REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 177 OF 2018

HON.MUSALIA MUDAVADI.....................1ST APPELLANT

KEVIN LUNANI...2ND APPELLANT

MARGARET NDANYI EMONDE............3RD APPELLANT

BARACK MULUKA...................................4TH APPELLANT

AMANI NATIONAL CONGRESS.............5TH APPELLANT

VERSUS

ANGELA GATHONI WAMBURA..........1ST RESPONDENT

IBRAHIM BULMOR MEMBA..............2ND RESPONDENT

HON.GODFREY OSOTSI.......................3RD RESPONDENT

JUDGMENT

1. The 1st to 4th appellants were the respondents in a complaint lodged by the 1st and 2nd respondents in the *Political Parties Disputes Tribunal* (hereinafter the tribunal). The 5th appellant, *Amani National Congress* (hereinafter the party) was enjoined in the complaint as the 1st interested party while the *Registrar of Political Parties* who is not a party to this appeal was named as the 2nd interested party.

2. In their statement of claim dated 15th January 2018, the 1st and 2nd respondents basically challenged the legality of the process through which the 4th appellant, *Mr. Barack Muluka* was appointed as the party's Secretary General.

3. In the main, the 1st and 2nd respondents (the claimants) complained that the appointment of the 4th appellant as the party's Secretary General was unprocedural, illegal, null and void as it was allegedly done in flagrant violation of the party's constitution. They averred that according to the party's constitution, the position of Secretary General was elective and its holder was required to be elected in elections held by the National Delegates Convention and not appointed by resolutions in a Special National Executive Committee Meeting (hereinafter the SNEC meeting) which in this case took place on 12th October 2017; that in any case, the said SNEC meeting was not properly convened and constituted and it could not thus lawfully transact any business on behalf of the party; that the resolutions passed in the meeting were based on falsified resignation letters and/or documents which were purportedly made by

the *bona fide* Secretary General of the party *Hon. Godfrey Osotsi* (the 3rd respondent); that the publication of the appointment of the 4th appellant as the new Secretary General of the party in the Standard and Nation newspapers of 22nd November 2017 was irregular and unlawful.

4. The claimants further contended that their attempts to invoke the party's internal dispute resolution mechanism were frustrated by the 1st – 4th appellants but in their view, they had exhausted all available avenues of the party's dispute resolution mechanism.

5. In their prayers, they sought the following reliefs:

> ***i. A declaration that the special national executive meeting held on 12th October 2017 and all resolutions and consequential actions and/or decisions taken as a result thereof were irregular, illegal, null and void.***
>
> ***ii. A declaration that the Kenya Gazette Vol. CXIX-No. 167 Notice No. 11045 dated 10th November 2017 of intended change of the 1st interested party's secretary general is irregular, null and void.***
>
> ***iii. An order that the bona fide secretary general of the party remains Hon. Godfrey Osotsi subject to an election that is held in strict compliance with the party constitution.***
>
> ***iv. An order restraining the 1st – 4th respondents and all national officials of the party from in any way interfering with the affairs of the interested party otherwise than as provided by the Party Constitution, 2016.***
>
> ***v. An order directing the relevant officials of the 1st interested party to organize and conduct elections of the national executive committee to ensure compliance with Article 26.1 of its Constitution.***
>
> ***vi. Costs to the claimant.***
>
> ***vii. Any other orders as the honourable tribunal may deem fit.***

6. Upon being served with the claimant's statement of claim, the 1st – 4th appellants filed their memorandum of appearance on 25th January 2018; a preliminary objection and statement of defence dated 26th January 2018.

7. In the preliminary objection, the 1st – 4th appellants challenged the jurisdiction of the tribunal to entertain and determine the claimant's complaints on grounds that the issues raised in their statement of claim fell outside the ambit of *Section 40 (1)* of the *Political Parties Act* and that even if they did not, the claimants had not exhausted the party's internal dispute resolution processes before filing their complaint with the tribunal as required by *Section 40 (2)* of the *Political Parties Act (PPA)*. The tribunal heard the preliminary objection and dismissed it in a ruling dated 8th February 2018.

8. In their statement of defence, the appellants denied *in toto* all the allegations made by the claimants in their statement of claim.

9. The record of the tribunal shows that on 2nd February 2018, the 3rd respondent presented a Notice of Motion seeking that he be enjoined in the complaint as the 3rd interested party which prayer was granted by the tribunal. He subsequently swore and filed an affidavit on 9th February 2018 supporting the claimants' statement of claim and denying the averments made in the appellants' statement in defence.

10. The matter proceeded to full hearing at the end of which the tribunal rendered its decision in a

judgment delivered on 12th April 2018. The tribunal held *inter alia* that the Kenya Gazette Vol. CXIX-No. 167 Notice No. 11045 dated 10th November 2017 of the intended change of the party's Secretary General was irregular, null and void and that the 3rd respondent was the party's *bona fide* Secretary General subject to elections that were to be held in strict compliance with the party's constitution.

11. The appellants were aggrieved by the tribunal's decision. They filed this appeal vide a memorandum of appeal dated 13th April, 2018 in which they faulted the tribunal's judgment on the following five grounds:

> ***1) The chairman of the Political Parties Disputes Tribunal erred in law and in fact in holding that the tribunal had jurisdiction to entertain this dispute despite the fact that the 1st and 2nd respondents had not exhausted the internal dispute resolution mechanism before moving to the tribunal.***
>
> ***2) The chairman of the said tribunal erred in law and in fact in dismissing the appellants' preliminary objection to its lack of jurisdiction in entertaining this dispute on the ground that technicalities never mattered and that only substance did.***
>
> ***3) The chairman of the said tribunal erred in law and in fact in holding that the open and voluntary resignation of the secretary general was not valid despite overwhelming evidence in support of the open voluntary resignation.***
>
> ***4) The chairman of the said tribunal misdirected himself in finding that the secretary general of the 5th respondent was coerced into resigning without any iota of coercion being adduced before the tribunal.***
>
> ***5) The chairman of the said tribunal misdirected himself in dismissing the appellants' defence despite overwhelming evidence in support of the defence case.***

12. By consent of the parties, the appeal was prosecuted by way of written submissions which were orally highlighted before me on 29th November 2018 by learned counsel *Mr. Ameyo* and *Dr. Alutalala* who appeared for the appellants; *Mr. Wandati* who represented the 1st and 2nd respondents and *Mr. Awele* who represented the 3rd respondent.

13. After carefully considering the grounds of appeal, the written and oral submissions made by counsel on record, all the authorities cited as well as the voluminous record of appeal, I find that only three key issues emerge for my determination. These are :

> i. Whether this court in the exercise of its appellate jurisdiction can entertain and determine the challenge on the tribunal's jurisdiction to determine the dispute filed by the claimants.
>
> ii. If the answer to issue number (i) is in the affirmative, whether the tribunal had jurisdiction to hear and determine the aforesaid dispute.
>
> iii. Whether the tribunal erred in law or in fact in finding that the 3rd respondent's resignation was invalid for having been procured unlawfully through coercion and undue influence.

14. Starting with the first issue, the respondents in their respective submissions contended that this court lacks jurisdiction to enquire into whether the tribunal had jurisdiction to hear and determine the dispute lodged before it by the claimants because the issue had been raised in a preliminary objection filed by the appellants and was determined on merit by the tribunal in a ruling delivered on 8th February 2018 in which it held that it had jurisdiction to hear the dispute; that the appellants did not file an appeal against the ruling dismissing the aforesaid preliminary objection within the time prescribed by *Section 34 (1)* of the *Political Parties Disputes Tribunal (Procedure) Regulations* and that therefore, the challenge on the

tribunal's jurisdiction is time barred; that in any case, the appellants submitted themselves to the jurisdiction of the tribunal when they chose to proceed with the hearing of the main dispute.

15. The respondents also argued that this court cannot adjudicate on the issue of jurisdiction since the decision appealed against is not the tribunal's ruling on the preliminary objection but the tribunal's final judgment dated 12th April 2018 which did not make any determination on the tribunal's jurisdiction to hear the dispute. To support his submissions that this court cannot entertain the issue of the tribunal's jurisdiction on appeal as it was now time barred, the 3rd respondent relied on the Supreme Court's decision in the case of ***Nicholas Kiptoo Arap Korir Salat V IEBC & 7 Others, [2014] eKLR***, which held that an appeal which was filed out of the prescribed time without leave of the court was fatally defective and must be struck out.

16. To counter the respondents' submissions, learned counsel *Mr. Ameyo* contended that the ruling on the preliminary objection was part and parcel of the judgment subject of this appeal; that the fact that the appellants acquiesced to the proceedings subsequent to the dismissal of their preliminary objection did not as a matter of law confer jurisdiction on the tribunal.

17. I wish to start my determination of the above issue by pointing out that though the PPDT is a specialized tribunal whose mandate is to adjudicate on inter party and intra party disputes which can reasonably be described as political disputes, *Rule 34 (2)* of the *Political Parties Disputes Tribunal (Procedure) Regulations, 2017* makes it clear that appeals filed in the High Court against the tribunal's decisions should be treated as civil appeals and should be resolved in the same manner as appeals filed against decisions of the subordinate court. For the avoidance of doubt, *Section 41* of the *Political Parties Act* specifically provides that appeals from the tribunal shall be on points of both fact and the law just like all other civil appeals filed in the High Court.

18. That said, this being the first appellate court, it is enjoined by law to examine and determine any finding of fact or law made by the tribunal which is contested on appeal. A challenge on jurisdiction is a fundamental question of law which goes to the root of the legality of any decision made by a court of law or any body having quasi judicial powers like the tribunal. As was held by the Court of Appeal in ***Owners of Motor Vessel "Lillian S" V Caltex Oil (Kenya) Limited, (1989) KLR 1***, jurisdiction is everything and without it, the court must down its tools. It cannot take any single step.

19. The centrality of jurisdiction was underscored by the Supreme Court in ***Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 Others,[2012] eKLR***, when it expressed itself as follows:

> ***"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively*** *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. ***Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation."***

20. After considering all the submissions made by the parties on whether or not this court has jurisdiction to entertain the jurisdictional challenge made by the appellants in this appeal, I take the following view of the matter.

I take the view that this court in the exercise of its jurisdiction as the first appellate court is duty bound to examine and consider any finding or order that was made by the tribunal in the course of the proceedings subject matter of the appeal in order to determine their legal validity if the same are contested on appeal. Whether or not the tribunal had jurisdiction to determine the dispute before it is a fundamental and pure

point of law and since it has been raised on appeal against the final judgement rendered by the tribunal, this court is duty bound to consider it to arrive at its own independent determination concerning whether or not the tribunal correctly or wrongly assumed jurisdiction in the matter. The court cannot turn a blind eye to such an important legal question just because an interlocutory appeal was not filed to contest the tribunal's finding on the preliminary objection raised by the appellants.

21. The failure of the appellants to file an interlocutory appeal on the tribunal's ruling on jurisdiction did not and could not have ousted this court's jurisdiction to determine whether or not the tribunal was correct in its finding that it had jurisdiction to hear the dispute. This is more so considering that any act done without jurisdiction becomes a nullity in law and has no legal effect. Jurisdiction flows from the Constitution and the law and the tribunal's finding or the conduct of the appellant in submitting to its jurisdiction could not have conferred jurisdiction on the tribunal if it did not have it in the first place.

22. In any event, the ruling on jurisdiction determined a preliminary objection which was raised at the preliminary stages of the proceedings.

I wholly agree with the submissions made by learned counsel *Mr. Ameyo* that the ruling on the preliminary objection formed part and parcel of the proceedings that culminated in the final judgment challenged on appeal. The court therefore has a legal obligation to consider the jurisdictional challenge raised before it on appeal as this is the only way that it can make its own independent conclusion on such a critical point of law which has potential to determine the outcome of this appeal one way or the other.

23. The case cited by the 3rd respondent namely, ***Nicholas Kiptoo Arap Korir Salat V IEBC & 7 Others, [2014] eKLR*** for the proposition that the appeal on the issue of jurisdiction is time barred is not applicable to this appeal. In that case, the Supreme Court was being asked to admit an appeal which had been filed out of time without leave of the court. That is not the position in this appeal. The appeal in this case was filed within the time prescribed by the law.

24. In sum, it is my finding that this court has jurisdiction to consider and determine whether or not the tribunal had jurisdiction to entertain the dispute that was filed before it by the claimants.

25. Having resolved the first issue in the affirmative, I now turn to consider the second issue I had isolated for my determination.

The appellants have submitted that the tribunal did not have jurisdiction to hear the dispute as the claimants had not exhausted the 5th appellant's internal dispute resolution mechanism before filing the dispute in the tribunal; that the claimants did not file their formal complaints to the Internal Dispute Resolution Committee (IDRC) and that therefore, the IDRC's decision dated 11th January 2018 was arbitrary and amounted to an abuse of the IDRC's discretion; that the *suo moto* decision was unlawful as it violated the appellants right to be heard and contravened the rules of natural justice; that in the circumstances, it cannot be said that the party's internal dispute resolution mechanism (IDRM) was exhausted before the dispute was filed in the tribunal.

26. The appellants further submitted that the complaint filed with the tribunal was a totally new complaint different from the one that was placed before the IDRC by the Registrar of Political Parties (RPP) which included a new complainant namely *Ibrahim Memba*; that the enjoinment of the 3rd respondent as an interested party convoluted matters more as he introduced another complaint into the dispute which had not gone through the party's IDRM.

27. The respondents on their part denied the appellants claim that the tribunal lacked jurisdiction to hear the dispute. While admitting that the claimants did not file other complaints that complied with the form directed by the IDRC, the respondents submitted that the IDRC subsequently dealt with the substance of their initial complaints and made its decision on the same and that therefore, the tribunal had jurisdiction to resolve the dispute as the claimants before it were the same people who had complained to the IDRC.

28. As noted earlier, jurisdiction is donated by either the Constitution or the law. Jurisdiction refers to the authority which a court or tribunal has to adjudicate on matters formally presented before it for determination. I wholly agree with the definition of what constitutes jurisdiction as aptly captured by the court in ***John Kipngeno Koech & 2 Others V Nakuru County Assembly & 5 Others, [2013] eKLR*** when it stated that:

> ***"Jurisdiction is the practical authority granted to a formally constituted legal body to deal with and make pronouncements on legal matters and by implication to administer justice within a defined area of responsibility. It is the scope, validity, legitimacy or authority to preside or adjudicate upon a matter."***

29. Having understood what is meant by jurisdiction, let us now examine whether the tribunal had jurisdiction to determine the claimant's complaints.

The tribunal derives its mandate from *Section 40* of the *Political Parties Act*. *Section 40 (1)* provides that:

> ***"(1) 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."***

Section 40 (2) imposes a restriction on the tribunal's jurisdiction by stipulating that:

> ***"Notwithstanding subsection (1), 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."***

30. What *Section 40 (2)* above means is that the tribunal acquires jurisdiction to determine disputes that fall within the ambit of *Section 40 (1)* only if the disputes had been heard and determined by the political parties' internal dispute resolution mechanism. A careful scrutiny of *Section 40* of the *Political Parties Act* (PPA) makes it apparent that in giving statutory backing to political parties' internal dispute resolution mechanisms, the intention of Parliament was to promote good governance and growth of political parties by strengthening their institutional capacities to resolve their internal disputes without external interference. The tribunal was thus created as an entity that would exercise appellate jurisdiction over decisions made by organs appointed by political parties to determine their intra and inter party disputes.

31. I must however add that though this court in determining appeals such as the present one must have regard to parliament's intention in creating the tribunal, the court must also be alive to the fact that there may be situations where political parties may for their own reasons refuse to set in motion their IDRM when called upon to do so by aggrieved parties. If the court were to be confronted by such a situation, it would not be powerless and would be in a position to grant the aggrieved party a remedy that would best serve the ends of justice. Each case must however be considered on its own merits.

32. In this appeal, the appellants contention is that though the dispute filed in the tribunal was covered

under *Section 40 (1)* of the *PPA*, it had not been heard and determined by the 5th appellants IDRC before it was filed in the tribunal and that consequently, the tribunal erred in holding that it had jurisdiction to entertain and determine the same. This contention was vehemently denied by the respondents.

33. It is not disputed that vide a letter dated 17th November 2017, the Registrar of Political Parties (RPP) referred a petition dated 14th November 2017 to the 5th appellant's (the Party) Secretary General. The petition had been filed against the party and its officials by seven party members.

34. On receipt of the petition, the party's IDRC convened a meeting on 19th December 2017 which was attended by both the petitioners and the respondents through their respective advocates. The petitioners included *Angela Gathoni Wambura* (the 1st respondent in this appeal) while the respondents were ANC party, its party leader, chairman and other officials who included *Hon. Godfrey Osotsi* (the 3rd respondent).

35. The record of proceedings in that meeting shows that the IDRC disclosed to the parties present that it had also received a second petition made on 23rd October 2017 by one *Ibrahim Bulmor Memba* (the 2nd respondent). Both petitions questioned the circumstances and the manner in which *Mr. Barack Muluka* (4th appellant) had been appointed as the party's Secretary General. The record shows that *Mr. Ibrahim Memba* did not attend that meeting.

36. The record further shows that with the concurrence of the advocates representing the seven petitioners and the respondent, the IDRC directed that since the complaint (1st petition) had been forwarded to it by the RPP and had not been filed as required by *Article 62* of the party's constitution, the petitioners were to file proper complaints with the committee on or before 21st December 2017 and the respondents would thereafter respond to the same. Though the petitioners did not comply with the above directive, the IDRC proceeded to determine their complaint as presented through the RPP and the one filed by *Ibrahim Bulmor Memba suo moto* without according any of the parties an opportunity to be heard on their respective complaints.

37. After deliberating on the two complaints, the IDRC made its decision on the following terms:

> ***a) That both petitions are non starters and cannot be determined by this committee.***
>
> ***b) That the decision made by the National Executive council to appoint an interim secretary general was made in the interest of and for the continuity of the party.***
>
> ***c) That a National Delegates Convention be urgently convened for purposes of ratifying the appointment of a Secretary General.***
>
> ***d) That until such time as the national delegates convention shall be convened; Barrack Muluka should continue discharging his duties as the party Secretary General.***

38. It is significant to note that by the time the IDRC was making its decision on 11th February 2018, the 1st and 2nd respondents had already filed their complaints with the tribunal and proceedings before it were ongoing. When confronted with a challenge on its jurisdiction in the preliminary objection filed by the appellants, the tribunal ruled that it had jurisdiction to hear the dispute on grounds that the 1st claimant had demonstrated that he had attempted to move the party to constitute its IDRM and that this was sufficient to achieve the intended threshold required by *Section 40 (2)* of the PPA.

39. I think it is important to reproduce the holding of the tribunal *in extenso* in order to understand its true import. In paragraphs 14, 15 and 16 of its ruling, the tribunal expressed itself as follows:

> ***"14. For purposes of compliance with the IDRM requirement of s. 40 (2) of the Political Parties Act 2011, this Tribunal in*** Margaret Ndalama & 4 Others V Wiper Democratic Movement – Kenya

PPDT Complaint No. 4 Of 2015, ***found that a complainant will be deemed to have satisfied the same, provided that it has moved the party to constitute a tribunal for the purpose. In other words whether the party does institute one or not is not the issue, rather the attempt to comply will suffice.***

15. The decision was arrived at with reason owing to the realization that many complainants shall be non-suited simply on account of the fact that the party mandarins could ignore such a request, in order to frustrate the applicant's bid to lodge a complaint in the first instance.

16. Accordingly, from the foregoing analysis, this tribunal finds that the claimants, or at least the 1st claimant did attempt to comply with the IDRM requirements of s. 40 (2) of the political parties act 2011, no matter the outcome. We shall not say much about the 2nd claimant for now. Suffice it to say that the cause for action for the complainants is the same."

40. While I fully understand the tribunal's motivation in reaching its decision, I am unable to agree with its interpretation of *Section 40 (2)* of the *Act*. The tribunal failed to address its mind to the clear and express provisions of the aforesaid section which is in mandatory terms. The provision specifically limits the tribunal's jurisdiction to only those disputes that had been heard and determined by a political party's internal dispute resolution mechanism. The resolution of a dispute by a party's internal dispute resolution organ was a condition precedent to the tribunal's exercise of jurisdiction. The plain and clear wording of *Section 40 (2)* of the *Act* states in no uncertain terms that it requires not only the filing of a complaint with the organ charged by a political party with the responsibility of its internal dispute resolution mechanism but also the actual hearing and determination of the complaint.

41. In my considered view, the tribunal was clearly wrong in its finding that a mere attempt to set in motion a party's IDRM was sufficient to give it jurisdiction to hear and determine a dispute falling under *Section 40(1)* of the *PPA*. There was no evidence placed before the tribunal to demonstrate or even suggest that the 5th appellant had made it impossible for the claimants to have their complaints processed through its IDRM. The record of the proceedings before the Party's IDRC shows the complete opposite.

42. The record confirms that after receipt of the complaints lodged by seven party members who included the 1st claimant, the party constituted its IDRC which sat on 19th December 2017 and gave directions regarding the manner in which it would deal with the complaint. As noted earlier, the complainants with the consent of their advocates were directed to resubmit their complaint to align it with the party constitution. Instead of complying with this directive, they abandoned the IDRC process and chose to file their complaint with the tribunal. This was done on 15th January 2018 when the IDRC process was still ongoing considering that the IDRC made its decision on 11th February 2018. It is worth noting that the tribunal delivered its ruling on jurisdiction on 8th February 2018 a few days before the IDRC made its decision.

43. Though I concur with the appellants' submission that the IDRC's decision was made unprocedurally, irregularly and illegally in breach of the rules of natural justice, it is my finding that this is the decision that completed the party's IDRM. The legality or otherwise of the decision is a matter which ideally should have been adjudicated upon by the tribunal had the dispute been lodged before it at the right time.

44. Given my foregoing findings, I have come to the conclusion that the dispute lodged in the tribunal was premature as it was filed before the claimants had exhausted the party's IDRM. They should have complied with the IDRC's directive and filed their complaint in accordance with the party's constitution and should have waited for the same to be heard and determined. It is only after the IDRC had made a decision that they could have lawfully moved to the tribunal to challenge the decision if they were aggrieved by it.

45. Given the above findings, it is my determination that the tribunal misdirected itself and fell into error when it found that it had jurisdiction to hear and determine the dispute filed before it by the claimants.

Upon an analysis of all the material placed before me, it is my finding that the threshold set by *Section 40 (2)* of the *PPA* had not been met by the time the dispute was filed with the tribunal and therefore, the tribunal lacked jurisdiction to hear the dispute.

46. The effect of this finding is that all the proceedings that were conducted before the tribunal culminating into the judgment dated 12th April 2018 were *void abinito*. They amounted to a nullity in law which basically means that they amounted to nothing. To borrow the wisdom of L. Denning as expressed in ***Mcfoy V United Africa Limited, [1961] 3 ALL ER 1169*** at page 1172:

> ***"If an act is void, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."***

47. The tribunal's judgment which is the subject of this appeal being a product of proceedings which were conducted without jurisdiction is also a nullity in law and cannot be sustained. It must be set aside.

48. Although the finding on the tribunal's jurisdiction would have been sufficient to dispose of this appeal, I would be remiss if I did not consider the third issue I had distilled for my determination considering that the 3rd respondent's alleged involuntary resignation prominently featured in the parties arguments in the appeal and was among the issues that were determined by the tribunal.

49. It is clear from the statement of claim dated 15th January 2018 that the claimants challenged the procedure and process that was used by the party in appointing the 4th appellant as its Secretary General. My perusal of the statement of claim does not show that the claimants complained that the 3rd respondent's resignation from the position of Secretary General of the party was involuntary as it had been procured by coercion and undue influence. This complaint was first introduced into the dispute by the 3rd respondent when he was enjoined therein as the 3rd interested party.

50. In his affidavit in response to the claimants claim and the defence filed by the appellants, the 3rd respondent though supporting the other claims made by the claimants averred that on the evening of 4th May 2017, he was summoned by the 1st appellant who asked him to sign a pre-drafted and undated letter of resignation in exchange for his nomination as a member of parliament sponsored by the party; that he signed the said letter under coercion and undue influence.

In its judgment, the tribunal considered the 3rd respondent's complaint and held that his resignation was indeed involuntary as it was procured through coercion and undue influence.

51. Given that the 3rd respondent had been enjoined in the dispute as an interested party, the law is that in protecting his stake in the dispute, he ought to have presented to the tribunal for consideration and determination matters that fell within the original dispute filed by the claimants. He should not have used the proceedings in the tribunal to have his own dispute determined which was substantially different from the main dispute that had been instituted by the claimants. The Supreme Court in ***Francis Kariuki Muruatetu & Another V Republic & 5 Others, [2016]*** had opportunity to address itself to the role of an interested party in a dispute. It stated as follows:

> ***"…. Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether new issue to be introduced before the Court."***

52. In view of the foregoing, I find that the tribunal erred in entertaining and making a determination on the 3rd respondent's alleged involuntary resignation from office as the party's Secretary General, a matter which was not raised in the original dispute lodged before it.

53. For all the foregoing reasons and findings, I am satisfied that this appeal is merited and it is hereby allowed with the result that the decision of the tribunal dated 12th April 2018 is hereby set aside.

54. Since costs follow the event, the appellants are awarded costs of the appeal.

It is so ordered.

DATED, SIGNED and **DELIVERED** at **NAIROBI** this 30th day of April, 2019.

C. W. GITHUA

JUDGE

In the presence of:

Ms Katana holding brief for Mr. Ameyo & Dr Alutalala for the Appellants

Mr. Wandati for the 1st & 2nd Respondents and holding brief for Mr Awele for the 3rd Respondent

Mr. Salach: Court Assistant