



REPUBLIC OF KENYA



**Karanja & another v Wambui & 5 others (Civil Appeal E527 of 2021)
[2022] KEHC 16770 (KLR) (Civ) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16770 (KLR)

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

CIVIL

CIVIL APPEAL E527 OF 2021

JK SERGON, J

DECEMBER 20, 2022

BETWEEN

HON. REUBEN GITAU KARANJA 1ST APPELLANT

HON. SAMUEL RIMUI KAIYANI 2ND APPELLANT

AND

HON. KIERU JOHN WAMBUI 1ST RESPONDENT

HON. KARIUKI MUCHIRI 2ND RESPONDENT

JUBILEE PARTY 3RD RESPONDENT

**HON. RAPHAEL TUJU, ACTING SECRETARY GENERAL JUBILEE
PARTY 4TH RESPONDENT**

THE COUNTY ASSEMBLY OF NYANDARUA 5TH RESPONDENT

HON. SPEAKER, COUNTY ASSEMBLY OF NYANDARUA .. 6TH RESPONDENT

*(Being an appeal from the judgment of the Political Parties Disputes Tribunal
delivered on the 6th day of August 20221 in PPDTC Complaint no. E013 of 2021)*

JUDGMENT

1. Kieru John Wambui and Kariuki Muchiri, the 1st and 2nd respondents respectively at the material time were members of Jubilee Party, the 3rd respondent herein and sat in the County Assembly of Nyandarua. They were appointees of the 3rd respondent in the Nyandaura County Assembly Service Board.



2. On January 11, 2021 the 1st and 2nd respondents received communication from Raphael Tuju, the acting secretary general of Jubilee Party and the 4th respondent herein advising them that they had been replaced as representatives of the 3rd respondent in the Nyandarua County Assembly Service Board. The aforesaid communication prompted the duo to file a complaint before the Political Parties Disputes Tribunal whereof they sought for the following reliefs:
 - a. A declaration that the 3rd respondent has no power to remove the 1st and 2nd respondents herein from the Nyandarua County Assembly Service Board and therefore the decision remove the 1st and 2nd respondents herein from the Nyandarua County Assembly Service Board as contained in the 4th respondent's letter dated January 11, 2021 as unlawful and/or no legal effect.
 - b. A declaration that the purported removal process of the 1st and 2nd respondents herein from the Nyandarua County Assembly Service Board by the 3rd respondent herein was un-procedural and violated article 47 of the *Constitution* of Kenya, 2010, the *Fair Administrative Actions Act*, 2015, the *County Assemblies Services Act, 2012* and the *County Governments Act, 2012*.
 - c. A declaration that the 1st and 2nd respondents herein were denied the right to fair hearing, due process and the resultant decision was unlawful and had no effect in law.
 - d. A declaration that the ratification and/or implementation of the decision of the 3rd respondent to purportedly remove the 1st and 2nd respondents herein from the Nyandarua County Assembly Service Board by the 5th respondent was unlawful and of no legal effect.
 - e. An order reinstating the 1st and 2nd respondents herein to their respective positions as in the County Assembly Service Board of the 5th respondent herein as well as restraining the 3rd to 6th respondents by themselves, their agents and/or servants or employers from implementing such an unlawful decision emanating from the 3rd respondent's resolution to purportedly remove the 1st and 2nd respondents from office as members of the Nyandarua County Assembly Service Board of the 5th respondent.
 - f. Damages for loss of credit and integrity and interest thereon at the honourable tribunal's rates.
 - g. The costs of the complaint and interest thereon oat the tribunal's rates.
3. The complaint was opposed by Reuben Gitau Karanja and Samuel Rimui Kaiyani the 1st and 2nd appellants respectively and by the 3rd and 4th respondents. The County Assembly of Nyandarua and its speaker, being the 5th and 6th respondents herein respectively were in support of the complaint.
4. The Political Parties Disputes Tribunal in its judgment delivered on August 6, 2021 found and held inter-alia that the purported removal process of the 1st and 2nd respondents by the 3rd respondent was unprocedural and unlawful.
5. The tribunal further declared the communication by the 4th respondent to the speaker on January 11, 2021 purporting to communicate the Jubilee Party's replacement of the 1st and 2nd respondents as its appointees in the Nyandarua County Assembly Service Board as void and inconsequential. Costs was awarded to the 1st and 2nd respondents to be paid by the appellants and the 4th respondent.
6. Being dissatisfied with the tribunal's decision, the appellants preferred this appeal and put forward the following grounds :.
 - i. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to appreciate that the appellants' complaint was not only of want for procedure



in the 1st respondent's decision making process but also of usurpation of authority by the 1st and 2nd respondent in making the impugned decision.

- ii. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to appreciate that appointment of the appellants to the County Assembly Service Board is provided for under section 12 of the [County Governments Act, No 17 of 2012](#) as amended by section 46 of the [County Assembly Services Act, No 24 of 2017](#).
 - iii. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in relying on the former section 12(3)(b) of the County Government Act, that was already amended by section 436 of the [County Assembly Services Act, No 24 of 2017](#) hence relying on an obsolete law.
 - iv. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to appreciate all the provisions of section 12(5)(b) of the [County Governments Act, No 17 of 2012](#) only apply to members of the County Assembly Service Board representing the public and appointed by the County Assembly and not the appellants who are members of the County Assembly of Nyandarua.
 - v. That the learned members of the political Parties Disputes Tribunal erred both in law and in fact in failing to appreciate that the appellants' tenure of office as members of the County Assembly Service Board is provided for and protected and/or insulated from political manipulations under section 12 (5) (a) of the [County Governments Act, No 17 of 2012](#).
 - vi. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in generalizing the possibility of removal of County Assembly Service Board member to include the appellants herein even when their tenure of office is protected by law.
 - vii. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to find that the only two scenarios where the appellants can cease being members of the County Assembly Service Board of Nyandarua pursuant to section 12(5) (a) (i) & (ii) of the [County Governments Act, No 17 of 2012](#) are
 - a. At the end of the term of the County Assembly and
 - b. If the person ceases to be a member of the County Assembly and not removal by the 1st, 2nd and 3rd respondents herein or anyone else whatsoever.
 - viii. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to find that therefore, the communication by the 1st respondent through the 2nd respondent purporting to replace the appellants with the 5th and 6th respondents in the Nyandarua County Assembly Service Board was null and void and that it is not possible under whatever circumstances except as expressly and unequivocally provided for under the law.
 - ix. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to find that the 1st respondent has no power to remove the appellants from the Nyandarua County Assembly Service Board under any circumstances whatsoever.
 - x. That the learned members of the Political Parties Disputes Tribunal erred both in law and in fact in failing to award the appellant damages for the unlawful removal from the Nyandarua County Assembly Service Board.
7. When the appeal came up for hearing, this court gave directions to have the appeal disposed of by written submissions.



8. I have re-evaluated the complaint that was before the Political Parties Disputes Tribunal. At the time of writing this judgment, the 1st, 2nd, 3rd and 4th respondents were the only parties who had filed their written submissions which I have considered together with the authorities cited.
9. Two main issues arose for determination on appeal. First, is whether the 3rd respondent had power to remove the 1st and 2nd respondents from the Nyandarua County Assembly Service Board. Secondly, whether the purported removal of the 1st and 2nd respondents from the Nyandarua County Assembly Service Board by the 3rd respondent through the 4th respondent was unprocedural and unlawful.
10. In relation to the first issue, the 1st and 2nd respondents are of the submission that they were legally appointed and or elected into the Nyandarua County Assembly Service Board hence they were legitimately in office. They pointed out that having been elected into office and sworn in, the provisions of section 12(5) (a) of the County Government Act No 17 of 2012 took effect therefore they could only vacate office at the end of the term of the County Assembly or if they cease to be members of the County Assembly.
11. The 1st and 2nd respondents aver that they did not cease to be members of County Assembly hence they could not be removed from office. With respect, I am persuaded by the arguments of the 1st and 2nd respondents that their office was insulated under the Act from political manipulations and wrangles. The record shows that the 1st and 2nd respondents were being punished for failing to support the impeachment of the speaker of Nyandarua County Assembly by the purported attempt to remove them from the County Assembly Service Board.
12. I also find that the 3rd respondent had no power or authority to remove the 1st and 2nd respondents from the board vide the letter dated January 11, 2021 through the 4th respondent.
13. On the second issue as to whether or not the 1st and 2nd respondents were procedurally and or lawfully removed? It is the submission of the 3rd and 4th respondents that they were never given a chance to be heard. They accused the 3rd and 4th respondents of ailing to adhere to article 47 of the Constitution of Kenya, 2010.
14. I have carefully perused the proceedings before the Political Parties Disputes Tribunal and it is clear that the appellant herein did not provide evidence that the 3rd respondent subjected the 1st and 2nd respondents to a fair process of hearing before deciding that the duo be removed from office as members of the Nyandarua County Assembly Service Board and replacing them with the appellants herein. The 1st and 2nd respondents removal therefore was unprocedural and unfair. I find the 1st and 2nd respondent's right to affair administrative action was breached.
15. The other ground raised by the 3rd and 4th respondent is to the effect that the Political Parties Tribunal lacked jurisdiction to entertain the complaint under section 40 of the Political Parties Act. It is argued by the duo that the 1st and 2nd respondents had not exhausted the party internal dispute resolution mechanism. The record shows that the 3rd and 4th respondents had raised the issue touching on jurisdiction before the tribunal.
16. The tribunal considered the issue and came to the conclusion that the 1st and 2nd respondent's demonstrated that they attempted to first approach the party internal dispute resolution mechanism to resolve the issue.
17. I am convinced that the Political Parties Disputes Tribunal came to the correct finding therefore it cannot therefore be faulted. The tribunal had jurisdiction to entertain the complaint filed by the 1st and 2nd respondents.



18. In the end, I find no merit in the two appeals. Consequently, the consolidated appeals are hereby dismissed. A fair order on costs is to order which I hereby do, that each party bears its own costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 20TH DAY OF DECEMBER, 2022.

JK SERGON

JUDGE

In the presence of:

..... for the Appellants

..... for the Respondent

