



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCC NO. 2 OF 2020

GODFREY MURITHI MUCHIRI.....1ST APPLICANT
CHARLES NJERU NYAGA.....2ND APPLICANT
MARGARET MUKWANJERU GITARI.....3RD APPLICANT
LEONARD GITONGA.....4TH APPLICANT
DENIS MUTWIRI MUTHITU.....5TH APPLICANT

VERSUS

THE SPEAKER, THARAKA NITHI COUNTY ASSEMBLY.....1ST RESPONDENT
THE CLERK, THARAKA NITHI COUNTY ASSEMBLY.....2ND RESPONDENT
THE THARAKA NITHI COUNTY ASSEMBLY.....3RD RESPONDENT

R U L I N G

1. **GODFREY MURITHI MUCHIRI** and 4 others (Plaintiffs) have sued the Speaker, Tharaka Nithi County Assembly and 2 others over party elections involving Jubilee Party a party the Plaintiffs say they belong. The Plaintiffs claim that the party made party elections on 24th February 2020 to elect leaders in the County Assembly and that after the elections, the Plaintiffs were elected to various positions to wit;

- a. Majority Party Leader- Godfrey Murithi Muchiri
- b. Deputy Party Leader- Charles Njeru Nyaga
- c. Majority Party Whip- Margaret Mukwanjeru Gitari
- d. The County Assembly Board Representative - Leonard Gitonga

2. The Plaintiffs claim that the members of the County Assembly who lost the elections presented what they term "*a wrong list*" comprising the following;

- a. Majority Party Leader- Peterson Mwirigi Kathenya
- b. Deputy Party Leader- Asumpta Mukwanjeru Gabriel
- c. Majority Party Whip- Boniface Njeri Kigwari
- d. Majority Deputy Whip- Samwel Muthini Karangi
- e. The County Assembly Service Board Representative - John Njagi Mucee.

3. The Plaintiffs have averred that despite getting clarification from Jubilee Party as to which list was legitimate and genuine, the Defendants have planned for a meeting to swear in the losers instead of the victors of the party elections held.
4. The Plaintiffs have filed an urgent applications dated 3rd March 2020 seeking *inter alia* orders of temporary injunction to restrain the defendants from announcing and/or swearing the new elected leaders from the Majority Party, Jubilee Party in the County Assembly pending determination of this matter.
5. The Defendants/Respondents filed grounds of opposition to the said application and a Preliminary Objection to the entire suit stating that this court lacks jurisdiction to entertain the application and the entire suit courtesy of **Article 159 2(c)** of the **Constitution of Kenya 2010** and also in view of the provisions of **Section 39, 40 and 41** of the **Political Parties Act No. 11 of 2011**. They have further averred that the suit is premature in their view and that the jurisdiction of this court have been triggered prematurely.
6. In view of the Preliminary Objection raised, this court directed the parties in this suit to canvass the Preliminary Objection first before going into the merits of the case because the P.O (Preliminary Objection) touched on the jurisdiction of this court to handle this case.
7. The Defendants have submitted through learned counsel Mr. Saluny that the pleadings filed by the Plaintiffs indicate that the Plaintiffs were contestants in various positions in the Jubilee Party that won majority seats in the County Assembly of Tharaka Nithi. The Respondents contend that the nature of the case is an issue between members of Jubilee Party which in their view is an issue that falls within the jurisdiction of Political Tribunal. They contend that this court lacks jurisdiction to deal with the dispute in the first instance. They have pointed out that **Section 39** of the **Political Parties Act** creates a Tribunal which is mandated to handle party disputes. They have further emphasized that **Article 159 (2) (c)** of the **Constitution Kenya 2010** promotes use of alternative dispute resolution mechanisms. They contend that in this instance, the **Political Parties Disputes Tribunal** created under **Section 39** of the **Political Party Act** is the alternative dispute resolution mechanism available for the Plaintiffs for utility before approaching this court.
8. They have further contended that under **Section 40 (2)** of the **Political Party Act** the first port of call is the internal party organs even before a party approaches the Tribunal. They have faulted the Plaintiffs for not initiating any internal party processes.
9. The Defendants have drawn the attention of this court on the provisions of **Section 41(2)** of the **Political Party Act** which gives this court appellate jurisdiction on decisions made by Political Parties Disputes Tribunal and that this suit is premature to that extent.
10. The Defendant/Respondents have further submitted that the seats in the County Assembly were declared vacant and presently no business in the House can be transacted and that the interim orders issued have hampered operations in the County Assembly and the County at large.
11. They contend that the role of Speaker of County Assembly is purely nominal as it only accepts decisions of officials as elected by individual Party and only facilitates the swearing in of the office bearers. They have faulted the Plaintiffs for suing the wrong parties and non joinder claiming that the new elected officials should have been sued.
12. The Plaintiff/Applicants have opposed the Preliminary Objection raised by the Defendants stating that under **Article 165 (3)** of the **Constitution of Kenya 2010**, this court is granted jurisdiction over all civil matters and especially in this matter where they have claimed that their political rights have been infringed.
13. According to the Applicants, they initiated internal resolution mechanisms of the party as per exhibit GMM4 in their affidavit but they have alleged that the County Assembly chose to ignore the decision of the Internal Party Committee dated 25th February 2020 which in their view declared the Plaintiffs/Applicants the winners as opposed to the other list forwarded for swearing in. They contend that the action of Defendants not to honour the party's internal decision precludes them from relying on **Article 159 (2)** of the **Constitution of Kenya**. They point out that the very action of the Respondents made them come to court for redress.
14. The Applicants submitted that there were no notice by the Registrar of Political Parties declaring the seats vacant and therefore the business of County Assembly is going on because the office bearers are still in the office.
15. The Applicants have further contended that if this court was to find that this matter should be handled by political parties Disputes Tribunal, it should transfer the matter to the Tribunal rather than shirking out the suit and have relied on the decision of **Linus Kamunyo Muchira -vs- Speaker Embu County Assembly Majority Leader [2016] eKLR.**
16. This court has considered the Defendants' Preliminary Objection and the response made. The main and the only issue is whether this court has jurisdiction to deal with Political Disputes such as the one presented by the Plaintiffs.
17. There is no dispute that under **Article 38** of **Constitution of Kenya 2010** political rights of every citizen of Kenya is protected. Every citizen has a right to make political choice as enunciated under **Article 38** of the **Constitution of Kenya**. The Plaintiffs like any other Kenya therefore have every right to make political decision of their choice and no one can force them to associate with a party or political idea they do not subscribe to. The Plaintiffs have alleged from the bar through counsel that their political rights have been infringed.
18. Looking at the suit before me, the Plaintiffs are scanty on how their political rights enshrined in the Constitution of Kenya have been infringed or about to be infringed if that was the case, one would have expected them to lodge a Constitutional Petition listing down their grievances and how their constitutional rights have been or about to be infringed and by whom. In my view a party cannot just allege from the bar that his/her constitutional rights have been or about to be infringed.
19. The suit by the Plaintiffs is hinged on apparent political differences among members of the County Assembly from the same Political

Party- Jubilee Party. Under the Political Parties Act, 2011 parliament enacted the said statute to deal with registration, regulation, funding of Political Parties and connected purposes like solving internal party disputes among members. The **Section 39** of the Statute establishes the Political Parties Disputes Tribunal whose functions are clearly spelt under **Section 40** of the **Act** as follows:-

" (1) **The Tribunal shall determine;**

a. Disputes between the members of a political party.....

(2) Notwithstanding subsection

(1) the Tribunal shall not hear or determine a dispute under paragraph (a) (b) (c) or (e) unless the dispute has been heard and determined by the Internal Political Party Dispute Resolution Mechanism."

20. The operative words in the above provisions is "**shall**" which shows that parliament clearly placed party matters and affairs including disputes on the doorstep of;

(1) The Political Party itself through its internal mechanisms.

(2) Political Parties Disputes Tribunal.

The Tribunal is given strict timelines of determining disputes within 3 months from when they are lodged and the Act under **Section 41 (2)** gives this court only appellate jurisdiction over the decisions of the Tribunal.

21. The Plaintiffs have invoked the jurisdiction of this court under **Article 165 (3) (a)** which grants this court unlimited jurisdiction in both criminal and civil matters. It is however trite that the Constitution of Kenya requires wholesome interpretation because one Article thereof cannot be read in isolation. Under **Article 165(5)** for example the jurisdiction of this court is ousted on matters reserved exclusively for the Supreme Court, and issues touching on **Article 162(2)** of the Constitution. A further reading of **Article 159 (1) (c)** indicates that one of the principles guiding this court in the exercise of its judicial authority is the promotion of alternative forms of disputes resolution mechanisms. So where a Statute clearly states that such a dispute should first be handled by a Statutory body, it is not proper for the court to usurp jurisdiction. In this instance the Statute clearly grants this court appellate jurisdiction over political disputes involving either members of Political Parties or members of a political party and the party itself.

The law cited above has clearly stated that the first port of call is the internal party organ then the Tribunal itself. It is only then and upon Tribunal making a decision that the appellate jurisdiction of this court can be invoked. The original jurisdiction to deal with party affairs rests in other avenues as cited in the **Political Parties Act** and unless a party can demonstrate that the other avenues provided is an impediment to right to access justice, or any other fundamental rights there is no basis to invoke inherent jurisdiction of this court under **Article 165(3)** of the **Constitution of Kenya**. I do not find basis for the Plaintiff/Applicants to invoke the said jurisdiction because no basis has been laid before me.

22. In the case of **ALBEITY HASSAN ABDALLA -V- INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC), MOHAMMED ADAN ALI, ANUAR LOITITIP & WIPER DEMOCRATIC MOVEMENT PARTY [2018] ECLR** the Court of Appeal dealt with the issue, *inter alia*, of whether the HC had jurisdiction to handle the issue of nomination of party agents. The Court of Appeal upheld the decision of the HC on that question of law that it did not have the jurisdiction because those were party affairs and any dispute on them should have been taken before the Political Parties Disputes Tribunal. The court stated;

"Consequently, in so far as the grievance regarding the appointment of the party agent is concerned, given that party agents were indeed appointed by the 4th respondent in terms of subsection (1) of Section 30 of the Elections Act, the subsequent internal wrangles pertaining to that appointment were between the appellant and his political party (the 4th respondent) and ought to have been referred to the PPDT for resolution. As we dispose of this issue we also point out that it is trite law that where the law provides a resolution mechanism, the same should be strictly adhered to (see. Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425, where it held that:-

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

23. Similarly in **Republic -vs- Benjamin Jomo Washaili majority Whip National Assembly & 4 others exparte Alfred Kiptoo Keter & 3 others [2018] eCLR**, the Applicants had sought to block their ouster from departmental committees in parliament where they served, **Odunga J** declined and held as follows:-

"42. It is however my view that the onus is upon the applicant to satisfy the Court that he ought to be exempted from resorting to the available remedies. In Re Preston [1985] AC 835 at 825D Lord Scarman was of the view that a remedy by judicial review should not be made available where an alternative remedy existed and should only be made as a last resort. I therefore associate myself with the position adopted by Emukule, J in Revital Healthcare (EPZ) Limited & Another vs. Ministry of Health & 5 Others [2015] eCLR at paragraph 10 where he cited with approval the case of Damian Belfonte vs. The Attorney General of Trinidad and Tobago C.A 84 of 2004 in which it was held that:-

"...where there is a parallel remedy, Constitutional relief should not be sought unless the circumstances of which the

complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature, which, at least arguably indicates that the means of least redress otherwise available would not be adequate. To seek constitutional relief in the absence of such feature would be a misuse, an abuse of the Court's process."

Accordingly, where there is an alternative remedy provided by an Act of Parliament which remedy is effective and applicable to the dispute before the Court, the Court ought to ensure that that dispute is resolved in accordance with the relevant statute. Accordingly I agree with the decision in Pasmore vs. Oswaldtwistle Urban District Council [1988] A C 887 that where an obligation is created by statute and a specific remedy is given by that statute, the persons seeking the remedy is deprived of any other means of enforcement. I therefore agree with Mwera, J (as he then was) in Safmarine Container N V of Antwerp vs. Kenya Ports Authority (supra) to the extent that it is not only the Constitution that can limit/confer jurisdiction of the court but that any other law may by express provision confer or limit that jurisdiction. In his decision the learned Judge relied on Article 159 of the Constitution. Clause (2)(c) of the said Article provides that in exercising judicial authority, the courts and tribunals shall be guided by the principle that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted. Courts and Tribunals cannot be said to be promoting alternative dispute resolution mechanisms when they readily entertain disputes which ought to be resolved in other legal forums. Accordingly I agree that where there is an alternative remedy and procedure available for the resolution of the dispute that remedy ought to be pursued and the procedure adhered to."

24. This court is guided by the above positions taken by the courts in the cited decisions. I do not agree with the Plaintiffs' position that **Article 165(3)** clothes this court to determine everything brought before it because as I have observed above, where the Constitution clearly gives a mandate to other courts and where a Statute clearly gives jurisdiction to another organ to first entertain the dispute, this court cannot usurp the jurisdiction save when the Statute itself is challenged on its constitutionality. That certainly is not the case here.

25. The Plaintiffs have invoked **Section 14** of the **Political Party Act** but that section deals with resignation of members of a Political Party or expulsion of a member from a Political Party which is not the case here. The Plaintiffs have not demonstrated that they fully exhausted the mechanisms provided under the cited Statute. The letter exhibited in my view does not demonstrate that there was a complaint filed and that the party upon hearing the complaints and the Respondents reached a resolution or a verdict. The letter dated 25th February only talks of "**thorough investigations**" and does not state if the "**thorough investigations**" included hearing all the parties to the dispute. In any event if the Plaintiffs claim that the internal party mechanism was exhausted, certainly the complaint was not forwarded to Political Parties Disputes Tribunal as provided by the statute. This is because, the Plaintiffs apparently conceded that they could be headed there and that is why they pleaded with this court to refer the dispute to he said Tribunal. They have cited the decision of **Hon. Justice J.M Bwononga** in the case of Linus Kamunyo Muchira -vs- Speaker Embu County Assembly [2016] eKLR but I am respectfully not persuaded because in the first place, the Tribunal need to satisfy itself that the Plaintiffs have first complied with **Section 40 (2)** of the **Act** before entertaining the matter. So if this court were to transfer the matter as it is, there would be challenges to the Tribunal to decline to entertain the matter for want of procedure because then it would be violating the directions given by this court to entertain the dispute. The Tribunal as it were would find itself between a rock and hard place. To follow the procedure as per the Statute establishing it or the directions of this court. That in my view is undesirable. There is nothing preventing the Plaintiffs herein if they so desire to lodge their claim directly to the Tribunal.

In the premises this court finds merit in the Preliminary Objection dated 9th March 2020 filed herein. The same is sustained. The Plaintiffs have not demonstrated that internal party mechanisms have been exhausted and/or invoked the appellate jurisdiction of this court under **Section 42(2)** of the **Political Party Act**. The suit and the application in its entirety is struck out but I shall make no order as to costs because the Plaintiffs have demonstrated that they could be having a good cause though through a different forum provided by law other than this court.

Dated, signed and delivered at Chuka this 12th day of March 2020.

R.K. LIMO

JUDGE

12/3/2020

Ruling signed, dated and delivered in the open court in presence of Ouma holding brief for Saluny for the Respondents.

R. K LIMO

JUDGE

12/3/2020