



**Democratic Party of Kenya v Nchore & 3 others; Registrar of Political Parties (Interested Party)
(Civil Appeal E1455 of 2023) [2025] KEHC 9988 (KLR) (Civ) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1455 OF 2023

AC MRIMA, J

JULY 11, 2025

BETWEEN

DEMOCRATIC PARTY OF KENYA APPELLANT

AND

JESSE SARUNI NCHORE 1ST RESPONDENT

REV KIPNGETIH SIGEY 2ND RESPONDENT

DR JACOB HAJI - SECRETARY GENERAL 3RD RESPONDENT

ESAU KIONI - CHAIRMAN 4TH RESPONDENT

AND

REGISTRAR OF POLITICAL PARTIES INTERESTED PARTY

(Being an appeal against the Judgment and Decree of the Political Parties Disputes Tribunal made on 6th December 2023 by Gad Gathu (Presiding Member) Muzna Jin (Member) & Stephen Musau (Member) in PPDT Complaint No. E016 of 2023)

JUDGMENT

Background:

1. Jesse Saruni Nchore and Rev. Kipng'etich Sigey the 1st and 2nd Respondents herein, being bona fide members of Democratic Party of Kenya (hereinafter referred to as 'the Appellant' or 'DP' or 'The Party') lodged Complaint No. E016 of 2023, before the Political Parties Dispute Tribunal (hereinafter referred to as 'PPDT' or 'the Tribunal').



2. It was their case that the Appellant together with Dr. Jacob Haji, then the Secretary General and the 3rd Respondent herein and Esau Kioni the then Chairman and 4th Respondent herein respectively, had violated the Party's Constitution by inter alia failing to hold a National Delegates Convention [NDC], substituting the NDC with the National Governing Council [NGC]; charging nomination fees and intending to co-opt members into the NGC rather than holding elections. To that end, they sought among other orders to restrain any member of the Appellant from convening and/or acting on the resolution of the NGC held on 8th September 2023.
3. In its judgment, which is the subject of this appeal, the Tribunal declared null and void the resolution of the NGC meeting of 8th September 2023 which it found wrongly amended the Appellant's Constitution. It was the Tribunal's position that pursuant to Article 12 as read with Article 37 of the Appellant's Constitution, the NGC did not have any role in the amendment of the Party's Constitution since that was the sole mandate of the NDC.
4. Dissatisfied with the said decision, the Appellant preferred the instant appeal.

The Appeal:

5. Through the Memorandum of Appeal dated 19th December 2023, the Appellant sought to set aside the Tribunal's declaratory order that rendered null and void the resolution of the NGC held on 8th September 2023. It asserted seven broad grounds that can be summarised as hereunder;
 - i. That the Tribunal failed to appreciate that the tabling of the amendments of the Party Constitution by the National Executive Council at the NGC and the approval thereof was only a step-in proper compliance with the Party constitution as regards a provisional amendment, pending ratification by the National Delegates Convention.
 - ii. That the Tribunal erred in law and fact when it failed to wholistically read and interpret together with all concerned Article and factors against the contextual holding and passing of resolutions concerning amendment of *the constitution* when it read and interpreted Article 12 and 37 of the Party Constitution only as the source of authority of the NGC thereby misdirecting itself.
 - iii. That the Tribunal had no sufficient basis of declaring null and void the resolution concerning amendment of *the constitution* thus occasioning miscarriage of justice by trashing the deliberations of the Appellant's NGC, its solemn constitutional duty.
 - iv. That the Tribunal erred in both law and fact when it declared the resolution on ground of Article 37 which article had not been pleaded, hence it acted beyond its jurisdiction/condemned the Appellants before affording them an opportunity to be heard.
 - v. The Tribunal erred in both law and fact when it issued the declaratory order thereby quashing a resolution to amend *the Constitution* whereas neither the resolution nor the amended Constitution was tabled before the Tribunal.
 - vi. The Tribunal erred in both fact and law when it condemned the Complainants Statement of claim whereas the party was not responsible in any way for the late amendment, an injudicious exercise of discretion.
 - vii. That the Tribunal failed to exercise its discretion judiciously when it made orders for costs that each party to bear own costs, and failed to appreciate that the Complainants filed were without merit.



6. In its written submissions dated 14th March 2025, the Appellant submitted that on 1st August 2023, the Appellant's Management Committee met and resolved to revoke the notice calling for the NDC due to financial constraints. It was its case that in lieu of the NDC, the Management and the NEC formally called the NGC on 8th September 2023. It was its case that the Tribunal erred in its finding that the resolution amounted to amending *the Constitution* whereas the agenda for the NGC was; 'reviewing and recommendation to amend party Constitution to National Delegates Convention for adoption'.
7. In reference to the minutes of the National Governing Council and the resolutions thereat as read together with the agenda, it was its case that NGC had only approved the draft amendment for the NDC for ratification and that the resolution by the NGC for approval by the NDC was not the conclusion of the amendment process, but part of the process.
8. The Appellant sought that the appeal be allowed as prayed.
9. Whereas the 1st, 3rd and 4th Respondents did not oppose the appeal, Kipng'etich Sigey, the 2nd Respondent herein, challenged the appeal through written submissions dated 6th June 2025. He maintained that the NDC is the supreme organ of the Appellant and the sole body empowered to amend the Party Constitution according to Articles 12 and 37 of *the Constitution*. It was his case that Articles 91 and 92 of *the Constitution* of Kenya as read with Section 9 of the *Political Parties Act*, called upon political parties to operate within the confines of their Constitutions and democratic principles. The 2nd Respondent submitted that while the NGC is a critical decision-making organ, its task is primarily with policy implementation and organizational oversight and constitutional amendment. He argued that the Party constitution did not recognize or provide for a category of provisional amendments. He maintained that the NGC cannot rely on a non-existent procedural mechanism to validate actions that are constitutionally invalid.
10. As regards the issue of costs, he submitted that as per Rule 43(2) of the Political Parties Disputes Tribunal (Procedure) Regulations, 2017, costs of any complaint or other matter shall follow the event unless the Tribunal for good reason otherwise orders. He urged the Tribunal's decision on costs ought to be upheld. In conclusion, he urged the Court to find that the appeal lacks merit and that the decision of the Tribunal should be upheld in toto.

Analysis:

11. This Court, being the first appellate Court, is duty bound to re-assess the evidence afresh with a view to arriving at its own independent findings. That was so held in the locus classicus case of *Selle and Another -vs- Associated Motor Board Company and Others* [1968] EA 123. In doing so, this Court will ascertain whether the appeal is merited.
12. Section 41(2) of the *Political Parties Act* provides for the jurisdiction of this Court in matters emanating from the Tribunal as follows;

Determination of disputes

- (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.
 - (2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to the Court of Appeal and the decision of the Court of Appeal shall be final.
13. As to whether the Tribunal erred in its impugned decision, a look at the Party's Constitution becomes imperative and is the starting point. Article 12 establishes the NDC which is the supreme organ of



the Party. Some of its powers, duties and obligations relevant to this matter appear in Sub-article [b] as follows: -

- i. To determine the Party policies.
- ii. To review, formulate and or approve all the policies of the party.
- iii. ...
- iv. ...
- v. To consider, amend, modify, or ratify if necessary, *the Constitution* of the Party.
- vi.
- vii.
- viii.
- ix.
- x.
- xi.
- xii. To consider any such other items as may be referred to it by the NGC or the NEC.

14. Article 13 establishes the NGC being the second highest Party organ and whose some of its functions are in sub-article [c] as follows: -

- i. To review and or formulate policies of the Party for approval by the National Delegates Convention.
- ii. To initiate all such activities as may further the aims and objects of the Party.
- iii. To receive reports from the National Executive Committee on the operations of the party.
- iv. To monitor the general activities of the Party on behalf of the National Delegates Convention and to provide direction for such activities.
- v. To make policy and administrative decisions on behalf of the National Delegates Convention; which in the opinion of the NEC cannot wait until the next NDC and to present such decisions for ratification at the next NDC.
- vi.
- vii. ...

15. There is also the National Executive Committee [NEC] which is provided for under Article 14 [being an administrative arm of the Party] and whose mandate is as follows: -

- i. To act as the Executive body of the National Governing Council and the National Delegates Convention, and to ensure that all decisions made by those bodies are duly carried out and all the policies are adhered to;
- ii. To supervise the administrative machinery of the Party at all levels and take such measures, as it deems necessary to enforce the decisions and programs of the Party as laid down by the National Governing Council and the National Delegates Convention;
- iii. To co-opt not more than ten (10) Party members to NEC to cater for special interest;



- iv. To appoint members of the Council of Elders;
- v. To work in liaison with and to oversee the work of the Party Parliamentary Groups, the Party Women Congress and the Party Young Democrats Congress;
- vi. To appoint full time members of staff for all the departments of the Party at the Party Headquarters;
- vii. To approve the terms and conditions of services of the staff members employed by the Party;
- viii. To appoint other committees as it deems necessary from time to time for specified tasks and to determine their terms of reference;
- ix. To receive, consider, approve and implement reports and recommendations from the various standing, ad hoc and specialized committees or individuals; and where not empowered by this Constitution without prior approval by the NDC and/or the NGC, to forward the same to the appropriate authority for such approval;
- x. To liaise with the Party Election Commission in order to ensure co-ordination of elections of Party officials at all levels and Party nominations for Presidential, Deputy Presidential, National Assembly, Senate and County Governors and ward representatives and any other County based/originated representation.
- xi. To prepare the party lists as legally prescribed and to present the same to the Registrar of Political Parties, within the prescribed time.
- xii. To appoint Party representatives to other organizations to which the Party relates.
- xiii. To establish, co-ordinate and conduct various schemes aimed at stimulating Party activities;
- xiv. To ensure that the agenda for, and report to the National Delegates Convention or National Governing Council, are prepared and on time;
- xv. To recommend persons for consideration for appointment as the Party Patron by the National Delegates Convention;
- xvi. To recommend Persons for consideration for appointment as members of the Council of Elders by the National Delegates Convention;
- xvii. To determine such honorarium to be paid to the auditors for their duties;
- xviii. To appoint members of the Party to fill vacant positions that have occurred in NEC or other commission or committee of the party for any reason, pending ratification by the electing/ appointing organ of the party.
- xix. To make or cause to be made rules and/or regulations for prescribing whatever requires to be prescribed under this Constitution for the better carrying out of the provisions of this Constitution and matters incidental thereto; and
- xx. To ensure proper order, discipline, and strict adherence to *the Constitution* of Kenya, Party Constitution, By-laws, and the Party Policies by all officials and members.
- xxi. To initiate, prepare or cause to be prepared the necessary financial rules and procedures for approval by NGC and/or the NDC.



16. And, Article 37 provides for the amendment of *the Constitution* in the following terms: -

This Constitution may be amended, altered modified and or ratified by the National Delegates Convention.

However, NEC may, by consensus provisionally amend, alter, modify the party Constitution pending final ratification by the National Delegates Convention, provided it is necessary and expedient and in the interest of the well-being of the party and in compliance with the laws governing political parties.

17. A holistic reading of the above provisions leaves no doubt that indeed the Appellant's Constitution can be amended. Whereas such amendments, alterations or modifications to *the Constitution* may appear as the sole preserve of the NDC, *the Constitution* also allows the NEC to '... by consensus provisionally amend, alter, modify the party Constitution pending final ratification by the National Delegates Convention, provided it is necessary and expedient and in the interest of the well-being of the party and in compliance with the laws governing political parties.'

18. Further, a reading of Article 13 of the Party's Constitution leaves no doubt that the NGC has general powers to act on behalf of the NDC and can even make policy and administrative decisions on behalf of the NDC and can also initiate any activities as may further the aims and objects of the Party. The NGC also receives reports from the NEC on the operations of the Party. The NDC is also obligated to consider any item as may be referred to it by the NGC or the NEC. To me, such issues may include recommendations or proposals to amend *the Constitution*, from time to time, as to align with the Party policies, political demands, ideologies and realities. The Party Constitution, therefore, places the NGC as a crucial organ called upon to always act in the best interests of the Party and to remain as 'an eye' of the NDC.

19. In this matter, due to financial constraints, the NEC and the Management Committee resolved to revoke a notice previously issued calling for an NDC. Instead, the matter was placed before the NGC in a meeting convened on 8th September 2023. In its deliberations, the NGC resolved to propose to the NDC to amend *the Constitution*. The proposal was tailored as follows: -

(i)

(ii) Reviewing and recommendation to amend party constitution to National Delegates Convention for adoption.

20. It was that resolution which offended the 1st and 2nd Respondents and who subsequently filed a complaint before the Tribunal. In the impugned judgment, the Tribunal was satisfied that the Notice given and the attendance at the NGC were within the law. The Tribunal, however, found that the NDC acted without authority in coming up with the recommendation to propose amending *the Constitution*, which was the sole preserve of the NDC.

21. Like an election, an amendment to a Constitution is also a process which depends on specific provisions of the constituting document. In the case at hand, it is the NDC which has the final say on whether to amend the Party Constitution or not. However, the NDC is not the only Party organ that can initiate amendments to *the Constitution*. For instance, the NEC is empowered to '... by consensus provisionally amend, alter, modify the party Constitution...' of course subject to the ratification by the NDC. It, therefore means that, whereas the NEC may provisionally amend *the Constitution*, it is the NDC which has the final say on those amendments. The NDC may affirm or reject those amendments. Likewise, the NGC in its wider mandate can initiate amendments to *the Constitution*. In so doing and



in the spirit of Article 37, the NGC may even seek consensus from any party organ on the proposed amendment, but such remains nothing until it is considered and approved by the NDC.

22. To buttress the above position, Article 14[b][ix] of the Party Constitution allows the NEC to receive any reports or recommendations even from persons and if the issues raised therein traverse beyond its mandate to forward such to the NDC or the NGC as the case may be. That scenario is in consonance with the Party's Guiding Principles and Values as enshrined in Article 2 of *the Constitution* and the Aims and Objects as provided for in Article 4 thereof. In embracing the Bill of Rights in *the Constitution* of Kenya, the Party no doubt accords liberty to its members to take part in its affairs and that includes making proposals to amend *the Constitution*.
23. Having said as much, this Court does not find the resolutions reached at by the NGC on 8th September 2023 to be in anyway in contravention to the Party Constitution for they are, but just recommendations to the NDC. Therefore, a party feeling aggrieved by those recommendations still has an opportunity to persuade the NDC not to give its green light on the same. The recommendations are, hence, part of the process which the Party Constitution as well as *the Constitution* of Kenya guarantees fairness to all.
24. Drawing from the foregoing, it is this Court's finding and holding that the appeal is merited and respectfully finds that the Tribunal erred in its decision to annul the recommendations.

Disposition:

25. As I come to the end of this judgment, this Court appreciates the patience by Counsel and hereby apologizes to the parties for the delay in delivering this decision. The delay was occasioned by commitments at the Judicial Service Commission which forced me to be away from the office and unable to render the decision on the due date even though it was ready.
26. In the end, this Court hereby makes the following final findings: -
 - (a) The appeal be and is hereby allowed and the order declaring the resolution of the NGC of the 8th September 2023 null and void is hereby set-aside and quashed accordingly and is substituted with an order dismissing the Complaint in its entirety.
 - (b) The 2nd Respondent shall bear the costs of both the Complaint and this appeal.

Orders accordingly

DELIVERED, DATED and SIGNED at NAIROBI this 11th day of July, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Jesse Saruni, 1st Respondent in person.

Amina/Abdirazak – Court Assistants.

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