E060 of 2022 and PPDT Nairobi no E016 of 2022, on the basis that the Tribunal had no jurisdiction to entertain the same.
2. Martin Mugo Maina, the Appellant herein being aggrieved preferred this appeal and put forward the following grounds:



- i. The honourable tribunal erred in law and in fact in finding that it lacks jurisdiction to hear and determine the complaints.
- ii. The honourable tribunal erred in law and in fact in finding that the complainants ought to have pursued internal disputes resolution mechanism (DRM) under the coalition agreement (for the complainant in E060 of 2022) and the political party's IDRМ (for complainant no E016 of 2022).
- iii. The honourable tribunal erred in law and in fact in failing to make a finding on the question of the legality of the coalition agreement in so far as it integrated Maendeleo Chap Chap as a constituent of the coalition political party which issue was the focal point of the dispute.
- iv. The honourable tribunal misdirected itself in finding that the complainant having not attempted the IDRМ had not demonstrated the circumstances set out in the case of John Mworira Nchebere and others vs The national Chairman Orange Democratic Movement & Others (Nrb PPDT complaint no E002 of 2022).
- v. The honourable tribunal exhibited extreme bias against the appellant and thus arriving at an erroneous and improper judgment with glaring contradictions and failed to properly determine the actual issues in controversy.
- vi. The honourable tribunal misdirected itself in finding that it was difficult to believe that the Maendeleo Chap Chap would have proceeded to blindly execute the agreement of such magnitude when no copy of such agreement was produced before it; to demonstrate that indeed the Maendeleo Chap Chap designated signatories had executed the same.
- vii. The honourable tribunal erred in law and in fact in failing to take into consideration the political rights as well as the rights of association of a member of political party in circumstances where his/her own political party is illegally included as a constituent member of a coalition political party.
- viii. The honourable tribunal was extremely biased against the appellant and disregarded the issues raised by the complainant to with that;
 - a. The inclusion of Maendeleo Chap Chap in the coalition agreement is null and void for want of procedural and substantive statutory compliance.
 - b. The existence of any coalition agreement was disputed in entirety and that the complainant could not have in the circumstances subjected the complaint to the internal dispute resolution mechanism under the agreement whose contents were unknown.
 - c. The complainant submitted that if any such coalition agreement existed then the same was not signed by authorized designate signatories i.e chairperson, secretary general and organising secretary as per the party's constitution. The same was reaffirmed by 1st respondent (Registrar of Political parties) that the Maendeleo Chap Chap had vacancies in its office in the position of the chairman and organizing secretary.
 - d. As submitted by RPP the said coalition agreement was executed by the secretary general, the deputy organizing secretary and the party leader and not the said authorized designate signatories. However, there was no resolution by the Maendeleo Chap Chap party's NEC to authorize such persons to sign the said agreement in



circumstances that there was vacancy in the position of the chair person and the organizing secretary.

- e. The complainant submitted that having disputed the existence of any coalition agreement none was produced before the honourable tribunal by either of the respondents. As such even the honourable members of the tribunal did not have the benefit of perusing the alleged coalition agreement to enable to make a determination if indeed Maendeleo Chap Chap had executed the same and if so, by which signatories.
 - f. Only two pages of the alleged agreement was produced before the honourable tribunal without execution pages (to demonstrate that indeed Maendeleo Chap Chap had signed the same) thus and thus unreliable to demonstrate existence of a signed coalition agreement by Maendeleo Chap Chap.
 - ix. The honourable tribunal thus erred in law and in fact in considering irrelevant information and disregarding matters presented before it by the complainants thus arriving at a wrong decision.
3. When this appeal came up for hearing, this court gave directions to have the same disposed of by written submissions. At the time of writing this judgment the 1st Respondent was the only party who had filed her submissions. I have re-evaluated the case that was before the Tribunal. I have further considered the written submissions plus the authorities filed by the 1st Respondent. It is important at this stage to set out the background of this appeal before determining the appeal.
 4. Maendeleo Chap Chap, the Interested Party in this appeal, was the complainant in Nairobi A PPDT complaint no E060 of 2022 while Martin Mugo Maina, the Appellant herein was the complainant in Nairobi BE016 of 2022. In both complaints the complainants sought for similar orders vizly:
 - i. An order compelling the Registrar of political parties (the 1st Respondent herein) to delist the Interested parties as a member of Azimio la Umoja One Kenya Coalition party, the 2nd Respondent.
 - ii. An order do issue quashing the contents of gazette notice no 4442 of April 14, 2022 in so far as it includes the petitioner as a constituent political party of the 2nd Respondent.
 - iii. An order of permanent injunction to restrain the 2nd Respondent from purporting to represent to members of the public or the IEBC or any person that the Azimio Coalition agreement was lawfully entered between the Interested Party and the 2nd Respondent.
 - iv. Costs of the petition.
 5. The Tribunal gave orders to have the two complaints to be consolidated and heard together. In complaint no. E060 of 2022, Maendeleo Chap Chap disputed its inclusion as part of the 2nd Respondent vide a letter dated April 27, 2022 alleging *inter alia* lack of involvement of its Special National Delegates conference and that form PP-19 was signed by unauthorized persons under its constitution.
 6. The 1st Respondent vide the letter dated April 29, 2022 declined to entertain the withdrawal request made by Maendeleo Chap Chap, the Interested Party from the 2nd Respondent coalition political party stating *inter alia* that the 1st Respondent had no mandate to withdraw the Interested Party since the 2nd Respondent is already registered under Section 7(7) of the [political parties Act, 2022](#).



7. The Interested Party was consequently prompted to appeal against the 1st Respondent's refusal to the Tribunal arguing that despite clear breach of its constitution, the 1st Respondent declined to delete its name as a member of the 2nd Respondent.
8. The Interested Party further stated that it was unaware of the terms of the coalition agreement and thus it is unable to initiate the process of withdrawal. The Interested Party accused the 1st Respondent of accepting the coalition agreement before confirming that it deposited its members' resolutions. The Interested Party also stated that the Tribunal had jurisdiction to determine the dispute under Section 40(1) (f) of the [Political Parties Act](#).
9. In complaint in Nairobi B PPDT no E016 of 2022, the Appellant stated that the inclusion of Maendeleo Chap Chap (Interested Party) in the coalition agreement is null and void for want of procedural and statutory compliance. The Appellant pointed out that the 1st Respondent should have confirmed that the Interested Party's NEC submitted a resolution duly signed by authorized officials of the party.
10. The Appellant stated that he could not have exhausted the party's IDRM due to exceptional circumstances as the prayers sought could not have been granted by anybody other than the Tribunal.
11. The Appellant challenged the existence of the coalition agreement hence he did not know the procedure stated in the agreement as to which forum to approach. It is the Appellant's case that they want to walk out of the coalition agreement in peace and that there was no basis of refusing them to exit.
12. The Registrar of Political parties (1st Respondent) argued before the Tribunal that there existed a unique relationship between the Interested Party and the 2nd Respondent by operation of Section 12 and 7 of the [Political Parties Act](#) as read together with the Third schedule to the [Political Parties Act](#), that the Interested Party is a party to the 2nd Respondent and that if aggrieved by entry into the coalition agreement, they ought to employ the IDRM mechanism in the coalition agreement.
13. It is the submission of the 1st Respondent that the Appellant and the Interested Party failed to attempt any IDRM contrary to Section 40(2) of the [Political Parties Act](#). The 1st Respondent adopted her submissions in complaint no. E060 of 2022 in response to complaint no. E016 of 2022 and further argued that the Appellant ought to have gone to his party to report its complaint and to have his party representing him in matters concerning the coalition agreement and not to directly approach the Tribunal.
14. The 2nd Respondent is of the submission that the Interested Party was bound by the provisions of the coalition agreement specifically Article 22 which gave the procedure to be followed when a party seeks to withdraw from the coalition, that is the IDRM set out under the coalition agreement.
15. After considering the rival arguments the Tribunal came to the conclusion that it had no jurisdiction to entertain the complaints and proceeded to order for the striking out of the same hence this appeal.
16. Though the Appellant has put forward a total of 9 grounds of appeal, one main ground disposes of the entire appeal that is whether the complaint was competently before the Tribunal and whether the Tribunal had jurisdiction to entertain the complaints.
17. It is the submission of the Appellant and the Interested Party that the Tribunal erred in concluding that it had no jurisdiction to hear and determine the complaints. It is also the Appellant's submission that the Tribunal erred when it held that the Appellant and the Interested Party ought to have pursued the IDRM under the coalition agreement in complaint no. E060/2022 and the political party's IDRM in complaint no. E016/2022.



18. The Respondents on the other hand opposed the appeal on various fronts. First the Respondent pointed out that the nature of complaint before the Tribunal was that in respect of joinder and withdrawal from the Azimio la Umoja One Kenya Alliance Coalition.
19. I have carefully re-evaluated the case that was before the Tribunal and it is clear that the substantive issue in dispute is whether the Interested Party should be allowed to withdraw as a member of the 2nd Respondent. It is not in dispute that the Maendeleo Chap Chap joined the 2nd Respondent as a coalition member. The Appellant has also questioned the procedure used to have the Interested Party joining the 2nd Respondent's coalition as a member.
20. It is alleged that some unauthorised officials executed documents binding the Interested Party as a party of the 2nd Respondent. It is clear from the material placed before the Tribunal and before this court that the issues raised by the Appellant are in respect to failures and inactions by his own political party, the Interested Party herein.
21. With respect, I agree with the 1st Respondent that such issues fall squarely within the ambit of his Political Party's Internal Dispute Resolution (IDRM). It is also apparent that the grievance by the Interested Party revolve around its own procedures for joining and leaving the coalition which issues face within the coalition's IDRM as specified in the coalition agreement.
22. Under the provision of Section 40 of the *Political Parties Act* as read with the *Political Parties Act (Amendment) Act*, it is mandatory for coalition political parties to have IDRM's which mechanism is the first port of call before a party can approach the Tribunal. It is apparent that the Appellant did not demonstrate to the Tribunal that he attempted to obtain information pertaining the coalition agreement under Article 35 of the *Constitution* of Kenya, 2010 as read with the *Access to Information Act*, therefore it cannot lie in the mouth of the Appellant and the Interested Party to claim that they were not aware of the contents of the coalition agreement.
23. With regard to the challenge of the validity or otherwise of the coalition agreement, I am convinced that those are the issues which ought to be resolved within the Coalition Internal Dispute Resolution Mechanism and the Interested Party's IDRM. In the circumstances of this appeal, it is clear that The Tribunal, had no jurisdiction to entertain the complaints under Section 40 (2) of the *Political Parties Act*, therefore the Tribunal rightly ordered the striking out of the complaints.
24. In the end, I find no merit in this appeal. The same is ordered dismissed. In the circumstances of this appeal, I am of the humble view that a fair order on costs is to order which I hereby do that each party should bear its own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF MAY, 2022.

J K SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondents

..... for the Interested Party

