



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSOLIDATED ELECTION PETITION APPEALS NOS. 2 & 3 OF 2018

ERIC KAMANDE.....1ST APPELLANT

JUBILEE PARTY.....2ND APPELLANT

SECRETARY GENERAL JUBILEE PARTY.....3RD APPELLANT

VERSUS

AMOS MURIGI.....1ST RESPONDENT

SIMON KAMAU.....2ND RESPONDENT

SPEAKER OF THE COUNTY ASSEMBLY OF MURANG'A.....3RD RESPONDENT

[Appeal from the judgment and decree of the Political Parties Disputes

Tribunal delivered at Nairobi on 20th April 2018 in Complaint No. 3 of 2018]

JUDGMENT

1. These consolidated appeals relate to a contest between the 1st appellant and the 1st respondent over the seat of *Leader of the Majority Party* in the County Assembly of Murang'a. The disputants are both members of the Jubilee Party.
2. Two separate appeals were lodged challenging the decree issued on 20th April 2018 by the Political Parties Disputes Tribunal (hereafter *the Tribunal* or *the PPDT*). The first was *Appeal Number 2 of 2018* filed on 3rd April 2018 by Eric Kamande (hereafter *the 1st appellant*). The second was *Appeal Number 3* which was instituted on 3rd May 2018 jointly by the Jubilee Party and its Secretary General (hereafter *the 2nd and 3rd appellants*).
3. On 27th June 2018 the Court (*Githua J.*) ordered that the two appeals be consolidated. On 9th October 2018, the learned judge directed that the parties should be described and appear as per the heading in this judgment.
4. This is a first appeal to the High Court. It is thus an appeal on both *facts* and the *law*. I have *re-evaluated* all the evidence and drawn independent conclusions. *Peters v Sunday Post Limited* [1958] E.A 424, *Selle v Associated Motor Boat Company Ltd* [1968] E.A 123.
5. The brief facts are as follows: On 8th September 2017, the 1st appellant was elected as the Leader of the Majority Party in the County Assembly of Murang'a. On 18th December 2017, *twenty nine* Members of the County Assembly (hereafter *the MCAs*) presented a petition to Simon Kamau (hereafter *the 2nd respondent*). The latter was the Interim Chairman of Jubilee Party in Murang'a. The petition raised complaints about the leadership style of the 1st appellant. The petition was dated 14th December 2017 and appears at pages 69 to 70 of the Record. The list of charges against the 1st appellant is at pages 76 to 78.
6. The version of events that followed is convoluted and contested. According to the 1st appellant, the 1st respondent unlawfully convened a "party caucus" on 5th January 2018 at which the 1st appellant was voted out of the office and replaced by the 1st respondent. The retort by the 1st respondent is that the meeting was lawful; and, that he henceforth became the *de jure* majority leader. However, his assumption into office was obstructed by the 1st appellant "*and the political leadership in Murang'a*".
7. But according to the 2nd respondent, he convened a mediation meeting on 22nd December 2017 at Sportsview Hotel Kasarani. It failed to

take place due to disruption by the 1st appellant, the Chief Whip and Deputy Chief Whip. A further meeting was called for 23rd December 2017 where “it was unanimously decided” that the county assembly caucus be held on 5th January 2018 “where the party leaders in the Murang’a County Assembly would be given an opportunity to respond to the allegations”.

8. The venue was to be Trotters Hotel, Kenol. However, information leaked that the meeting would be again disrupted. The organizers changed the venue for the caucus to Sahara West Park Hotel in Kiambu. The 2nd respondent claims that appropriate notices were sent out to that effect.

9. The 1st appellant, the Chief Whip and Deputy Chief Whip lodged a written complaint with the Jubilee Party national office on 5th January 2018 about their “unprocedural” removal from office. [Pages 145-147 of the record].

10. On 5th January 2018, the 2nd respondent notified the Speaker of the Assembly of the changes made that day at the county assembly caucus. By a further letter dated 8th January 2018, he informed the Secretary General (3rd appellant) of the same changes. The letter was copied to the Speaker and to the Executive Director of the Jubilee Party.

11. In the midst of all this, there was another petition dated 6th January 2018 this time addressed to the Secretary General of the party for removal of the 2nd respondent as Interim Chairman of the Jubilee Party in Murang’a. That petition was lodged by 12 officials from the branch; and, by Gerald Wambugu, a Member of the Murang’a County Assembly. The latter was particularly incensed that the 2nd respondent had presided over an “illegal caucus” on 5th January 2018. [Pages 51 to 57 of the Record]

12. It is also material that the 1st respondent through a letter dated 18th January 2018 to the Secretary General of the party (the 3rd appellant) requested for assistance to assume office and for “urgent internal resolution of the leadership row by the party.” It was received at the party headquarters on 22nd January 2018.

13. The letter required the Secretary General to resolve the matter within 7 days in default of which the 1st respondent would take out legal proceedings “to enforce the decision of the majority members of Murang’a County Assembly made on 5th January 2018”.

14. On 12th January 2018, the 3rd appellant wrote to the Speaker of the Assembly stating that “following a preliminary hearing” he was advising that the *status quo* be maintained until the matter was finally resolved by the party.

15. Although the Speaker (3rd respondent) claimed to be neutral in the affair, his position is betrayed by his replying affidavit at the PPDT where he deposed:

I am aware of the history of this dispute for the last 6 months during which it has at times degenerated to physical fights in attempts to remove the [1st appellant] from office and also aware of the manner in which he is alleged to have been removed at a party caucus convened by the 2nd respondent and hence believe that the stay order sought will guarantee the most orderly manner of resolving this dispute.

16. On 30th January 2018, the 1st respondent filed a *Petition* or *Complaint* before the PPDT. He sought to be declared the *bonafide* Leader of Majority pursuant to the resolutions at the disputed county assembly caucus; and, to be “facilitated” to assume office.

17. The PPDT delivered its judgment on 20th April 2018. It found that it was seized of jurisdiction and upheld the resolutions of the caucus of 5th January 2018. The Tribunal found that the petitioner (1st appellant) was validly elected as the Leader of the Majority. It granted the following four orders:

i) That a declaration be and is hereby issued that the petitioner is the bona fide leader of the majority party in the County Assembly of Murang’a.

ii) That an order be and is hereby issued that the respondents do affirm and facilitate the assumption to office of the said petitioner leader of the majority party in the County Assembly of Murang’a.

iii) That an order be and is hereby issued that the respondents be restrained from harassing and intimidating the petitioner in the exercise of his duties as the leader of the majority party in the County Assembly of Murang’a.

iv) We make no order on costs.

18. The 1st appellant’s *memorandum of appeal* is dated 23rd April 2018 and raises the following *nine* grounds.

i. That the Tribunal erred in law and in fact in failing to appreciate sufficiently and/or at all that under section 40(2) of the Political Parties Act, it lacked jurisdiction to entertain the dispute before it as the 1st respondent had not properly invoked and/or exhausted the 3rd respondent’s [Jubilee Party] internal dispute resolution mechanism [IDRM] and that a dispute in relation to the matters before them filed at the behest of the appellant was pending determination before the appropriate party organ.

ii. That the Tribunal erred in law and in fact in totally failing to determine whether the purported removal of the appellant from the office of leader of majority party of the Murang’a County Assembly was done in compliance with Article 47 as read together with

Article 38(3)(c) of the Constitution, section 4 of the Fair Administrative Action Act, 2015 and standing order 20 of the Murang'a County Assembly standing orders leading to a miscarriage of justice.

iii. That in the alternative, the Tribunal erred in law and fact in failing to appreciate sufficiently and/or at all that the impugned decision to remove the appellant from office of leader of majority is an administrative action within the meaning of section 2 of the Fair Administrative Action Act and as such the mandatory due process requirements including the right to natural justice under section 4 of the said Act must be complied with.

iv. That the Tribunal erred in law and in fact in failing to appreciate sufficiently and/or at all that the purported caucus that gave rise to the removal of the appellant from office and the subsequent purported election of the 1st respondent was called in contravention of Articles 19.2.1 of the Jubilee Party's constitution and that at any rate, such a caucus lacks the mandate to discipline and/or remove any member from his or her position.

v. That the Tribunal erred in law and in fact in failing to appreciate sufficiently and/or at all that 25 days is not sufficient duration for any meaningful IDRMs by the 3rd respondent since section 8 of the Fair Administrative Actions Act provides for 90 days to determine an appeal or review.

vi. That the Tribunal erred in law and in fact in excluding affidavit evidence filed at the behest of the appellant of persons who would have been called as his witnesses under Regulation 17(3) of the Political Parties Disputes Tribunal Regulations had the Tribunal conducted the matter through viva voce evidence. In addition, the exclusion contravened section 41 (4) of the Political Parties Act and Article 159 (2) (d) of the Constitution.

vii. That the Tribunal erred in law and in fact in failing to appreciate sufficiently and/or at all that whether or not the procedure for removal of a person from office is expressly provided by the party's constitution, the Constitution and the law implies that the right to natural justice and due process must be guaranteed at all times.

viii. That the Tribunal erred in law and in fact in failing to determine the issue whether the appellant was validly removed from office of leader of majority of the Murang'a County Assembly.

ix. That the Tribunal erred in law and in fact in failing to appreciate sufficiently or at all the written submissions made and authorities cited by the appellant.

19. However, in both his written and oral submissions, learned counsel for the 1st appellant condensed the grounds into only *three*: First, that the PPDT lacked jurisdiction to hear the petition; secondly, that the appellant's removal from office violated his rights to natural justice; and, thirdly, that the proceedings and resolutions of the caucus were *ultra vires*.

20. The 1st appellant prayed that the entire judgment and decree of the PPDT be set aside; and, for a declaration that he is the duly elected Leader of Majority Party in the Murang'a County Assembly. He also sought costs.

21. The 2nd and 3rd Appellants' *memorandum of appeal* is dated 3rd May 2018 and raises *eleven* grounds. The grounds generally mirror those by the 1st appellant above save for the following three points: First that the Tribunal erred by finding that the 2nd respondent had authority to call the caucus of 5th January 2018 in the manner that he did and contrary to Article 19.2:1 of the party. Secondly, that the Tribunal erred in finding that the 2nd appellant was indolent in resolving the wrangles; and, thirdly, that the Tribunal "*allowed itself to be bogged down by technicalities and procedure contrary to Article 159 (2) of the Constitution*".

22. The 2nd and 3rd appellants did not file any submissions as directed by the High Court. I have however seen the submissions they lodged before the PPDT on 26th March 2018. At the hearing of the appeal on 29th November 2019, *Mr. Ng'ang'a*, learned counsel for the 1st appellant, held brief for counsel for the other two appellants.

23. The 1st appellant's submissions were filed on 25th June 2019 together with a list of authorities. Those of the 1st respondent were lodged on 27th August 2019 while those by the 2nd respondent were filed on 2nd October 2019. The 3rd respondent only tendered points of law. He nevertheless associated himself fully with the submissions by the 1st appellant. Lastly, the 1st appellant filed a rejoinder to the 1st and 2nd respondents' submissions on 8th October 2019.

24. On 29th November 2019, learned counsel for the parties addressed the Court on those submissions. I am greatly indebted to all the learned counsel for their elaborate submissions. If I do not make direct reference to all the cited cases and materials, it is not for their lack of relevance.

25. I will commence with the jurisdiction of the PPDT. **Black's Law Dictionary**, 9th Edition, defines *jurisdiction* as the court's power to entertain, hear and determine a dispute before it. *Nyarangi, J.A.* put it more succinctly in ***Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited*** [1989] KLR 1:

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...

26. A key plank of the appellants' case is that the 1st respondent rushed the matter to the PPDT *eight days* after he issued his demand letter. The appellants contend that the Tribunal lacked jurisdiction because the internal dispute resolution mechanisms (IDRM) of the Jubilee Party

had not been exhausted.

27. Reliance was placed on **Sunctus G. Ndegwa & 3 others v Jubilee Party & another** Nairobi, High Court Election Nomination Appeal 29 of 2017 [2017] eKLR and **Joseph Obiero Ndiege v Orange Democratic Party & another** Nairobi, High Court Election Petition Appeal 19 of 2017 [2017] eKLR.

28. I find substantial merit in the position taken by the Court of Appeal in **Speaker of The National Assembly v James Njenga Karume**, Court of Appeal at Nairobi, Civil Application No. NAI 92 of 1992 [1992] eKLR where it was held:

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed

29. From the depositions it is clear that the main protagonists referred the dispute for resolution by the internal party mechanisms (IDRM). It is also conceded that the dispute was an intra-party affair that fell well within the jurisdiction of the Tribunal. Section 40 (1) of the **Political Parties Act** provides as follows:

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 partners; and

(f) appeals from decisions of the Registrar under this Act;

(fa) disputes arising out of party primaries.

30. The appellants' however contend that the dispute had not *ripened* for consideration by the Tribunal. Section 40 (2) of the Act provides that the Tribunal shall *not* hear or determine a dispute under paragraphs (a), (b), (c) or (e) *unless* the dispute has been heard and determined by the internal political party dispute resolution mechanisms (IDRM).

31. But there may be some exceptions. This was well illustrated well in **Eric Kyalo Mutua v Wiper Democratic Movement Kenya & another**, Nairobi High Court Election Appeal 4 of 2017 [2017] eKLR where Onguto J held:

[49] Where appropriate consequently the PPDT should entertain the dispute or alternatively determine that the better forum would be the political party's internal dispute resolution mechanism and refer the dispute to the relevant party organ. The PPDT may however not decline jurisdiction or dismiss a complaint simply because a dispute is yet to be filed before the party's dispute resolution organ.

[50] The instances may be various but to my mind, I can immediately identify a situation where time is evidently headed beyond a party's grasp. I may also cite a situation where the political party is evidently bent on frustrating a member. Likewise, there may be an instant where the dispute involves a non-member with a member but off a party primary process. The legislature must have had such instances in mind.

32. The 1st respondent was obviously frustrated and prejudiced by the blockade to his new office. It does not require rocket science to see the conspiracy against his political rights. For instance, it was futile for the Speaker to expect notification of change of office bearers from the party whips who had themselves been removed from office at the impugned caucus.

33. However, the 7 days' notice given by the 1st respondent in his letter of 18th January 2018 was perhaps too short a time to conclude any IDRM. As noted earlier, the letter only reached the party headquarters on 22nd January 2018.

34. From the undisputed letter of Hon. Tuju of 12th January 2018, it is evident that the party had initiated IDRM. On the other hand, mediation at the county level was frustrated by acts of violence. The 1st respondent blamed the 1st appellant and other political actors. The position taken by the Jubilee Party to maintain the *status quo* obviously benefited the 1st appellant to the chagrin of the 1st respondent.

35. No specific timelines were provided within which the IDRM in Jubilee Party was to be concluded. I am also alive to the provisions of section 7 (3) of the **Fair Administrative Action Act**:

The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that;

- a) the administrator is under duty to act in relation to the matter in issue;
- b) the action is required to be undertaken within a period specified under such law;
- c) the administrator has refused, failed or neglected to take action within the prescribed period.

36. Nevertheless, on 30th January 2018, the 1st Respondent filed the *Complaint* before the PPDT. The PPDT asserted jurisdiction (paragraph 23 & 24 of its judgment) on the grounds that:

This Tribunal takes note that whereas the said respondents claim that the IDRM was ongoing, there was no indication of when the same would be formally concluded.....we are thus not persuaded that the petitioner should await the internal processes for him to take any further steps.

37. While I disagree with that line of reasoning, I have arrived at the same result but for different reasons. I have closely analyzed Hon. Tuju's (3rd appellant's) letter of 12th January 2018 annexed to the affidavit of Mary-Karen Sorobit sworn on 22nd March 2018. I will reproduce it here *in extenso*:

Hon. Speaker

Murang'a County Assembly

Murang'a County

Dear Sir,

RE: LEADERSHIP WRANGLES IN MURANG'A COUNTY ASSEMBLY

The above matter refers.

As a matter of procedure, we called the entire interim office of Murang'a County for a hearing at the Party Headquarters on 11th January 2018 to give light on the matter.

Subsequently, we wish to advise your good office that the status quo remains in the County Assembly leadership until the matter is determined.

Please note any changes will be addressed to you directly from my office.

Any purported changes are therefore null and void.

Yours Sincerely,

HON. RAPHAEL TUJU (EGH)

SECRETARY GENERAL. [Underlining added]

38. Whichever way I look at the letter, it leaves *no* doubt that following the meeting at the headquarters on 11th January 2018 the Jubilee Party *dismissed* the leadership changes made at the caucus of 5th January 2018 as *null and void*. True, the letter leaves open "further determination" of the crisis. There are for example the summons and letters to potential witnesses appearing at pages 46 to 57 of the record. But given the text of the earlier letter by the Secretary General, this was mere window dressing: the matter was a *fait accompli*. I also agree with the 1st respondent that when the complaint was lodged with the PPDT, the Jubilee Party took no further action and seems to have deferred fully to the Tribunal.

39. I thus readily find and hold that the Tribunal was properly seized of jurisdiction.

40. One common ground raised in both appeals is that the PPDT erred by striking out a number of affidavits filed by some MCAs who attended the impugned caucus on 5th January 2018. A majority of those deponents were *Nominated Members* of the Assembly who had been summoned to the party headquarters. Examples are at pages 46, 49 and 50 of the Record. On 9th February 2018 Passy Kang'atu, Jane Muigai, Beth Ndung'u, Cathryn Wanjiku, Anne Kigo, Eunice Kariuki, Njoki Wambui, Flasia Chege, and Milka Ngari all filed identical affidavits before the PPDT "*recanting and disassociating themselves from the proceedings and resolutions arrived at the said caucus*". They also deposed that they no longer supported "*the unprocedural and unlawful removal from office of the assembly leaders*".

41. The affidavits were no doubt relevant. But they were filed without *leave* of the Tribunal. The Tribunal had the discretion to admit them. It found that the affidavits were filed "*in a most unorthodox manner*" and with no indication as "*to who drew or filed them*". It held that the admission of the affidavits would not "*fundamentally affect the ability of the petitioner or respondent to argue*" their cases.

42. I am alive that a court should eschew technicalities and pursue substantive justice. But it does not mean that all rules should be thrown

out of the window. I had this to say in **Bernard Kitur v Alfred Keter & others**, Eldoret High Court Election Petition 1 of 2017 [2017] eKLR:

*Rules are important hand maidens of justice. Unless they are followed, court proceedings would degenerate into a village baraza.....I am also alive that Article 159 (2) (d) does not throw rules of procedures or technical rules out of the window. The Supreme Court in **Raila Odinga and others v Independent Electoral and Boundaries Commission and 2 others** Nairobi Petition No. 5 of 2013 [2013] eKLR, summed up the matter as follows-*

The essence of that provision is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone, and which suits all situations of dispute resolution. On the contrary, the court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case and conscientiously determine the best course.

43. Granted those circumstances I cannot say that the tribunal acted in an arbitrary manner or improperly exercised its discretion. In the end, I am unable to impeach the order of the PPDT striking out those affidavits.

44. The next key question is whether there was failure of *natural justice* at the impugned county assembly caucus. Paraphrased, were the rights of the 1st appellant to a *fair administrative* action violated?

45. **Article 47 (1) and (2)** of the **Constitution** provides:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

46. Parliament enacted the **Fair Administrative Action Act** to give effect to **Article 47** of the **Constitution**. The relevant part of section 4 of the Act provides:

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard.....

47. It is important to keep in mind that the 1st appellant was holding an *elective position* as Leader of the Majority. The position is unlike that in ordinary employment. Furthermore, the office has no specific term or tenure. The MCAs who put him in that position were entitled to remove him for good or bad reasons. In **Born Bob Maren v Speaker Narok County Assembly & 3 others** High Court at Naivasha, petition 1 of 2014 [2015] eKLR, the Court stated:

[37] The Minority or Majority Party Leader comes into office through an election which is an expression of the wishes of his party. Equally he remains in office at the pleasure of his party

48. There is also the enlightening passage in **Republic v County Assembly of Migori & 4 others ex parte Johnson Owiro** where *Majanja J* held:

*[21] The position of Majority Leader in the County Assembly is an elective post open to all elected members of the Assembly. The election is in accordance with the Standing Orders which are the internal legislative rules governing such process. There is ample authority, as demonstrated in **Samson Vati Musembi & 6 others v Makuani County Assembly & 2 others (Supra)** and **Simon Wachira Kagiri v County Assembly of Nyeri & Others (Supra)** to support the proposition that the Court exercises great restraint in interfering with legislative processes. I am afraid that this case does not rise to the threshold requiring this court's intervention.*

49. Learned counsel for the 1st appellant referred to Article 13.2 (10) of the Jubilee Party constitution which states:

In all cases before the County Disciplinary Committee, every person appearing for a hearing shall be entitled to a fair hearing and be accorded an opportunity to defend themselves and may be represented by an advocate or any other party member.

50. That submission is misleading: the 1st appellant was not meant to appear before the County Disciplinary Committee; he was to appear before his colleagues in the assembly to answer to his leadership. This was a County Assembly Caucus convened under Article 19 of the Jubilee Party. I am not downplaying the fact that some of the accusations were of a criminal nature. I will come back to this matter shortly.

51. The issue is whether the 2nd respondent, as the Interim Chairman of the party in Murang'a was entitled to convene the county assembly

caucus. To answer that question, it is important to keep in mind that that the offices of the Leader of the Majority and Minority Party are creatures of section 10 of the **County Governments Act**.

52. However the process of filling the positions (or removal of the incumbents for that matter) is purely an *internal party affair* guided by the Standing Orders; the party constitution and the will of the members. See *Born Bob Maren v Speaker Narok County Assembly & 3 others* [Supra].

53. Returning to the question I posed earlier, I find that the 2nd respondent, as Interim Chairman of the party at the *material time* had the power to call the caucus. It is true there were separate disciplinary proceedings against him as deposed in the affidavit of Mary-Karen Sorobit referred to earlier. The point to be made however is that he had not been finally removed from office.

54. Article 9.2 of the Jubilee Party Constitution establishes the office of the County Party Chairperson. Article 19.2.1 provides that there shall be a county assembly caucus *convened by the county chairperson* of the party within 30 days after the declaration of results of a general election.

55. That Article relates entirely to the *inaugural caucus* following a general election. But I have not seen a contradictory Article stating that the same chairman cannot call for the subsequent caucuses. I also note that Article 19.2.5 of the party constitution provides that a county assembly caucus shall be held *at least twice* in a year.

56. The 2nd respondent is the same chairman who called the inaugural county assembly caucus of 8th September 2017 in which the 1st appellant was elected as Majority Leader. To now say that he had no power to convene the subsequent one merely because of a pending disciplinary case against him is to speak from both sides of the mouth. I am alive that the 2nd respondent became the subject of disciplinary proceedings after the disputed caucus [Pages 146 and 147 of the Record]. But that does not alter the legal position.

57. Standing Order 20 (1) of the Murang'a Assembly on the other hand provides that "*the largest party or coalition of parties in the Assembly shall elect a member of the Assembly belonging to the party or coalition of parties to be the Leader of the Majority Party*".

58. Standing Order 20 (3) deals with removal of the majority leader. It states that "*a member elected under paragraph (2) may be removed by a majority of votes of all members of the largest party or coalition of parties in the Assembly*".

59. Such changes should then be notified to the Speaker. That is what initially happened when the 1st appellant was elected on 8th September 2017. And it is the 2nd respondent who notified the Speaker of that outcome. Standing order 20 (3) and (4) provide that the removal of a leader of the largest party shall take effect when a member is elected to replace such a leader. The whip of the majority party or coalition of parties should notify the Speaker.

60. Learned Counsel for the 1st appellant, *Mr. Ng'ang'a*, submitted that the caucus should have been held in the Assembly Chamber and not some hotel. But he was unable to back it up with an express provision from the standing orders or even the party constitution.

61. I will now return to the question of natural justice. The starting point again is whether the 1st appellant had notice of the disputed caucus. According to the affidavit of the 2nd respondent sworn on 21st March 2018, the notices appear in exhibit SK7 9 (a)-(d). The first one is a newspaper advertisement calling for the meeting on 5th January 2018 at 9:00 a.m. at Trotters Hotel, Kenol. The second is a letter to the Speaker. The third notice is contained in a separate letter to the 1st appellant notifying him of the caucus and requiring him to "*prepare to defend himself*" against some unspecified charges. The fourth and fifth notices are similar letters to the Chief Whip and Deputy Chief Whip.

62. The notices bear a stamp of receipt by the Murang'a County Assembly of 2nd January 2018. The 2nd respondent conceded that the notices were sent out through the Assembly. He seemed to suggest that the 1st appellant was aware of the meeting since there was an attempt to disrupt the press conference held immediately after the caucus by persons aligned to the 1st appellant. But there was *no* acknowledgement of service or clear evidence of personal service upon the 1st appellant.

63. The second problem is that the *venue* was changed from Trotters Hotel to Sahara West Park in Kiambu. This was done only *two days* to the meeting. Although letters were sent out regarding the change of the venue [pages 91 to 95 of the Record] there was no corresponding advertisement or further evidence of personal service on the 1st appellant.

64. The third problem with the notice is that it partly concealed the true agenda of the county assembly caucus. The Jubilee Party Murang'a County Branch took out a newspaper advertisement that read:

Pursuant to Articles 19 (2), 7 (2) 3, 19 (1) 19 (2) 1 & 5 of the Jubilee Party Constitution, Notice is hereby given of the Murang'a County Assembly Caucus to be held on Friday 5th January 2018 at Trotters Hotel, Kenol. The caucus shall address our party's leadership in the assembly and the 2018 agenda.

65. It may be presumed that being a County Assembly Caucus; and, in view of Article 19 of the Jubilee Party constitution, that the removal of the 1st appellant was on the cards. But considering the earlier petition dated 14th December 2017 challenging the 1st appellant's leadership, the agenda of the caucus was hidden in plain sight.

66. The 2nd respondent received the detailed charges leveled against the 1st appellant way back on 18th December 2017. Nothing could have been easier than for him to specify that the agenda was the removal or replacement of the 1st appellant as the Leader of Majority.

67. I have no doubt that the proceedings of the impugned caucus amounted to an *administrative action*. It is not lost on me that the 1st appellant was facing 10 serious charges. Count 6 for example was of a criminal nature: corruption or solicitation of monies to approve CEC Members.

68. The 1st appellant may have had *constructive notice* of the county assembly caucus. But since he was a no show, it was incumbent upon the 1st and 2nd respondents to demonstrate there was *personal service*. The 1st appellant in his *further affidavit* sworn on 12th April 2018 and filed in the PPDT vehemently denied knowledge of the *accusations* leveled against him; and, averred that he was “*unaware of the so-called caucus and agenda*”.

69. In *Geothermal Development Co. Ltd v A.G. & others*, Nairobi High Court Pet. 352 of 2012 [2013] eKLR, it was held:

As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response. This right is not limited only in cases of a hearing as in the case of a court or before a tribunal, but when taking administrative actions as well.

70. I thus find that a proper notice was not issued; and, that there was no clear evidence that the 1st appellant was *personally served* with the notice or charges. Since he did not attend the meeting I am hard pressed to say that he waived his right to be heard. Despite the overwhelming votes that resolved to remove him from office, the *process* was tainted. It follows as a corollary that what transpired at the meeting was a *nullity*.

71. My finding on that point is sufficient to dispose of this appeal. The judgment and decree of the Political Parties Disputes Tribunal issued at Nairobi on 20th April 2018 is hereby set aside.

72. Costs follow the event and are at the discretion of the court. In the interests of justice, I order that each party shall bear its own costs.

73. Lastly, I must say the following, albeit *obiter dicta*. This is a political contest. To quote the dissenting opinion in *Baker v Carr* 369 U.S. 186, this Court was led into a *political thicket*. My judgment does not validate the 1st appellant’s leadership in the assembly. Such support can only come from the Members of the Assembly. The 1st appellant can choose to bury his head in the sand. But the bitter truth is that on 5th January 2018, majority of his colleagues voted him out; and, they may as well have succeeded except for want of proper *procedure*. Unless the 1st appellant can regain the confidence of his peers, it will be a futile *pretence* to lean on today’s decree.

That then is the judgment of this Court.

DATED, SIGNED and DELIVERED at MURANG’A this 28th day of January 2020.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Mr. K. Kamau holding brief for Mr. Ng’ang’a for the 1st appellant instructed by Mbugua Ng’ang’a & Company Advocates.

No appearance by counsel for the 2nd and 3rd appellants.

Mr. Wageni holding brief for Mr. C. Kamau for the 1st respondent instructed by Chege Kamau & Company Advocates.

Mr. Wageni for the 2nd respondent instructed by Wageni & Company Advocates.

Mr. K. Kamau for the 3rd respondent instructed by Kamau & Kamau Advocates.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.