



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**PETITION NO. 11 OF 2014**

**JEREMIAH EKAIMAS LOMORUKAI.....PETITIONER**

**VERSUS**

**THE COUNTY GOVERNMENT.....1ST RESPONDENT**

**THE UNITED REPUBLICAN PARTY.....2ND RESPONDENT**

**JACKSON LOWOI IKAI.....3RD RESPONDENT**

**RULING**

1. This Ruling is on the preliminary objections lodged on the 9th February 2015 by the County Government of Turkana (first respondent) and on the 4th March 2015, by Jackson Lowoi Ikai (third respondent). The twin objections are essentially based on the jurisdiction of this court to deal with this petition which was lodged on the 6th December 2014 by Jeremiah Ekamais Lomorukai (petitioner), against the first and third respondent together with the third respondent; united Republican Party (URP)
2. The, petitioner seeks orders to the effect, that the meeting of the respondents held at Eliye Springs – Christine Camp Resort on 24th November 2014 on an agenda which included the conduct of the petitioner as the Minority Party Leader,, resolution for change of leader of Minority party in the Turkana County Assembly minutes and signed membership list for the resolution of change of the Minority Party Leader in the County Assembly of Turkana and the respondents letters of 26th November 2014 and 2nd December 2014 on resolution to change and / or to change leadership of the office of the Minority Party Leader be declared unconstitutional, illegal, null and void ab-initio. Further, a declaration that the Turkana County Assembly interim and Draft Standing Orders, the Political Parties Act and the Constitution of Kenya on the removal of the petitioner as the jubilee coalition party minority leader were not and have not been followed by the respondent.
3. Basically, the petitioners complaint is on the manner in which his removal and replacement as the Jubilee Coalition Minority Party Leader on the 24th November, 2014 in a meeting held at Eliye Springs Christine Camp was conducted and effected by the respondents. It is the petitioner's contention that following the said meeting the members of the Minority coalition Party (Jubilee) agreed and resolved that he (petitioner) should be replaced with immediate effect and in accordance with the Turkana county Assembly standing Order No.17. The said members agreed to append their signatures in, a signed membership list to the assembly, speaker, the decision made on 24th November, 2014 for the change of the Minority Party position from the petitioner to the third respondent.
4. The petitioner further contends that in a letter dated 26th November, 2014, the acting Party Chairperson

of the United Republican Party Turkana County , wrote to the director of that party on the resolution to change the leader of Minority Party in the Turkana County Legislative Assembly and on the 2nd December, 2014, the secretary general of the County wrote to the clerk to the party assembly of Turkana on the change in leadership in the office of Minority Leader or communication on the petitioner's removal as the leader of Minority Party.

The petitioner avers in his supporting affidavit dated 6th December 2014, that, prior to the 5th December, 2014, he was not aware of the meeting held on 24th November, 2014, and that he was innocent of all the allegations levelled against him. That the minutes and signed membership list of 24th November 2014 and the letters dated 26th November 2014 and 2nd December 2014, infringed on his (petitioner's) constitutional rights and freedom and that the alleged changes in the leadership in the office of the Minority leader from himself as a ( URP) Jubilee Coalition members of the County Assembly to the third Respondent , a KANU/AMANI, Coalition members violated on contravened the political parties Act, the Assembly's standing orders and the constitutional of Kenya, 2010. For all the foregoing reasons, the petitioner seeks the orders sought herein.

5. In the present objections to this petition, the first and third respondents are challenging this courts, jurisdiction to hear and determine the matter. As for the first respondent, the objection is based on the grounds that the issues raised in the petition and indeed the petitioner's application dated 6th December, 2014, disclose an internal party dispute which falls within the jurisdiction of the second respondents internal disputes resolution mechanism in the first instance as provided by S.40 of the political parties Act No.11 of 2011. That an appeal from the decision of the second respondent's internal disputes resolution mechanism should thereafter proceed to the political parties tribunal as provided in s. 40(2) of the political parties Act No.11 of 2011. That the petition is therefore premature as the petitioner has not exhausted the appropriate dispute resolution mechanism envisaged under the Political Parties Act No.11 of 2011 and therefore this court lacks jurisdiction and is not the proper forum to entertain the matter in the first instance. Alternatively, the matter brought before the court are not justiciable.

6. As for the third respondent, his objection is based on the main ground, that this court does not have jurisdiction to entertain the petition and the accompanying application which are preserves of the political parties Tribunal.

Though the learned counsel , Mr. Chebii, the third respondent insisted that the dispute herein is between a party and its members and therefore the right forum is the political parties tribunal rather than the court which would only come in the appellate stage. Mr. Kemei learned counsel for the first respondent submitted on its behalf that the right forum to address and determine the the issues in the petition is the Political Parties Tribunal as provided by S.39 and 40 of the Political Parties Act since the dispute herein involves members of a political party (ie URP) and such disputes fall within the ambit of the said Tribunal.

7. It was further submitted by the first respondent that, S.40 (2) of the Political Parties Act binds those with disputes to exhaust internal dispute resolution mechanism yet this has not been done in this case thereby rendering the petition premature and an abuse of the court process. That, this court is bound to allow utilization of the other dispute resolution mechanism and would come in only at that appellate state.

It is also the submission of the first respondent that the matters in this dispute are not justiciable as they concern operations of a county assembly which are legislative in nature and in-deferent from other state organs under the separation of powers doctrine. The third respondent contented that the courts should therefore not interfere with functions of a County Assembly unless the dispute touches on the constitution of an action.

8. In response to all the foregoing, the petitioner through his learned counsel, Mr. Cheptarus, submitted that the subject matter of the petition and the accompanying application listing minutes of the meeting held on 24th November 2014. That, the said meeting was not a meeting of the second respondent as a political party as those who attended were members of the county assembly whose names were not listed

in the relevant list. Therefore, the present dispute does not fall within the provisions of the Political Parties Act No.11 of 2011. That the allegations against the petitioner were not raised in his presence contrary to the County and the Turkana County Assembly Rules. That, the internal dispute mechanism was not exploited by members of the County Assembly who attended the meeting of the 24th November 2014 and the letter dated 2nd December, 2014 by the second Respondent only recognized the powers of the members of the County Assembly (MCAs) to change the leadership.

9. It was further submitted by the petitioner that the actions of the respondents against him were unconstitutional as he was not given the opportunity of being heard and that the standing orders of the County Assembly were not complied with. He contended that the court has jurisdiction to protect the constitution and all laws under it. He also submitted that the proceeding, of the County Assembly are not challenged herein nor are the functions of the Assembly which did not make any decision in the matter. That, this is not a matter dealing with political party nomination as there was no meeting of a Political Party on 24th November, 2014.

10. From the rival submissions, the issue for determination is whether this court has the necessary jurisdiction to deal with the matters raised in this petition and the accompanying application for a temporary injunction to issue against the respondents restraining them from implementing the resolution made against the petitioner. The matters raised herein basically concerns the removal and replacement of the petitioner as the leader of the minority party in the Jubilee Coalition within the Turkana County Legislative Assembly.

It is the petitioner's contention that the resolution to replace him with the third respondent was made on the 24th November, 2014, in a meeting held at Eliye Spring- Christine Camp Resort in Turkana County which resolution was made in his absence and in violation of the law and in particular, the constitution, the Political Parties Act and the Turkana County Assembly Standing Orders;

11. It has often been said that jurisdiction is everything so that a court would have no power to make one more step without it. Thus, where a court has no jurisdiction, there will be no basis for a continuation of proceedings pending other evidence. A court must down tools if, it holds, the opinion that it's without jurisdiction. (*See, Owners of the M.V. Lilion S vs Caltex Oil (k) Limited (1989)KLR.1.*)

The jurisdiction of the High court with regard to any act done or said to be done under the constitution or any other law unless expressly omitted is almost guaranteed by dint of Article 165(3) of the Constitution (see *Trusted Society of Human Rights Alliance vs Attorney General (2012) e KLR* and *Republic vs County Assembly of Migori & Others Ex-parte Omolo Owino (2014) e KLR*. However, the matter herein revolves around the County Assembly of Turkana and members of a political coalition within the assembly. The court is thus being called upon to interfere with the functions of a County Assembly and the activities or/and decisions of political parties and that is why the petitioner has in his petition involved the Turkana County Assembly Standing Orders and the Political Parties Act, 2011.

12. S.10 of the County Government Act 2013 provides for County Assembly Party Leaders and states that

***“ there shall be in each country assembly a leader of the majority party and a leader of the minority party (s.10(1)) and that the leader of the minority party shall be the person who is the leader of the second largest party and coalition of parties in the county assembly.”***

That Turkana County Assemblies Internal County Assembly Standing Order No. 16 provides for the leader of the minority party in the manner of this election and removal. Indeed, the Jubilee Coalition in the Assembly by its meeting of the 24th November, 2014 resolved to remove the petitioner as the leader of the minority party and replace him with the third respondent . To that effect, the Secretary General of the second respondent wrote to the clerk of the assembly on the 24th December, 2014, the resolution was about to be implemented but for the interim injunction order issued by this court on 9th December 2014.

13. Suffice to say that the removal or replacement of the leader of the majority or minority party in a county assembly lies within the leadership of the county assembly and the political parties as by law

established i.e. that county Govt Act 2012 and the Standing Orders made under it as well as the Political Parties Act, 2011. The disputed resolution by the Jubilee coalition of the Turkana County Assembly was a political decision which was translated into a decision of the assembly when the second respondent to the clerk of the assembly vide the letter dated 2nd December 2014 and indeed when the minority Coalition party communicated to the speaker of the assembly with regard to the resolution against the petitioner.

The doctrine of separation of powers believes upon the legislature and the judiciary to respect each others mandate. In that regard, this court would interfere with the mandate of a county assembly only where the assembly has acted, in acting or has threatened to act in contravention of the constitution which is what the petitioner is alleging on the basis of his right to be heard prior to a decision being taken against him. Both organs are however expected to fulfill their respective roles in the promotion of the rule of law in a complementary and constructive manner (*see, the Common Wealth or haviwier house principle on the accountability of and the relationship between the three Branches of Government, 2004.*..)

14. Since the genesis of the petitioner's removal started with political deviation which was assimilated by the county assembly, any dispute emanating from the decision ought to first and foremost be subjected to a political process vide the Political Parties Act No.11 of 2011 which provides for disputes resolution mechanism which would be an alternative disputes readily recognized under Article 159 of the Constitution.

Political disputes bring into play political rights which are normally exercised through political process provided for under the constitution (see, chapter seven (7) of the constitution) and effected through relevant acts of parliament such as the Political Parties Act, 2011.

The subject matter here being the removal and election of the leader of the minority party is essentially a matter to be resolved by the second respondent and its coalition parties involving the political party machinery facilitated under the political parties Act which provides for resolution of disputes between party members and coalition party by way of Arbitration and the Political Parties Dispute Tribunal.

15. Where the law provides a particular procedure for redress for any particular grievances prescribed by the constitution or any Act of Parliament then the procedure must strictly be followed (*see Speaker of the National Assembly vs Karume (2008) 1 KLR (425).*..)

When it comes to Legislative Process and given that County Assembly's Standing Orders are the internal legislative rules governing a process such as the election and removal of majority or minority part leaders, courts are called upon to exercise utmost restraint in such matters (*see, Samson Vati Musembi & Others vs Makueni County Assembly & Others (2014) e KLR and Republic vs County Assembly of Migori (Supra).*

16. From all the foregoing it is apparent to this court that its jurisdiction to deal with the matters arising in the petition and the accompanying application is at the stage hampered or curtailed by the existence of alternative dispute resolution mechanism provided by the political parties Act 2011. Consequently, this court downs its tools and directs the petitioner to seek redress at the Political Parties Disputes Tribunal after which he may approach the Court of Appeal.

In sum, the preliminary objections by the first and third respondents are hereby sustained and allowed to the effect that both the petition and the notice of motion dated 6th December 2014, be and are hereby dismissed with costs to the first and third respondents.

**J. R. KARANJA**

**JUDGE**

(Read & Signed this 28th Day of May, 2015)

**J. R. KARANJA**

**JUDGE**