



REPUBLIC OF KENYA



**Omole v Registrar Of Political Parties & another (Civil Appeal E814 of 2023)
[2024] KEHC 1285 (KLR) (Civ) (16 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1285 (KLR)

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

CIVIL

CIVIL APPEAL E814 OF 2023

AN ONGERI, J

FEBRUARY 16, 2024

BETWEEN

BOOKER NGESA OMOLE APPELLANT

AND

REGISTRAR OF POLITICAL PARTIES 1ST RESPONDENT

COMMUNIST PARTY OF KENYA 2ND RESPONDENT

(Being an appeal from the Judgment of the Political Parties Dispute Tribunal (PPDT) (Hon. Willy Mutubwa, Hon. Abdirahman Adikadir Adan and Hon. Muzna Mohamed Yusuf Din) I PPDT Appeal No. E004 of 2023 delivered on 16/8/2023.)

JUDGMENT

1. The Political Parties Dispute Tribunal (PPDT), delivered a judgment on 16/8/2023 in which it dismissed the appellant's appeal against the respondent.
2. The appellant was seeking for the following orders;
 - i. That the finding by the first respondent that the proceedings conducted by the 2nd respondent were proper be quashed.
 - ii. That the 2nd respondent be ordered to conduct disciplinary proceedings of the complainant afresh in living with [the constitution](#) of the Communist party of Kenya under relevant Kenyan law.
 - iii. That the 1st respondent be ordered to reinstate the appellant in the party records.
 - iv. That the respondents be ordered to pay the costs of the proceedings.



3. The appellant contended that he was not tried by an independent and impartial adjudicating body and further that the members of the Disciplinary committee were part of both the central committee that resolved to initiate disciplinary proceedings against him and the central committee that adopted the findings of the disciplinary committee.
4. The appellant submitted that the disciplinary committee was both the prosecutor and the judge of the disciplinary proceedings.
5. The PPDT found that the disciplinary proceedings against the appellant were proper, fair and in accordance with party constitution and that the appellant was given notice of the institution of the disciplinary proceedings against him.
6. Further, that was in receipt of minutes of all meetings and all decisions taken.
7. The PPDT also found that the appellant refused to attend the disciplinary proceedings and further that the party constitution has clear provisions on the procedure and effect of refusal to participate in disciplinary hearings at Article 4.2.14.
8. On the issue as to whether the 1st respondent complied with the law in terms of updating the register of members of the 2nd respondent, the PPDT found that it fully complied with the law in terms of updating the register of the members of the 2nd respondent.
9. The appellant has appealed against the dismissal of the appeal on the following grounds;
 - i. The honourable tribunal erred in law and in fact in finding that the disciplinary proceedings conducted on the appellant were done in strict compliance with *the Constitution* of the Communist Party of Kenya.
 - ii. The honourable tribunal erred in law and in fact in finding that the appellant was precluded from raising issues of bias of members comprising the Disciplinary Committee because he had not filed a petition challenging the constitutionality of the provisions governing the appointment of the Disciplinary Committee;
 - iii. The honourable tribunal erred in law in failing to interrogate whether the conflation of multiple roles in the disciplinary proceedings by the Disciplinary Committee affected their neutrality and impartiality and therefore their capacity to adjudicate over the disciplinary proceedings;
 - iv. The honourable tribunal erred in law and in fact in failing to interrogate whether bias of members comprising the Disciplinary committee violated and infringed upon the appellant's right to a fair trial by an independent and impartial adjudicating body;
 - v. The honourable tribunal erred in law and in fact in failing to interrogate whether the appellant had a right to confront his accuser, the National Chairperson, and the substance of his claims in the disciplinary proceedings conducted on the appellant.
 - vi. The honourable tribunal erred in law and in fact in failing to appreciate that disciplinary proceedings in the Communist Party of Kenya occurred on two levels, the second being an internal appeal.
 - vii. The honourable tribunal erred in law and in fact in failing to appreciate that disciplinary proceedings at the 1st level in the Communist Party of Kenya would proceed regardless of whether the subject of these proceedings participated at this stage.



- viii. The honourable tribunal erred in law and in fact in failing to find that all subjects of internal disciplinary proceedings in the Communist Party of Kenya enjoyed an internal right appealing the decision of the Disciplinary Committee.
 - ix. The honourable tribunal erred in law and in fact in equating failure to participate in the 1st level of disciplinary proceedings with a refusal to also participate in internal appeal mechanisms of the disciplinary proceedings.
 - x. The honourable tribunal erred in law and in fact in finding that the appellant could not enjoy his right to internally appeal the decision of the Disciplinary Committee following his expulsion from the Communist Party of Kenya.
 - xi. The honourable tribunal erred in law and in fact in finding that the appellant was served in timely manner with a written statement of reasons at the conclusion of disciplinary proceedings at the 1st level in the party.
 - xii. The honourable tribunal erred in law and in fact in failing to find that the appellant was not informed through a written statement of his right to internally appeal the decision arising from disciplinary proceedings conducted on him.
 - xiii. The honourable tribunal erred in law and in fact in failing to find that the appellant was denied his internal right to appeal the decision arising from disciplinary proceedings conducted on him; and
 - xiv. The honourable tribunal erred in law and in fact in finding that the Registrar of Political Parties properly supervised the propriety and constitutionality of the Disciplinary proceedings conducted by the Communist Party of Kenya on the appellant.
10. The parties filed written submissions as follows; the appellant submitted that he was denied a fair hearing before an independent and impartial adjudicating body in the disciplinary proceedings. This was because the appellant was tried by a 3-member disciplinary committee whose members were part of the central committee that adopted the resolution to initiate disciplinary proceedings against the appellant. the three members had a front seat to the disputes between the appellant and the chairperson and secretary general. The person appointed to chair the disciplinary proceedings, Gitahi Ngunyi could thus not be reasonably expected to be neutral. In fact, he had a stake in the outcome of the proceedings in that he stood to gain should the DC find the Appellant was at fault as that effectively left no challenge to his appointment as Deputy Chairperson.
11. The appellant submitted that his right to fair Administrative Action was infringed upon by the failure to serve the appellant with a written statement of reasons, contrary to article 47 (2) of *the constitution* of Kenya and section 4 and 6 of the *Fair administrative Act*. When the Registrar of Political Parties wrote to the Appellant on 08/05/2023 informing him that the Communist Party of Kenya had expelled him, he wrote back through his advocates on 11/05/2023. In his response, he specifically informed the Registrar that he had no knowledge of any resolution of the Central Committee of the Party adopting the outcome of the disciplinary proceedings, and resolving to expel him from the Party.
12. It was only until 06/06/2023, 6 days after the Appellant’s expulsion was confirmed that the 2nd Respondent, through its Secretary General, served the Appellant with the decision and resolution of the Central Committee expelling him from the Party. The Appellant was not served with the decision of the Central Committee in time, or as demanded by article 47(2) of *the Constitution* of Kenya.



13. The appellant submitted further that he was denied a fair hearing by not being allowed to internally appeal the decision of the central committee contrary to article 50 (2) (q) of the Constitution of Kenya. In disciplinary proceedings conducted by the Communist Party of Kenya, article 4.2.19 of its Constitution provided that for Central Committee members, they had a right of appeal to the National Congress. The Appellant being a CC member was entitled to an Appeal before the National Congress. He was never availed this option.
14. The appellant argued that the registrar of Political Parties failed to properly exercise her function under section 34(a) of the Political Parties Act.
15. The Registrar never bothered to interrogate whether the Central Committee had served the Appellant with the resolution to expel him. In fact, for all intents and purposes, all the Registrar did was to file the respective responses and to accept at a prima facie basis that the expulsion of the Appellant was proper. As a result, the Registrar confirmed the Appellant's expulsion on 31/05/2023, having never responded to the Appellant's concerns or provided the information sought from her office.
16. The 1st respondent submitted that The Second Schedule to the Political Parties Act, 2011 (PPA) provides for the contents of a party constitution which include rules on Internal party dispute resolution mechanism in accordance with Article 47 and 50 of the Constitution. Party constitutions as derived from the Constitution and the PPA provide for the rights and duties of both the political party and its members— that while a political party has the right to expel party members that offend the party constitution as dictated in the respective constitution, the party member has the right to be afforded a fair hearing.
17. The 2nd Respondent's party constitution provides for various elements of the disciplinary processes including the venue of the hearing, role of the central committee, role of the disciplinary committee, and the right of appeal within the Communist Party of Kenya. Further, the organ mandated to hear and determine disputes and disciplinary matters in terms of article 4.2.8 of the 2nd Respondent's constitution is a disciplinary committee appointed by the central committee comprising a minimum of 2 or a maximum of 5 persons.
18. The 1st respondent submitted that at the point of hearing the case, the appellant neither appeared nor was he represented. The appellant chose to raise issue concerning the disciplinary process in other fora other than the one created for him under Section 14B of the Political Parties Act, 2011; a clear ploy to frustrate the party's right to expel errant members. Where a person has been afforded a particular platform to enjoy a certain right, and the person chooses to ignore the very platform on account of pretexts, such a person cannot possibly be approaching the court with clean hands.
19. The 1st respondent submitted that it is not required to retry the case which has already been tried at the party level under the guise of regulation of political parties. Nonetheless, the 1st Respondent not only reviewed the 2nd Respondent's disciplinary processes but also afforded the Appellant an opportunity to address himself on the documents submitted to the 1st Respondent and satisfied Article 47 of the Constitution by making a decision accompanied with reasons and furnishing the same on the 2nd Respondent.
20. The 2nd respondent submitted that on the question of whether the Appellant was denied a fair hearing before an impartial disciplinary committee, the PPDT held, and quite correctly so, that whereas the Party afforded the Appellant a chance to be heard by a disciplinary committee that was set up in accordance to the Party Constitution, it was the Appellant himself who refused to attend the hearing in total contravention of the Party Constitution, and the Party had no other option other than to expel him in line with article 4.2.14 of the Party constitution.



21. On the issue of impartiality of the Disciplinary Committee the 2nd respondent submitted that the Appellant had numerous chances of challenging his Disciplinary Process either at the Registrar's or at the Tribunal, but he did not. Further, the Appellant has never questioned the Constitutionality of the Party Constitution. In fact he has been part and parcel of previous disciplinary committees where he and others participated in the expulsion of other members in the past. In this Appeal, the Appellant cannot therefore invite the Court to address itself on matters that were never raised in the Tribunal.
22. The 2nd respondent submitted that it was the Tribunal's findings that the Appellant was served with all the documents at the various stages of his disciplinary process. All the evidence on the communication and exchanges was provided by the respondents to the Tribunal as presented in the record of appeal. At no one point did the Appellant contest the validity or otherwise of the evidence that the Respondents presented at the Tribunal.
23. The 2nd respondent submitted that unlike in the past where the Tribunal did not have jurisdiction to entertain matters unless the internal processes were exhausted, the *Political Parties Act* was amended in April 2022 and claimants no longer need to exhaust internal dispute resolution mechanisms. This amendment was termed as revolutionary since it was argued that it would in many cases take too long for issues to be resolved internally. The Appellant cannot eat his cake and still have it. He rushed to the Tribunal and the Tribunal made its decision. He cannot now claim that he wants to submit himself to the internal disciplinary processes of the party.
24. This is a second appeal the first appeal having been dismissed by the PPDT. The appeal is only on points of law.
25. There are two issues for determination;
 - i. Whether the decision of the PPDT was proper.
 - ii. Whether the 1st respondent complied with law in terms of updating the register.
26. I find that the PPDT was right in finding that the disciplinary proceedings of the appellant was in accordance with the party constitution.
27. The appellant did not dispute that he failed to attend the disciplinary proceedings yet he had notice of the same and it is not true that he was precluded.
28. On the issue as to whether the 1st respondent complied with the law in terms of updating records I find that the answer is in the affirmative.
29. I find this appeal lacks in merit and I dismiss it with costs to the 1st and 2nd respondents.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2024.

.....
A. N. ONGERI

JUDGE

In the presence of:

- for the Appellant
 for the 1st Respondent
 for the 2nd Respondent

