



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 24 OF 2017

CHARLES NYANDUSI.....1ST APPELLANT

JULIANA JEBET.....2ND APPELLANT

PATRICK MOSOTI AGISI.....3RD APPELLANT

JERRY KENYANSA.....4TH APPELLANT

VERSUS

REGISTRAR OF POLITICAL PARTIES.....DEFENDANT

AND

JUBILEE PARTY.....INTERESTED PARTY

(Being an appeal against the judgment and order of the Political Parties Dispute Tribunal

at Nairobi (Hon Kyalo Mbobu (Chairman), James Atema (Member), Hon Paul Ngotho

(Member), Hon Dr. Adelaide Mbithi (Member), and Hon Milly Odongo

(Member) delivered on 9th January, 2017 in the Political parties

Dispute Tribunal Appeal No. 6 of 2016)

RULING

1. On the 9th September, 2016 the Registrar of Political parties (hereinafter the Registrar) vide the Kenya Gazette Vol CX VIII No. 9 gave notice of the merger of Forum for Restoration of Democracy for the People (Ford People) with Jubilee party and the dissolution of Ford People.

2. The Appellant was aggrieved by the said notice and appealed to the Political Parties Disputes Tribunal (hereinafter Tribunal) on the following grounds:

“a)That the Registrar of Political Parties erred in law and in fact in dissolving the Forum of

the Restoration of Democracy for the People (Ford People);

b. That the Registrar of Political Parties in dissolving the political party the Forum of the Restoration of Democracy for the People (Ford People) did not satisfy herself that the process leading to the filing of the purported dissolution documents adhered to the Constitution of FORD people political party.

c. That the Registrar of Political Parties in making that unlawful decision, violated the Appellants' right to fair administrative action as enshrined in Article 47 of the Constitution of the Ford People political party;

d. That the Registrar of Political Parties erred in law and fact by accepting to dissolve the Forum for the Restoration of Democracy for the People political party without paying heed to the Constitution and Rules of FORD People;

e. That the Registrar in gazetting the dissolution of the Forum for the Restoration of Democracy for the People political party failed to satisfy herself on the status and competence of the persons proposing the dissolution of the political party to do so.

3. The Appeal was dismissed by the Tribunal on 9th January, 2017. Subsequently the Appellant applied to the Tribunal for a review of the judgment dated 9th January, 2017. The said application was dismissed. The Appellant then came to this court on appeal.

4. Vide a memorandum of Appeal dated 25th January, 2017, the Appellant seeks the following orders:

“a) This Appeal be allowed and the decision of the Political parties Disputes Tribunal delivered on the 9th January, 2017 be set aside.

b) The Costs of this Appeal and the costs of proceedings in the Political Parties Disputes Tribunal awarded to the Appellant.”

5. The grounds of appeal are as follows:

“1. The Honourable Chairman and members erred in law and in fact when they held that the Respondent did not make any decision capable of being appealed from under the provisions of the Political Parties Act.

2. The Honourable Chairman and members erred in law and in fact in holding that the decision of the Registrar being Appealed against in Political Parties Dispute Tribunal Appeal No. 6 of 2016 does not fall under the decisions that can be appealed at the Tribunal Under Section 40(1) of the Political Parties Act.

3. The Honourable Tribunal erred in law and in fact in holding that the Respondent did not err in dissolving the Forum for the Restoration of Democracy for the People political party.

4. The Honourable Tribunal failed to appreciate that the decision of the Registrar of Political Parties did not adhere to the provisions of the Political Parties Act.

5. The Honourable Tribunal erred in law and in fact in failing to appreciate that there was no basis for the Registrar of Political Parties to arrive at the decision she arrived at.”

6. The appeal is opposed. The Interested party filed the grounds of opposition dated 27th February, 2017. The grounds are as follows:

“1.The grounds upon which the instant Appeal is predicated upon are superfluous, frivolous

and inconsequential

2. The Honourable Chairman and members of the Tribunal correctly applied the law and the facts in arriving at their judgment.

3. The Honourable chairman and members of the tribunal judiciously exercised their directions, based on sound reasoning thereby arriving at the sound judgment.

4. That in fact, the Appellants are out on a fishing expedition as there is pending in Court a Judicial Review Application No. 47 of 2017 filed by the Appellants herein challenging the said Gazette Notice Vol. CX No. 109 issued by the Registrar of Political Parties.

5. That the challenged merger is now at an advanced stage hence the said Appeal will be of no consequence and is too late.

6. That the instant Appeal is frivolous , lacks merit and should be dismissed with costs and the decision of the Political Parties Tribunal be upheld..”

7. During the hearing of the appeal, the counsels for the respective parties opted to file written submission. I have considered the said submissions and the highlights of the same made before me.

8. On whether the Registrar made a decision capable of being appealed from, the provisions of the Political Parties Act, 2011, Section 11 thereof as amended by the Political Parties (Amendment) Act No 21 of 2016 which came into commencement on the 21st July, 2016, spells out the process of mergers of political parties in the following terms:

“(5A) Upon receipt of the merger instrument under subsection (1) (a), the Registrar shall immediately withdraw and cancel the certificates of registration of all the political parties that have merged and shall gazette the dissolution of the merged parties within seven days and a certificate of full registration issued to the new political party”;

“(6) Upon receipt of the merger instrument under subsection (1)(b), the Registrar shall gazette within seven days the dissolution of the parties that have resolve to dissolve and the registered party the parties have merged into;”

9. My understanding of the aforesaid provisions is that they do not give any leeway for the Registrar to query the process or the procedure adopted by the political party which culminates in a merger of a party and dissolution of the same. Section 5A talks of immediate withdrawal and cancellation of certificates of registration. Section 6 talks of gazette within seven (7) days. These provisions are couched in mandatory terms. Upon receiving the instruments of merger, the Registrar’s statutory duty is to immediately embark in the process of withdrawal and cancellation of the certificates of registration of the parties that have merged and gazette the dissolution.

10. The court has been referred to section 34 of the Act in respect of the duties of the Registrar. The said provision stipulates as follows:

“(a) register, regulate, monitor, investigate and supervise political parties to ensure compliance with this Act;

(b) administer the fund;

(c) ensure publication of audited annual accounts of political parties;

(d) verify and make publicly available the list of all members of political parties;

(e) maintain a register of political parties and the symbols of the political parties;

(f) ensure and verify that no person is a member of more than one political party and notify the Commission of his findings;

(g) investigate complaints received under this Act; and

(h) perform such other functions as may be conferred by this Act or any other written law.

11. While Section 11 of the Act deals directly with mergers, Section 34 deals generally with the functions of the office of the Registrar. These are administrative duties. Fair administrative action is envisaged under Article 47 of the Constitution. Thus one would pose and ask what transpired before the Registrar. There is no evidence of any complaint before the Registrar that could have triggered an investigation or hearing and a determination made. The issuance of the impugned gazette notice was thus an administrative function and there was therefore no appeal capable of being lodged before the Tribunal.

12. In arriving at the foregoing holding I am fortified by the definition of what constitutes a decision. The **Black's Law Dictionary 9th edition** defines a decision as follows:

“A decision is a judicial or agency determination after consideration of facts and law.”

This definition of a “decision” has been adopted in other persuasive cases relied on by the parties herein e.g.

a. **Republic v Commissioner of Lands & 13 others Ex-parte Ereri Co. Ltd & 8 others [2013] eKLR**

c. **Republic v Land Registrar & 3 others Ex-parte Aryan Limited [2016] eKLR**

c. **Republic v Registration of Societies & 5 others Ex-parte Uhuru Kenyatta & 6 others Misc. Civil Appl. 747 of 2006**

13. The question whether the Registrar erred in dissolving Ford People appears to challenge the process the party went through before arriving at the decision to dissolve. Whether there was failure to adhere to the party procedures is a matter that ought to have been handled through the party's internal dispute resolution mechanism which is provided for under article 8B of the party's Constitution.

14. Section 40 of the Political Parties Act makes provision for the Tribunal to hear a dispute after the party's internal dispute resolution mechanisms have been exhausted. The said provision stipulates as follows:

“(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.**

(2) Notwithstanding subsection (1), the Tribunal shall not bear 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.”

15. For the above stated reasons, this court cannot fault the judgment of the Tribunal. There was no decision capable of being dealt with by way of an appeal. The upshot is that the appeal is dismissed with costs.

Dated, signed and delivered at Nairobi this 10th day of April, 2017

B.THURANIRA JADEN

JUDGE