



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO. 17 OF 2014

ADAN ALI WAKO.....PLAINTIFF/APPLICANT

Versus

NURA DIBA BILLA.....1ST DEFENDANT/RESPONDENT

THE CLERK COUNTY ASSEMBLY OF ISIOLO.....2ND DEFENDANT

THE SPEAKER COUNTYASSEMBLY OF ISIOLO.....3RD DEFENDANT

RULING

Jurisdiction of Political Parties Tribunal

[1] By a Notice of Motion Application filed in court on 31st July 2014, the Plaintiff/Applicant sought the following orders:-

1.spent
2. **Dura Diba Billa the first defendant to be detained in prison for a term not exceeding six months for disobedience of a court order.**
3. **Costs of this application to be provided for.**

[2] But before the Application could be heard on merits, the 1st defendant filed Notice of Preliminary Objection citing the following grounds:

1. **The honourable court lacks jurisdiction to entertain, hear and determine this dispute in view of the Provisions of the Political Parties Act.**
2. **The entire suit should be struck out with costs.**

[3] When the matter came up for hearing on 29th September 2016, the court directed that the preliminary objection be canvassed first through written submissions. Parties obliged and filed their respective submission which I shall now consider.

[4] The 1st defendant argued that this court does not have jurisdiction to hear and determine the dispute

herein in view of the provisions of the Political Parties Act 2011 specifically Section 40 of the Act which provides that it is the Political Parties Tribunal established under the Act which has jurisdiction to determine disputes between inter alia members of a political party. According, to the 1st Defendant this dispute falls within the mandate of the Political Parties Tribunal. Consequently, the 1st defendant urged the court to uphold the Preliminary Objection and dismiss the entire suit with costs.

[5] The Plaintiff, the 2nd and 3rd defendant maintained that the dispute herein in before the right forum and that the Political Parties Dispute Tribunal had no jurisdiction in the circumstances of this matter.

DETERMINATION

Nature of preliminary objection

[6] I need not re-invent the wheel. A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. See the opinion by **Law JA** on this point in the case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696***. And, now that principle is abundantly clear. Therefore, a preliminary objection must not be blurred with factual details liable to be contested and in any event, will require to be proved through the processes of evidence. Once, a ‘preliminary objection’ calls for evidence in order to be proved, it loses the character of ‘preliminary objection and the matter must be heard through normal plenary hearing in court. See also ***Oraro vs. Mbaja [2005] 1 KLR 141 Ojwang, J*** (as he then was). This is the test I will apply.

[7] The Plaintiff urged that the 1st defendant had filed a replying affidavit disputing the facts as averred by the plaintiff in its application that was the subject of the preliminary objection and that filing a replying affidavit was itself an admission that the facts were contested and that the court could not determine them as preliminary objection. They further contended that paragraph 8 of the 1st defendants defence was an express admission of the jurisdiction of the court and that jurisdiction was not an issue which had been pleaded and that as such the same could not be a basis of a preliminary objection. These seem to be powerful arguments. But, upon careful consideration of the Preliminary Objection, the rival submissions by the parties and the authorities relied upon by the parties; I take the following view of the matter.

Jurisdiction is everything

[8] Jurisdiction is everything. This is the sweetest canticle ever composed by Nyarangi JA in the famous case of ‘**LILIAN S**’ and all courts sing it with joy every time the question of jurisdiction is raised. But before I move any further, let be dispel the impression created by or suggestion coming from the submissions by the Plaintiff that because the 1st Defendant admitted jurisdiction of the court in paragraph 8 of his affidavit, he could not raise a preliminary objection on jurisdiction. Terse reply: Jurisdiction cannot be conferred by consent of parties or by parties submitting themselves to the wrong court. Jurisdiction is granted by the Constitution and the law. The said argument by the Plaintiff is therefore not defensible at all. I now proceed on the main task of court in this matter.

Dispute between members on matters of the party

[9] The objection that has been raised is on jurisdiction- a matter which should be discernible by mere perusal of the pleadings especially the cause of action- an exercise that does not require probing for evidence as it was argued by the Plaintiff, 2nd and 3rd Defendant. From the plaint, it is clear that the dispute here is essentially between members of Jubilee coalition. It is essentially about purported removal of the Plaintiff from the office of Leader of Majority for the Jubilee Coalition in Isiolo County Assembly by the 1st Defendant. The dispute, therefore, relates to the affairs of the Jubilee coalition and must be determined by the internal dispute resolution mechanism of the Jubilee coalition. Appointment and removal of Leader of Majority is a matter for the Jubilee coalition which has the majority members in the County Assembly; a matter that cannot and should not be crudely reduced into a contest between the

individual members of the constituent parties of the Jubilee coalition. Accordingly, I do not accede to the narrow interpretation of section 40 of the Political Parties Act being preferred by the 2nd and 3rd Defendants. Such dispute ought to be referred to and be determined at first instance through the internal political party or coalition dispute resolution mechanism. See section 40(2) of the Political Parties Act which provides as follows:-

(2) 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.

Again, as this dispute is about purported removal of the Leader of Majority in the County Assembly, the standing orders and the County Governments Act will also guide the process of removal and replacement of the Leader of Majority in the County Assembly. Therefore, subject to section 40(2) of the Political Parties Act, the dispute in this case falls within the jurisdiction of Political Parties Tribunal established under section 39 of the Political Parties Act. See section 40 of the Political Parties Act which sets out the jurisdiction of Political Parties Tribunal as follows:-

40. Jurisdiction of Tribunal

(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 the decisions of the Registrar under this Act;

(fa) disputes arising out of party primaries

Doubtless, this case belongs elsewhere. It should be understood that Tribunals and alternative dispute resolution mechanisms have been established as a way of implementing the clarion call by the Constitution in article 159; to promote alternative dispute resolution mechanisms and attain overriding objective of the law; that is to say, affordable, inexpensive, efficient and expeditious disposal of cases. See the expedition with which disputes of the nature before me ought to be resolved in section 41(1) of the Political Parties Act below:-

(1) The Tribunal shall determine any dispute before it expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged.

And courts have said time and again; and impressed upon parties to adhere to and to exhaust the dispute mechanisms provided in law before coming to court. The upshot is that I uphold the preliminary objection and refer this dispute to the internal dispute resolution mechanisms of Jubilee Alliance Party (JAP) or Jubilee coalition for resolution within the timeframe provided in law.

Court retains jurisdiction to punish for alleged disobedience of court order

[10] However, the court retains jurisdiction to punish for the alleged disobedience by the 1st Defendant of the court order issued on 11th July 2014. The basis for taking this course is that the court order made on 11th July 2014 was in force at the time of the alleged disobedience and it ought to have been obeyed.

Therefore, any disobedience of a court order is liable to punishment by the court whatever the order may be. See Romer, LJ said in **Hadkinson v. Hadkinson** [1952] All ER 567 that:-

“Disregard of an order of the court is a matter of sufficient gravity, whatever the order may be”.

And, it does not matter the subsequent attacks a party may have on the probity or propriety or otherwise of the order. It has to be obeyed. I cannot put it any better than Romer, LJ in **Hadkinson v. Hadkinson** [ibid] that,

“A party who knows of an order, whether null or regular or irregular, cannot be permitted to disobey it... it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge or irregular. That they should come to the court and not take (it) upon themselves to determine such a question. That the course of a party knowing of an order, which was null and irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.”

For those reasons I will render my decision on the application dated 31st of July 2014 on 16th day of February, 2017. It is so ordered.

Dated, signed and delivered in open court at Meru this 25th day of January, 2017

F. GIKONYO

JUDGE

In the presence of:

M/s. Matata advocate for Mr. Murango advocate for 1st defendant

Mr. Kisaka advocate for plaintiff/absent

Mbogo & Muriuki advocate for 2nd and 3rd respondent – absent.

F. GIKONYO

JUDGE