



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION 144 OF 2011

- 1. UNITED DEMOCRATIC MOVEMENT**
- 2. ALEXANDER SITIENEI SUSAN DABALEN**
- 3. ELIJAH LESHAO**
- 4. JACOB MACHACHA MAJEMBE**
- 5. HON. JOSEPH LAGAT HON. NATHANIEL CHEBELON**
- 6. FRANCIS KOECH**
- 7. MARTIN OLE KAMWARO**
- 8. HON. PROF. HELLEN SAMBILI**
- 9. FRANCIS KOECH**
- 10. STEPHEN NKURANU**
- 11. REHEMA DID**
- 12. YUSUF ABDI**
- 13. DR. RONALD ZOCHIN**
- 14. HON. MOSES CHEBOI**
- 15. JUSTICE KEMEI**
- 16. TITO KOIYET**
- 17. STANLEY ROTICH**
- 18. JULIUS TOME EKWENYE**
- 19. HON. PHILIP ROTINO**

20. MILICENT NYABOKE

21. ANDREW KOMEN

22. REV. PAUL CHEBOI

23. IBRAHIM MOHAMED OMAR

24. SUSAN SEELA

25. BEATRICE NAYIANOI

26. EVANS AYIEKOAPPLICANTS

versus

POLITICAL PARTIES DISPUTES TRIBUNALRESPONDENT

LT. GEN (RTD) JOHN KOECH1ST INTERESTED PARTY

REGISTRAR OF POLITICAL PARTIES2ND INTERESTED PARTY

RULING

The application for my determination is the Notice of Motion dated 23rd June 2011 seeking;

- (1) That orders for certiorari do issue forthwith to removed into this honourable court so as to annul and quash the decision made by the political parties Disputes Tribunal on 2nd June 2011.
- (2) That orders of prohibition do issue prohibiting the Political Parties Disputes Tribunal from hearing or from further proceeding with or determining complaint No.3 of 2011, Ltd. Gen. (Rtd) John Koech versus United Democratic Party (UDM), Registrar of Political Parties and 26 others or any complaints arising from the same facts giving rise to the complaint.
- (3) That the court be at liberty to issue any other or further orders it may deem fair and just in the interest of justice.

It is the case of the applicant that the respondent is determined to proceed with complaint No.3 of 2011 regardless of lack of valid rules or any rules at all hence proposes to act in excess of jurisdiction or otherwise with lack of jurisdiction. Secondly that the respondent is bent on entertaining an application that seeks orders that are in breach of the constitution and the statutes to the prejudice of the applicants and 2nd interested party, the Registrar of Political Parties. Thirdly it is contended that the respondent/tribunal is seeking to punish the applicants for complying with the Registrar's directives notwithstanding that the breach attracts criminal charges. Fourthly, that the tribunal is bent on hearing a dispute that has already been heard and determined in the excess of equal and concurrent jurisdiction. Lastly it is the case of the applicants that the tribunal's ruling of 2nd June 2011 insisting on proceeding with the complaint despite all the defects on procedural and substantive grounds, is contrary to applicable and fair principles of equity, common law and logic.

The application was opposed by **Ms Kimaiyo** for the respondent, **Mr. Nelson Havi** for the 1st Interested Party and **Mr. Lubulellah** for 2nd interested Party. It was contended by the respondent and the Interested Party that the tribunal has jurisdiction to hear and determine the complaint in accordance with the law. And that Judicial review cannot apply in the circumstances of this case.

The question for my determination is whether the tribunal in dismissing the preliminary objection raised by **Mr. Katwa** had jurisdiction to do so. The basis of the application is that the tribunal did not have powers and jurisdiction to entertain the complaints filed by the 1st Interested Party against the applicants and the respondent herein. What has fallen for my determination is the propriety of the decision of the tribunal made on 2nd June 2011.

Mr. Lubullelah learned counsel for the 2nd Interested Party submitted that the tribunal has now put in place rules of procedure which paves way for the tribunal to hear and determine the issues at hand which is mandated to undertake. As regards to complaint No.3 of 2011 filed before the tribunal, **Mr. Lubullelah** submitted that it was an appeal from the Registrar's decision.

It is clear in my mind that the Political Parties Disputes Tribunal is established under section 5 of the Political Parties Act to carry out the disputes outlined in Section 6. The tribunal has powers and jurisdiction to hear and determine;

(a) Disputes between members of political parties

(b) Disputes between political parties forming a coalition.

(c) Appeals from the Registrar under the Act

As rightly pointed out by **Mr. Lubullelah** section 8 of the Political Parties Act provides that the Chief Justice shall make rules to regulate the procedure of the tribunal. There is no dispute that at the time of hearing complaint No.3 of 2011, the rules to govern the procedures of the tribunal had not been made and gazetted by the Chief Justice as provided. The reason is because at that time the Office of the Chief Justice was vacant. From the records before the tribunal, it is clear that on 19th April 2011 the Chairman of the tribunal brought the issue of lack of rules to the attention of the parties and all parties consented to proceed with the case in the absence of the rules of procedure. As is captured in the ruling delivered by the tribunal, there was no prejudice or loss suffered by any of the parties by the failure or lack of rules of procedure. In any case all the parties willingly consented to proceed without the existence of the rules of procedure.

I am in total agreement with **Mr. Havi** that proceeding in the absence of the rules of procedure is not fatal for as long as the tribunal can formulate some rules that are acceptable to the parties. In any case, that issue is now academic since the rules of procedure have already been put in place. It was also right for the tribunal to proceed since section 7 provides that any complaint or dispute must be determined within three months from the date the dispute is lodged. It is therefore clear in my mind that the tribunal was right to proceed in the absence of rules since that will have raised a jurisdictional issue if the complaint was not determined within three months.

Section 41(4) of the amended Political Parties Act 2011 provides that;

“A tribunal shall apply the rules of evidence and procedure under the evidence act and Civil Procedure Code with the necessary modification while insuring that its proceedings do not give undue regard to procedural technicalities.”

A further important issue to cement the correctness of the procedure followed by the tribunal proceeded can be found under article 159 which requires that court and tribunals to administer justice without due regard to procedural technicalities.

As regards whether the tribunal has powers and jurisdiction to entertain complaint No.3 of 2011, it is my decision that you can go directly to the tribunal or to the Registrar of Political Parties. The law is that if you opt to go to the registrar, you can approach the tribunal by way of appeal. In this case the registrar of political parties made a decision and accepted change of office bearers in accordance with the notification filed. The tribunal is mandated by section 40 of the Political Parties Act to determine disputes

concerning Political parties. Such a task cannot be claimed to be an infringement of any persons constitutional rights or a breach of any provision of the constitution or political parties act. Section 41(2) of the Political parties Act now provides an appeal from any such decisions. The applicants can and is entitled to make an appeal to the High Court if it is dissatisfied with any decision made by the tribunal. The tribunal has a statutory duty to determine disputes and complaints raised by any political parties or individuals, within a specific period. The time guidelines must be followed.

Section 3(4) of the Political Parties Act states that the registrar shall be responsible for administration of disputes between members of political parties. The decision of the Registrar of the Political parties is subject to the decision of the tribunal made whether in its appellate jurisdiction or original jurisdiction. Section 6 is a clear manifestation of that position. The complainant in No.3 of 2011 contended before the tribunal that he was never given an opportunity by the registrar of Political Parties before his name was removed as an official of UDM. I think that was a justified ground in view of disclosures made by all the parties in this case. I think it was incumbent and mandatory for the Registrar of Political parties to hear all parties before he or she makes a decision to remove or replace any person from being an official or a member of a political party. The failure by the Registrar of Political parties to give the former chairman an opportunity to rebut, contest, address and/or answer the issues raised by the persons who wanted to remove him was a cardinal issue which ought to have been considered before a valid decision could be made. The decision to remove and/or replace the former chairman of U.D.M. overlooks the principle that justice must not only be done but manifestly be seen to be done. The appearance of injustice is the denial of justice.

In my humble opinion it is the dialogue with the persons likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Such procedural safeguards have their historical origins in the notion that conditions of personal rights can be preserved only when there is some checks in arbitrary action on the part of public authorities. The intrinsic value of that right consists in the opportunity which it gives to individuals against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons. Whatever its outcome, such a hearing represents a valued human intervention in which the affected person, experience, at least the satisfaction of participating in the decision that vitally concerns her and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way.

Both the right to be heard from and the right to be told why are fundamental. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. In my view no better instrument has been devised for arriving at the truth than to give a person in jeopardy of a serious loss, notice of the charges against him and opportunity to meet it. The very essence of justice is intrinsically rooted in the decision making process. No doubt the removal of the former chairman by his own colleagues and the rectification of the notification by the Registrar of political parties, must accurately reflect the substantive rules applicable for both decision to assume accuracy, legality and legitimacy. I doubt whether the test was met by the party and the Registrar.

The entity with competent jurisdiction to investigate, entertain and determine the grievances by the complainant No.3 of 2011 is the Political Parties tribunal. It is not true as alleged by the applicants that the Registrar of Political Parties has concurrent and equal jurisdiction under section 3 (4) of the Political Parties act with the tribunal. It is also not true that the tribunal cannot resolve the disputes filed by aggrieved parties in the event the Registrar of Political Parties has already determined the complaint or grievances. In my understanding the tribunal is superior and can overturn the decision made by the Registrar of Political Parties. It is therefore my view that the tribunal was justified and correctly considered the preliminary objection and rightly dismissed the same as disclosing reasonable or no grounds at all. The complaint was not incompetent and was not an abuse of the process of law as established under the Political Parties Act. As was rightly pointed out by the tribunal, the registrar declined to act or deal with the dispute as raised by the complainant in complaint No.3 of 2011. She did not deal with the matter and she did not in my view make any credible decision which can be said to have been made by reasonable tribunal directing its mind to the factual and legal issues available and applicable.

A public authority which derives its existence and its powers from Statute cannot validly act outside those powers since such powers will ordinarily include anything fairly incidental to the express limit, a statutory body may lawfully adopt and follow procedures, it cannot abdicate its general remit. Powers which parliament hands over to a tribunal must be exercised with free hands and without unnecessary interventions from the courts unless there is apparent or manifest injustice being committed by the said authority. None has been brought to my attention.

In this case there is no evidence that the tribunal allowed its processes and procedures to be manipulated, abused or misused by the complainant. Whenever any person or body has legal authority/statutory function by legislation to make decisions, it must be left to perform its statutory function unless there is evidence to show that it exceeded its limits, committed an error of law or for failure to act fairly towards the parties. The 1st Interested Party contends that the Registrar committed a travesty of justice which must be addressed, investigated and determined by the tribunal. I think there is merit in the position taken by the 1st Interested Party.

In conclusion it is my determination that there is no error, lack of jurisdiction or illegality committed by the trial in dismissing the preliminary objection raised by the applicants. It is also my decision that the tribunal did not exceed its powers by entertaining the complaint lodged by the complainants in No.3 of 2011.

Consequently, the application dated 23rd June 2011 is dismissed with costs to the respondent and Interested Parties.

Dated, signed and delivered at Nairobi this 14th day of February 2012.

M. WARSAME
JUDGE