



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 579 OF 2016

JERRY KENYANSAAPPELLANT

VERSUS

ALBERT NYAUNDI 1ST RESPONDENT

FORD PEOPLE2ND RESPONDENT

JUDGMENT

This is a political dispute. The appellant herein was aggrieved by the decision of the respondents to convene and make resolutions of the National Delegates Congress without involving him or the legitimate members of the National Executive Committee. He then moved the Political Parties Disputes Tribunal to declare the resolutions null and void.

In a ruling delivered on 1st September, 2016 the Political Parties Dispute Tribunal dismissed the application for want of jurisdiction. That decision was informed by the provisions of Section 40 of the Political Parties Act No. 11 of 2011. Aggrieved by the decision of the Tribunal, the appellant lodged this appeal.

The substratum of the appeal is that the 2nd respondent has moved to merge with another political party, and the appellant opposes the said move and that the resolution made by the National Delegates Congress should be declared null and void. The Hearing Notice was served upon counsel for the respondents but on the date set for the hearing, the said counsel did not appear and therefore the court proceeded to hear the learned counsel for the appellant.

Ms Njagi, the counsel for the appellant took the court through the record and pointed out the shortcomings of the said resolutions which were brought to the notice of the Tribunal. It was her submission that there was no internal dispute resolution mechanism in the party and therefore whatever was decided was null and void. There was blatant abuse of the constitution of the party, and by moving to merge with any other political party left the members voiceless.

It was also pointed out that the person who alleged to be the Chairman and who signed the resolution was not the Chairman, because there was in place a legitimate Chairman of the 2nd respondent. The court was referred to Section 11 (2) of the Political Parties Act aforesaid which reads as follows,

“11 (2) A political party shall not merge with another political party unless the merger is in accordance with the constitution, rules and procedures of the political parties.”

It is the submission of counsel that the Tribunal should have ordered the respondent to comply therewith

instead of declining jurisdiction. Section 40 of the Political Parties Act aforesaid states as follows, “**40 (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 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.”

From the Constitution of the 2nd respondent contained in the record of appeal and in particular Article 8 B there is established a dispute resolution tribunal called The Party Tribunal. The membership of that tribunal is expressly set out.

From the record there is no evidence that the dispute that was registered with the Political Parties Tribunal was ever subjected to those provisions. The tribunal was therefore correct in declining jurisdiction to address the said dispute in view of the provisions of Section 40 aforesaid. The appeal before me is therefore misplaced and therefore fit for dismissal.

The question is, what is the court to do under such circumstances?

It has been submitted that by breaching the party constitution the members have been robbed of their political voice. In such circumstances the best that his court can do is to order all the parties herein to submit themselves to the constitution of the party which establishes the internal dispute resolution mechanism under clause 8B. I am unable to quash the resolution as sought by the appellant for the sole reason that, the same was not subjected to the internal party dispute resolution. I make no orders as to costs.

Dated, signed and delivered at Nairobi this 27th Day of October, 2016.

A. MBOGHOLI MSAGHA

JUDGE