



**Jubilee Party & 2 others v Ng'ang'a; Azimio La Umoja One Kenya Alliance (Interested Party) (Civil Appeal E003 of 2022) [2022] KEHC 3342 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 3342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E003 OF 2022  
WM MUSYOKA, J  
MAY 27, 2022**

**BETWEEN**

**JUBILEE PARTY ..... 1<sup>ST</sup> APPELLANT**

**CHAIRMAN, JUBILEE PARTY ..... 2<sup>ND</sup> APPELLANT**

**CHAIRMAN, ELECTIONS BOARD, JUBILEE PARTY ..... 3<sup>RD</sup> APPELLANT**

**AND**

**MARK NDUNGU NG'ANG'A ..... RESPONDENT**

**AND**

**AZIMIO LA UMOJA ONE KENYA ALLIANCE ..... INTERESTED PARTY**

*(n appeal from a decision of the Political Parties Disputes Tribunal, sitting at Kakamega, in PPDT Complaint No. E042 OF 2022, of 16th May 2022)*

**JUDGMENT**

1. The complaint before the Political Parties Disputes Tribunal had been brought by the respondent, who was a member of the 1<sup>st</sup> appellant, arguing that the 1<sup>st</sup> appellant had contacted him, and other eligible contestants, informing them that the 1<sup>st</sup> appellant would issue party nomination certificates on Friday April 22, 2022, at its headquarters. On that April 22, 2022, according to the respondent, the 2<sup>nd</sup> appellant intimated to him, categorically, that there would be no nomination for the Member of National Assembly for Makadara Constituency, Nairobi County, on account of a political arrangement, between the 1<sup>st</sup> appellant and the interested party, to zone Makadara Constituency in favour of the Orange Democratic Movement Party. He was aggrieved hence the complaint placed before the Political Parties Disputes Tribunal.



2. In his complaint, he raised a number of issues, but he sought two principal prayers: that the 1<sup>st</sup> appellant and the parties forming the coalition under the interested party, be restrained from submitting the nominee and candidate for the position of Member of National Assembly for Makadara Constituency Nairobi County to the Independent Electoral and Boundaries Commission (IEBC) under the zoning arrangement; and that the appellants be ordered to nominate the respondent as sole candidate for the 1<sup>st</sup> appellant for Member of National Assembly for Makadara Constituency Nairobi County.
3. The case that the respondent presented before the Political Parties Disputes Tribunal was that when the 1<sup>st</sup> appellant received his payment for nomination fees, he expected that he would participate in a nomination exercise. He was invited, on April 16, 2022, by text message, to a meeting that was to be held at Windsor Golf Hotel & Country Club on April 18, 2022. He attended the meeting, and found that the appellants had appointed panels of three, to meet aspirants from each of the constituencies in Nairobi County. For Makadara, there were only two candidates, he and a Njuguna Mwangi. Njuguna Mwangi withdrew, so the respondent was left as the sole candidate. According to the respondent the meeting ended with a resolution that he and other eligible aspirants would be issued with party nomination certificates on April 22, 2022, at the headquarters of the 1<sup>st</sup> appellant. On April 22, 2022, instead of being issued with a party nomination certificate, the respondent was informed by the 2<sup>nd</sup> respondent that there would be no nomination for Member of National Assembly for Makadara Constituency Nairobi County as that seat had been reserved for another party among those in the coalition under the interested party. He asserted that he had not been consulted, had incurred great expense and his rights had been violated.
4. The case for the appellants was that it was true that the seat for Member of National Assembly for Makadara Constituency Nairobi County had been reserved or zoned off in favour of another political party, following an arrangement under the interested party. The appellants also substantially confirmed the case by the respondent, and that they only argued that the respondent did not present the case to them for internal resolution by the party, and, therefore, the Political Parties Disputes Tribunal lacked jurisdiction.
5. The Political Parties Disputes Tribunal framed two issues, which they went on to determine. One, whether the Political Parties Disputes Tribunal had jurisdiction and, two, which orders were available for the Political Parties Disputes Tribunal to make. on jurisdiction, the Political Parties Disputes Tribunal found that, under section 40(2) of the *Political Parties Act*, No. 11 of 2011, the Political Parties Disputes Tribunal would have jurisdiction to entertain an appeal under section 40(1), so long there was some evidence that there was an attempt by the complainant to have the disputed subject to the internal political party dispute, and the respondent had provided evidence that he had made such an attempt, and, therefore, the Political Parties Disputes Tribunal had jurisdiction. On the second limb, the question of the orders that it ought to make, the Political Parties Disputes Tribunal considered that the respondent had indeed paid nomination fees, and had an expectation that a nomination process would be carried out by the 1<sup>st</sup> appellant. It also considered that the parties to the complaint had not presented any documentary material to demonstrate the nature of the relationship between them and the interested party, to warrant the making of the zoning arrangements that had the effect of denying the respondent nomination. The Political Parties Disputes Tribunal also considered that the appellants had conceded that a ticket was supposed to be issued to the respondent, except for the zoning factor. Eventually, the Political Parties Disputes Tribunal decided that the respondent was entitled to the nomination certificate he was seeking, and ordered the appellants to issue him with one.
6. After the Political Parties Disputes Tribunal delivered its decision on May 16, 2022, the appellants were aggrieved, and they applied for review of the said decision, vide a Motion, dated May 17, 2022.



Their case was that the appellants had decided that no nomination would be conducted In Makadara, on account of the zoning arrangement, and, therefore, the 1<sup>st</sup> appellant did not nominate. It was asserted that the respondent had also not demonstrated that it was the best aspirant for Makadara for the 1<sup>st</sup> appellant. It was submitted that since no nomination had been conducted, the Political Parties Disputes Tribunal should have directed the 1<sup>st</sup> appellant to conduct a party nomination for Makadara. It was stated that the approach by the 1<sup>st</sup> appellant was that the party was to carry out indirect nomination, through consensus, where the parties were to agree among themselves. It was stated that that was not done, because of the zoning agreement. It was asserted that the Political Parties Disputes Tribunal exercised a jurisdiction it did not have, when it directed that a certificate be issued to the respondent. They sought that the order be reviewed to allow the appellants conduct a nomination.

7. In response, the respondent submitted that an indirect nomination exercise was conducted at the meeting at Windsor on April 18, 2022. It said that while there the respondent met a fellow aspirant for the nomination, Njuguna Mwangi , they talked and reached a consensus, that Njuguna Mwangi would abandon his quest for Member of National Assembly, and go for Member of County Assembly instead. It was asserted that the nomination was concluded, when the respondent was left as the sole aspirant. It was submitted that the appellants had not contested the nomination issue previously and it was not an issue. It was submitted that the appellants had conceded that the respondent was a member of their party, he had applied for the ticket, and they chose consensus and interviews. It was argued that the direction that a certificate be issued was within the mandate of the Political Parties Disputes Tribunal. It was further argued that the appellant did not contest that a nomination was done, and they had no complaint on the suitability of the respondent.

8. It is not clear to me, from the typed proceeding availed to me, on the content of the ruling the subject of the appeal, but it appears to be that portion under “Wanjiku” at page 18, which reads:

“The scope of review is limited to; (a) discovery of new and important matter or evidence which after due diligence was not within the knowledge of the applicant or could not be produced at time when decision was made.

(b) to correct an apparent error on the face of decision.

There is no new information availed before this tribunal that was not canvassed  
not part of hearing.

Application is therefore dismissed with costs.

Dated this May 18, 2022

Presiding Member PPDT

Signed”

9. It is the decision of May 18, 2022, that prompted the filing of the appeal herein. The grounds of appeal are that the Political Parties Disputes Tribunal erred in declining to review its order, in finding that review could not be founded only on error on face of the record, in restricting its finding only on the ground of discovery of new evidence, in finding that there was no error apparent on the face of the record, and in failing to find that it had nominated the respondent unlawfully. They would like the ruling of May 18, 2018 set aside, and its application dated May 17, 2022 allowed.

10. The respondent has responded by filing a replying affidavit, in which he avers that there was no discovery of any new and important matter or evidence, nor disclosure of any mistake or error apparent on the face of the record.



11. I directed that the appeal be canvassed by way of written submissions, which the appellants indicated they wished to highlight. The appellants filed written submissions, which they highlighted on May 25, 2022. The respondent relied on his replying affidavit. Both sides made brief highlights. The appellants submitted that the only issue was whether there was nomination, to warrant issuance of a certificate. They submitted that no nominations were carried out, hence the Political Parties Disputes Tribunal was in error in dismissing the review application. The respondent submitted that a nomination was carried out by consensus. It was asserted that the complaint was not that a nomination was not done, but that his name was not forwarded after the nomination. He asserted that he was the sole nominee after his only competitor withdrew at Windsor. He stated that the meeting at the party headquarters on April 22, 2022 was not for the purpose of nomination, but for the formality of presentation of the certificate. He asserted that nomination was fully done at Windsor. In rejoinder, the appellants argued that no evidence was presented of the alleged nomination by consensus at Windsor, and that that evidence was being presented at the bar.
12. To determine whether or not the Political Parties Disputes Tribunal made an error of one kind or other, one should look at the review application, dated May 17, 2022. The grounds on the face of that application were that the Political Parties Disputes Tribunal had erred in directing the 1<sup>st</sup> appellant to issue a certificate of nomination, instead of ordering a nomination exercise to be conducted. The Political Parties Disputes Tribunal is said to have usurped the role of the 1<sup>st</sup> appellant, it had conducted a nomination unfairly. It is averred that the rights of other aspirants were infringed. It was further averred that the judgment was null and void for under the *Political Parties Act*, and that the Constitution of the 1<sup>st</sup> appellant and the rules under it a nomination could only be undertaken by the 1<sup>st</sup> appellant. The affidavit sworn in support of that application, by Kamau Mbugwa, on May 17, 2022, was along similar lines.
13. The application dated May 17, 2022, was for review of the judgment of the Political Parties Disputes Tribunal. Review is granted on the basis of the grounds that were summarized in the ruling by the Political Parties Disputes Tribunal of May 18, 2022, that is discovery of new evidence and error on the face of the record. From the application and the affidavit in support, I do not see any claim by the appellants that they had discovered any new facts or material that was not available to the Political Parties Disputes Tribunal on May 16, 2022. Secondly, there is no allegation that there was an error on the face of the record. The only reference to an error in the grounds on the face of the application is that the Political Parties Disputes Tribunal, by ordering issuance of a certificate to the respondent, made a grave error, by usurping the role of 1<sup>st</sup> appellant, as there had been no nomination. In the affidavit, there are two references to error. At paragraph 7, that the Political Parties Disputes Tribunal made an error in directing issuance of a certificate as it had no jurisdiction in that regard. Paragraph 8 avers that the Political Parties Disputes Tribunal, having found that the 1<sup>st</sup> appellant had made an error in failing to conduct nominations, should have ordered a nomination exercise to be undertaken instead of directing issuance of a certificate. The references to errors in the application and the affidavit are not with respect to errors or mistakes on the face of the record, which could be corrected or rectified by way of review, but errors of judgment, which went to the core of exercise of discretion, for which review is not available, and for which the right remedy is appeal. In short, the appropriate remedy available to the appellants should have been an appeal to the High Court against the order of May 16, 2022.
14. Review is very narrow, it does not go to the merits of the decision or exercise of discretion or the substance of the decision, but has more to do with process. It is about discovery of new evidence, or errors relating to reference to or reliance on the wrong material or use of wrong figures, et cetera. What the appellants raise go to the merits of the decision, that discretion should have been exercised, by the Political Parties Disputes Tribunal, according to them, to direct conduct of a nomination exercise, as



opposed to directing issuance of a certificate of nomination. The exercise of discretion, in that decision, between ordering a nomination to be carried out and a certificate of nomination to be issued, could not be a matter of an error on the face of the record, but that of an improper or inappropriate exercise of discretion. I say so as there is no concurrence as to whether a nomination was carried out or not, for the appellants say there was none, while the respondent asserts that there was. The Political Parties Disputes Tribunal agreed with the respondent, a question of evaluation of the evidence, hence its decision. It found, for a fact, that the appellants had conceded that the respondent was entitled to the certificate, except for the complication presented by the zoning arrangement.

15. In the end, it is my finding that the appeal herein has no merits, and I hereby dismiss it with costs. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 27<sup>TH</sup> DAY OF MAY, 2022**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Ms. Wanjiku Thuita, instructed by Wanjiku & Wanjiku, Advocates for the appellant.**

**Mr. Asembo, instructed by Asembo & Asembo, Advocates for the respondent.**

