



**Republic v County Assembly of Garissa & 2 others; Farah & 4 others
(Interested Parties); Khalif & 3 others (Exparte Applicants) (Judicial
Review E008 of 2023) [2024] KEHC 3496 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW E008 OF 2023**

JN ONYIEGO, J

APRIL 11, 2024

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES
2010, ARTICLE 179 OF THE CONSTITUTION OF KENYA, SECTION
35 AND 42 OF THE COUNTY GOVERNMENT ACT 2012 AND THE
PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) ACT 2017**

**IN THE MATTER OF THE STANDING ORDERS
OF THE COUNTY ASSEMBLY OF GARISSA**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY ASSEMBLY OF GARISSA 1ST RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF GARISSA 2ND RESPONDENT

CLERK, COUNTY ASSEMBLY OF GARISSA 3RD RESPONDENT

AND

MOHAMED ABDI FARAH INTERESTED PARTY

AHMED ABDIRAHMAN SHEIKH INTERESTED PARTY

ABDIRAHMAN MUKTAR INTERESTED PARTY

MAHAT ABDIKADIR IBRAHIM INTERESTED PARTY

AZIMIO LA UMOJA COALITION INTERESTED PARTY

AND



ABUBAKAR MOHAMED KHALIF EXPARTE APPLICANT
ABDI IBRAHIM DAAR EXPARTE APPLICANT
OMAR ABDI HASSAN EXPARTE APPLICANT
ABDIRAHMAN MOHAMED ALI EXPARTE APPLICANT

RULING

1. The brief background of these proceedings is that, between 25.08.2023 and 05.09.2023, the 1st exparte applicant while on official trip out of the country together with other Garissa County government officials among them the deputy majority leader, a group of members of the County Assembly from Azimio la Umoja Coalition Party to which he is elected as Member of County Assembly(MCA) Garissa County, purported to have resolved by majority votes that their party had replaced him as the leader of the majority with one Mohamed Abdi Farah(1st interested party).
2. That in the same resolution, Hon. Abdi Ibrahim Daar majority whip (2nd applicant) was replaced by Ahmed Abdirahman sheikh (2nd interested party). It was deposed that Vide two letters dated 03.09.2023 authored by Hon. Ahmed Abdirahman Sheikh and Hon. Timira Bishar addressed to the Assembly speaker, the speaker was notified of the changes hence requested to communicate to the House on the same.
3. It was deposed that vide minutes dated 03.09.2023, the same MCAs resolved to remove the deputy majority leader and the party's public service board representative the 3rd and 4th ex parte applicants respectively. That the four ex parte applicants were respectively replaced by the four interested parties.
4. Consequently, the speaker having received the two letters on 05.09.2023 expressing the alleged changes, acted by convening a session of the house on 12.09.2023 and accordingly, communicated to the Assembly that pursuant to Azimio la Umoja Parry's resolution and subsequent communication vide the two letters, the majority leader and majority whip had lost their positions in favour of the newly elected leaders whom he recognized as the official majority leader and majority whip.
5. Aggrieved by the said move, the ex parte applicants herein moved this court vide chamber summons dated 14.09.2023 seeking orders outlined as hereunder:
 - i. Spent.
 - ii. That leave be granted to the ex parte applicants to apply for an order of certiorari to remove to the High Court to quash the decision of the 2nd respondent vide his communication to the Assembly on 12.09.2023 recognizing the 1st 2nd and 3rd interested party as Leader of Majority Party, Majority Whip, Deputy Majority Leader and Board Member of the County Assembly Service Board respectively; and declare it illegal, null and void and in breach of the principles of legitimate expectation.
 - iii. That leave be granted to the ex parte applicants to apply for an order of certiorari to remove to the High Court and quash the decision of the 2nd respondent made vide letters dated 03.09.2023 and any other ultra vires decision, order and/or directive of the 3rd respondent 1st, 2nd and 3rd Interested Party as leader of Majority Party, Majority whip, Deputy Majority Leader and Board Member of the County Assembly Service Board respectively.



- iv. That leave be granted to the ex parte applicants to apply for an order of mandamus to compel the 2nd respondent to within two days of the issue of the said order herein; communicate the orders of this court to the house on the restoration of the ex parte applicants as the Majority Party Leadership in the House; and in particular, the 1st ex parte applicant as leader of majority party, the 2nd ex parte applicant as the majority whip, the 3rd ex parte applicant as the deputy majority leader and the 4th respondent as Board Member of the County Assembly Service Board.
 - v. That leave be granted to the ex parte applicants to apply for an order of prohibition against the respondents from directing, interfering and/or in any other way acting as the leadership of the majority party in the Assembly of Board Member of the County Assembly Service Board party that is contrary to the laid down provisions of the law, the Assembly Standing Orders and enabling regulations and statutes.
 - vi. That leave be granted to the ex parte applicants to apply for an order of prohibition to prohibit the County Assembly of Garissa and the speaker of the said County Assembly from implementing the letter dated 03.09.2023 and implementing the 3rd respondent's communique of 12.09.2023.
 - vii. That the grant of leave herein does operate as a stay to stop the respondents from implementing the 2 letters dated 03.09.2023 and the 2nd respondents' communication dated 12.09.2023 removing the 1st ex parte applicant as Leader of Majority Party, the 2nd ex parte applicant as Majority whip, the 3rd ex parte applicant as the Deputy Majority Whip, and the 4th respondent as Board Member of the County Assembly Service Board.
 - viii. That an order be issued that the respondent be condemned to bear the costs of this application.
 - ix. That this Honourable Court be pleased to give such further Orders and directions as it may deem fit and just to grant.
6. Upon considering the ex parte application, Chigiti J granted the orders as follows:
- i. That the application dated 14.09.2023 is hereby certified urgent.
 - ii. That the application is admitted for hearing during the Court vacation.
 - iii. That leave be granted to the ex parte applicants to apply for an order of certiorari to remove to the High Court and quash the decision of the 2nd respondent vide his communication to the assembly on 12.09.2023 recognising the 1st, 2nd and 3rd interested party as Leader of Majority Party, Majority Whip, Deputy Majority Leader and Board Member of the County Assembly Service Board respectively; and declare it illegal, null and void and in breach of the principles of legitimate expectation.
 - iv. That leave be granted to the ex parte applicants to apply for an order of certiorari to remove to the High Court and quash the decision of the 2nd respondent made vide letters dated 03.09.2023 and any other ultra vires decision, order and/or directive of the 3rd respondent, 1st, 2nd and 3rd Interested Party as leader of Majority Party, Majority Whip, Deputy Majority Leader and the Board Member of the County Assembly Service Board respectively.
 - v. That leave be granted to the ex parte applicant to apply for an order of mandamus to compel the 2nd respondent to within two days of the issue of the said order herein; communicate the orders of this court to the house on the restoration of the ex parte applicants as the Majority Party



Leadership in the House; and in particular, the 1st ex parte applicant as leader of majority party, the 2nd ex parte applicant as the majority whip, the 3rd ex parte applicant as the deputy majority leader and the 4th respondent as Board Member of the County Assembly Service Board.

- vi. That the leave be granted to the ex parte applicant to apply for an order of prohibition against the respondents from directing, interfering and/or in any other way acting as the leadership of the majority party in the Assembly or Board Member of the County Assembly Service Board party that is contrary to the laid down provisions of the law, the Assembly Standing Orders and enabling regulations and statutes.
 - vii. That leave be granted to the ex parte applicants to apply for an order of prohibition to prohibit the County Assembly of Garissa and the speaker of the said County Assembly from implementing the letter dated 03.09.2023 and implementing the 3rd respondent's communique of 12.09.2023.
 - viii. That the leave shall operate as a stay pending the hearing and the determination of the application dated 14.09.2023 that the grant of leave does operate as a stay to stop the respondents from implementing the 2 letters dated 03.09.2023 and the 2nd respondent communication dated 12.09.2023 removing the 1st ex parte applicant as Leader of Majority Party, the 2nd ex parte applicant as the Majority whip, the 3rd ex parte applicant as the Deputy Majority Leader and the 4th respondent as Board Member of the County Assembly Service Board.
 - ix. That the matter shall be mentioned before the presiding judge in Garissa High Court for further directions.
 - x. That the Deputy Registrar Garissa high Court shall facilitate the assignment of a date convenient to the presiding judge in Garissa High Court.
7. Consequently, the applicants filed a substantive notice of motion dated 25.09.23 but filed on 26.09.2023 seeking;
1. That an order of certiorari be and is hereby issued to remove to this Honourable Court and quash the decision of the 2nd Respondent vide his communication to the Assembly on 12th September, 2023 recognizing the 1st, 2nd and 3rd Interested Party as Leader of Majority Party, Majority Whip, Deputy Majority Leader and Board Member of the County Assembly Service Board respectively; and declare it illegal, null and void, and in breach of the principles of legitimate expectation.
 2. That an order of certiorari be and is hereby issued to remove to this Honourable Court and quash the decision of the 2nd Respondent made vide letters dated 3rd September, 2023 and any other ultra vires decision, order and/or directive of the 3rd Respondent 1st, 2nd and 3rd Interested Party as Leader of Majority Party, Majority Whip, Deputy Majority Leader and Board Member of the County Assembly Service Board respectively.
 3. That an order of mandamus be and is hereby issued, compelling 2nd Respondent to within 2 days of the issue of the said order herein; communicate the orders of this court to the house on the restoration of the Ex-Parte Applicants as the Majority Party Leadership in the house; and in particular, the 1st Ex-Parte Applicant as Leader of Majority Party, the 2nd Ex-Parte Applicant as the Majority Whip, the 3rd Ex-Parte Applicant as the Deputy Majority Leader and the 4th Respondent as Board Member of the County Assembly Service Board.



4. That an order of prohibition be and is hereby issued to restrain the Respondents from directing, interfering and /or in any other way acting as the leadership of the Majority Party in the Assembly or Board Member of the County Assembly Service Board party that is contrary to the laid down provisions of the law, the Assembly Standing Orders and enabling regulations and statutes.
 5. That an order of prohibition be and is hereby issued prohibiting the County Assembly of Garissa and the Speaker of the said County Assembly from implementing the letter dated 3rd September, 2023 and implementing the 3rd Respondent's communique of 12th September, 2023.
 6. That a declaration be and is hereby issued that the process of the 2nd Respondent ejecting the 1st Ex-Parte Applicant as Leader of Majority Party, the 2nd Ex-Parte Applicant as the Majority Whip, the 3rd Ex-Parte Applicant as the Deputy Majority Leader and the 4th Respondent as Board Member of the County Assembly Service Board was flawed as in bad faith, had an improper purpose, improperly exercised its powers, acted unreasonably and erred in law.
 7. That an order be issued that the Respondents be condemned to bear the costs of this application.
 8. That in default, notice to show cause do issue against the respondents to show cause why they should not be cited for contempt of court.
 9. That the costs of this application be provided for.
8. The application is anchored on the particulars set out on the face of it and further amplified by the averments contained in the verifying affidavit of Abubakar Mohamed Khalif sworn on 25.09.23. Despite being served with the said ex parte order, the respondents and the interested parties did not act as directed thereby prompting the ex parte applicants to file a notice of motion dated 25.09.2023 seeking implementation of the ex parte orders by stressing that there was no change of leadership in the assembly and that the declaration by the speaker was not valid as the same was based on a decision that was not taken and therefore a forgery. It was further deposed that for the reason that the respondents had willfully disobeyed this court's orders, a notice to issue against them to show cause why they could not be cited for contempt of court.
 9. The contempt application was however heard and a ruling delivered compelling the speaker to comply with the ex parte orders pending the hearing and determination of the substantive notice of motion.
 10. As a response to the said ex parte applicants' substantive notice of motion, the respondents filed a preliminary objection dated 01.12.2023 which is the subject of determination in this ruling. The preliminary objection was based on the following grounds:
 - i. That this Honourable Court has no original jurisdiction to hear and determine the application in view of the provisions of sections 39,40(1)(a), (b), (c), (e) and (fa), section 40(2) and 41 of the *Political Parties Act* No. 11 of 2011 as read together with section 9(2) of the Fair Administrative Actions Act No. 4 of 2015 which vests jurisdiction to hear and determine disputes relating to political parties first to the Internal Political Party Disputes Resolution Mechanism.
 - ii. That the substantive application was filed outside the mandatory timeframe of 21 days as provided for under Order 53 Rule 3(1) of the Civil Procedure Rules 2010 as read together with Section 8 and 9 of the Law Reforms Act, Cap 26 of the Laws of Kenya.



- iii. That for the foregoing reasons, the application is incompetent and legally untenable and ought to be struck out with costs.
11. The interested parties also filed an application dated 21-09-23 basically seeking the suit herein to be dismissed for lack of jurisdiction.
12. When the matter came up for directions, the court directed that the preliminary objection be canvassed first by way of written submissions which direction both parties complied with.

Respondent's/objector's submissions

13. The 1st, 2nd and 3rd respondents via their written submissions dated 19.01.2024 filed by Sheikh and Shariff advocates submitted in reference to the issues listed hereunder:
 - i. Whether this Honourable Court has jurisdiction to hear and determine the suit in view of the provisions of sections 39,40(1) (a) (b) (c) (e) and (fa), section 40(2) and 41 of the Political Parties Act No. 11 of 2011 as read together with section 9(2) of the Fair Administrative Actions No. 4 of 2015 which vests jurisdiction to hear and determine disputes relating to political parties first to the Internal Political Disputes Resolution Mechanism.
 - ii. Whether the substantive application is bad in law and thus not properly before the court, the same having been filed outside the mandatory timeframe of 21 days under Order 53 Rule 3(1) of the Civil Procedure Rules, 2010 as read together with Sections 8 and 9 of the Law Reforms Act, Cap 26 of the Laws of Kenya.
14. In reference to the first issue, it was submitted that jurisdiction flows from either the constitution or legislation or both as was held by the Supreme Court in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR. That from the pleadings by the petitioners, it can clearly be gleaned that this court lacks jurisdiction for the reason that the dispute herein relates to the leadership of Azimio Coalition in the County Assembly of Garissa. Reliance to that end was placed on sections 39,40 and 41 of the Political Parties Act and the case of Godfrey Murithi Muchiri & 4 Others v Speaker, Tharaka Nithi County Assembly & 2 Others [2020] eKLR to urge that this court lacked jurisdiction.
15. The respondents contended that the first port of call in the dispute of this nature ought to have been the internal party dispute resolution mechanism before the same is subjected to court. It was contended that section 9 of the Fair Administrative Actions Act stipulates the procedure under which one is to move to court when seeking for reprieve in any action touching on breach of fair administrative action. That sub section 2 denotes that the High Court shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. It was further urged that clearly the ex parte applicants did not exhaust the mechanisms provided by the statutes hence the time was not ripe for this court's jurisdiction to be invoked.
16. It was further contended that the 1st and 2nd ex parte applicants represented by the same firm of advocates had prior to filing the instant application filed a Complaint Number E017 of 2023 before the Political Parties Dispute Tribunal where the said complaint was struck out for want of exhaustion of the internal dispute resolution mechanism before invoking the jurisdiction of the Tribunal.
17. On the second issue, it was urged that the ex parte applicants having obtained leave to file a Judicial Review application failed to file a substantive notice within 21 days as directed by the court thus contravening Order 53 Rule 3 of the Civil Procedure Rules 2010.



18. It was contended that the 21 days' leave granted to the ex parte applicants lapsed on 06.10.2023 being 21 days from the date of issuance of the said leave. That the applicants uploaded into the e-filing system the substantive application on 12.10.2023 long after the lapse of the 21 days.
19. Further, that the application was assessed at Kes. 10,575/- which amount the applicants are yet to pay and therefore, this court should not grant audience to the applicants for the said reasons. Reliance to support the same was placed on the case of Republic v The Kenya Medical Laboratory Technicians and Technologists Board ex parte Edna Mwende Kavindu [2017] eKLR where Aburili J struck out a judicial review application for want of being filed out of time without leave for extension.
20. Mr. Chengo for the interested party merely associated himself with the submissions of the respondents.

Exparte Applicants' submissions

21. The ex parte applicants through Manyange and company advocates filed their written submissions dated 25.01.2024 in reference to the following issues:
 - i. Whether this Honourable Court has jurisdiction to hear and determine the suit in view of the provisions of sections 39,40(1) (a)(b)(c)(e) and (fa), section 40(2) and 41 of the [Political Parties Act](#) No. 11 of 2011 as read together with section 9(2) of the Fair Administrative Actions Act No. 4 of 2015.
 - ii. Whether there is non-disclosure of materials facts.
 - iii. Whether the substantive application is bad in law and thus not properly before the court, the same having been filed outside the mandatory time frame of 21 days under Order 53 Rule 3(1) of the Civil Procedure Rules.
22. It was contended that the dispute herein does not fall within the purview of the statute under section 40 (1)(a) to (fa). That the dispute is among members of political parties in a coalition and not coalition partners. It was urged that the statute does not directly legislate for the resolution of disputes involving members of political parties within a coalition. Counsel contended that the dispute herein being a dispute amongst the members of parties in the Azimio Coalition are not captured by the provisions of the statute. It was urged that the members of the Azimio Coalition are the constituent' parties and not individual members of the political parties forming the coalition.
23. According to learned counsel, the members can thus choose to refer the dispute to the party(ies) or move this Honourable Court directly. In that regard, the court was referred to the case of R.B.& R.G.O v H.S.B. & A.S.B.(2014)e KLR and Miller v Miller (1988)e KLR. That there is no statute or article in [the constitution](#) that bars anyone from approaching this court. It is against this backdrop that it was urged that the ex parte applicants have no right to appear before the PPDT as the Tribunal lacks jurisdiction under section 40 (1) (e) to entertain the suit herein.
24. It was argued that the issues raised herein are complex in nature and beyond the jurisdiction of a subordinate court, tribunal or IDRMs body. That only the High Court can thus issue the appropriate remedies or prerogative orders as prayed by the applicants herein hence the reason why this court's jurisdiction was invoked. It was contended that to follow the political parties' Act process is an unnecessary impediment to justice hence the reason for filing the suit before the high court. In that regard, reliance was placed in the case of Godfrey murithi Muchiri and 4 others (supra).
25. In reference to the fact that the Tribunal struck out Complaint No. 17 of 2023 Abubakar Mohamed Khalif and Another vs Mohamed Abdi Farah and 5 Others, it was urged that the said complaint was



not simply struck out for want of jurisdiction but also for the reason that ex parte applicants were not parties contemplated under section 40(1) (e) of the statute.

26. On whether there was no disclosure of material facts of the suit, it was argued that all facts relating to this suit were disclosed. It was urged that JR E007 of 2023, was withdrawn on 12.09.2023 and not on 18.09.2023 as alleged. That the notice of withdrawal was stamped by the Garissa Court Registry on 12.09.2023 and therefore, at the filing of the suit herein, there was no Garissa JR E007 of 2023 before the court as at 18.09.2023 hence nothing to disclose.
27. While urging that a party has a right to file and withdraw a suit before the same is settled down for hearing, reliance was placed on the case of Julius Musili Kyunga v Kenya Commercial Bank & Another; James Muriuki Karaya (interested party) [2019] eKLR.
28. Regarding the issue that there was no suit before this court pending determination for the reason that the substantive motion was filed out of the 21 days provided for by Order 53 Rule 3 of the Civil Procedure Rules, it was urged that the issue as raised did not bring out issues of pure point of law as the same was not only disputed but also required production of evidence. Support was placed on the case of Rosalia Wangui & Another v National Police Service Commission & 2 Others [2021] eKLR where the court held that where a court needs to investigate facts; a matter cannot be raised as a preliminary objection.
29. That the uploading of the motion was done as a matter of course for the reason that it did not appear in the portal. According to them, the registry had uploaded the documents in seven entries which upon opening, no document was found to have been uploaded. That it was that technical hitch that informed the reason for filing physical documents on 26.09.2023 and therefore, the allegations by the respondents that the substantive motion was filed out of time is unfounded.

Analysis and determination

30. Having considered the preliminary objection herein, the response thereof and written submissions together with the authorities relied on by the parties, I discern one issue for determination as follows; whether the preliminary objection meets the threshold required to strike out a suit with finality. Basically, the court is duty bound to make a finding whether; the substantive motion was filed out of the stipulated time and; Whether this court is endowed with the requisite jurisdiction to determine the matter.
31. What then is a preliminary objection? As to whether the preliminary objection as raised is a pure point of law, the Court in the case of Mukhisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Limited EA 696, defined a preliminary objection as follows;

“...a “Preliminary Objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a Preliminary Objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”



32. The first limb of the preliminary objection is whether the motion herein was filed out of the stipulated time after issuance of directions to do so. From the record of these proceedings, leave to commence the judicial review application was granted by Chigiti J. on 15.09.2023. Pursuant to section 57(1)(a) of the *Interpretation and General Provisions Act*, in computing time for the purposes of a written law, unless the contrary intention appears, a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.
33. Having perused the record herein, I find that the substantive motion was filed in court on 26.09.2023 which translates to 11 days after issuance of the directions to file it; The applicants endeavoured to explain the circumstances under which the late uploading was done. The fact that uploading was done later is understandable taking into account the technological challenges in our online filing system. It therefore follows that the motion was filed within time and this limb of objection thus fails.
34. On the question whether this court is possessed of the requisite jurisdiction, the *ex parte* applicants urged that this court is possessed of both the original and appellate jurisdiction to determine the matter before it while the respondents argued that the orders sought herein had previously been filed before the Political Parties Disputes Tribunal, hereinafter, the PPDT via PPDT Complaint No. E017 of 2023. That the PPDT pronounced itself on 02.10.2023 by stating that the complaint before it was incompetent for reasons *inter alia* that the same did not embrace the Internal Political Party Dispute Resolution Mechanism, hereinafter IDRMM prior to the same being filed before it.
35. The issue of jurisdiction is key as it is everything. In the case of *R vs Karisa Chengo* [2017] eKLR, the court observed thus;
- “By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means.
- If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
36. It is trite that without the requisite jurisdiction, a court cannot move a step further upon discovery that it lacks such mandate to effectively determine the suit. This is the wisdom derived from justice Nyarangi J as he then was in the case of *Owners of Motor Vessel LillianS” v Caltex oil (Kenya) Ltd* (1989) KLR.
37. The court has been asked to declare that it has no jurisdiction to entertain the suit herein by dint of Section 39, 40(1) and 42 of the *political parties Act* 2011 and section 9(2) of the Fair Administrative Actions Act in that where there is an internal dispute resolution mechanism provided for in statute or otherwise, a party should first exhaust such resolution mechanism before engaging the court.
38. There is no doubt that where there is an internal dispute resolution mechanism provided in *the constitution*, statute or agreement whichever is applicable, an aggrieved party is duty bound to exhaust such process before seeking Court’s intervention. That is what the doctrine of exhaustion is all about. See Section 9(2) of the fair Administrative Actions Act and the holding in the case of *The Speaker of*



the National Assembly v James Njenga Karume (1992) eKLR in which it was held that; where there is a clear procedure for the redress of any particular grievance prescribed by *the constitution* or an Act of parliament, that procedure should strictly be followed.

39. It therefore follows that this court must ascertain whether it is seized of the requisite jurisdiction to entertain the matter before it. I say so for the reason that Section 40 of the *Political Parties Act* (PPA) provides as follows:

- “(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;
- (fa) disputes arising out of party primaries.
- (2) Notwithstanding subsection (1), the Tribunal shall not hear or determine dispute under paragraphs (a) (b) (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.

41.

- (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 both the Court of Appeal and the Supreme Court.

40. The Act, further in subsection (2) of section 40, gives a condition for the jurisdiction of the Tribunal with regard to disputes covered in (a), (b), (c), and (e), to have them first subjected to internal political party dispute resolution mechanisms. Thereafter, the same may be escalated to the High Court on appeal on points of law and facts and on points of law to both the Court of Appeal and the Supreme Court.

41. It is not controverted that the dispute before this court emanated from the members of Azimio la Umoja Coalition. The said Azimio la Umoja Coalition must be noted as a constituency of various political parties. To support their case, the respondents herein placed reliance on a case previously filed by the ex parte applicants herein before the PPDT via, PPDT Complaint No. E017 of 2023 which this court has since ably perused.

42. The PPDT in the said case ruled that it lacked jurisdiction to determine the complaint before it for the reason that the applicants had not explored the IDR. The PPDT went further to consider the letters by the applicants which alleged the exploration of the IDR. The finding of the PPDT which finding I am in agreement with is that the said letters did not amount to a resolution of the dispute as the same only raised concern on the complainants being ejected from their respective positions in the Assembly. In short, the PPDT struck the complaint out and further noted that the complaint was filed prematurely before it. The ex parte applicants did not deny the same but rather urged that this



court be guided by Section 9 of the Fair Administrative Act and article 165 on the inherent powers of the High Court.

43. If the applicants were aggrieved by the decision of the tribunal, they should have appealed to the high court as provided for under Section 41(2) of the [political parties Act](#) and in the converse proceed to their coalition party for redress. The applicants should not have abandoned the process provided under the [political parties Act](#) and proceed to the high court. It would amount to abuse of the court process in my view.
44. The applicants argued that as individuals, they had no recourse to directly approach the Azimio coalition party for redress. The definition of a political party is provided under Section 2 of the [political parties Act](#) as;
 - (a)“ an association of citizens with an identifiable ideology or programme that is constituted for the purpose of influencing public policy of nominating candidates to contest elections; and
 - (b) includes a coalition political party.
45. The word election under the same section is defined as the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election.
46. There is no dispute that the dispute herein arose out of an election contest between members of Azimio coalition party. A political party whether as a single party or a coalition party is a party for all purposes and intents. Therefore, an aggrieved person can under Section 40(a) move the relevant party seized of the power to hear the dispute and make a determination. Although I did not get the opportunity to peruse the Azimio coalition party’s agreement, it must be having a dispute resolution mechanism for its members from constituent parties.
47. It is my considered view that an individual can either directly or through his constituent party, move the coalition party for redress unless the coalition party’s constitution expressly provides to the contrary. The bottom line is that, the applicants must exhaust the internal dispute resolution mechanism before approaching the tribunal and subsequently the court for judicial review reliefs. See Geoffrey Muriithi case (Supra) where justice Limo held that the dispute between Jubilee Party membership in respect of the County Assembly leadership ought to have been subjected to internal dispute resolution mechanism. Similar position was held in the case of Linus Kamungo Muchina vs Speaker Embu County Assembly and Majority Leader Embu County Assembly(supra).
48. From the record, no attempt was made to approach the relevant party for redress. There is no evidence that the party was engaged and it refused to hear or entertain the dispute in which case the parties would have no choice but to approach the court for redress. To buttress that proposition, am guided by the holding in the case of Musalia Mudavadi & 4 others vs Angela Gathoni Wambura & 2 others [2019] eKLR, where the following considerations were made by the High Court: -

“...I must however add that though this court in determining appeals such as the present one must have regard to parliament’s intention in creating the tribunal, the court must also be alive to the fact that there may be situations where political parties may for their own reasons refuse to set in motion their IDRMs when called upon to do so by aggrieved parties. If the court were to be confronted by such a situation, it would not be powerless and would be in a position to grant the aggrieved party a remedy that would best serve the ends of justice. Each case must however be considered on its own merits...”



49. As already mentioned above, the question that lingers before this court's mind is whether the jurisdiction of this court was properly invoked. Taking into account the express provisions of Section 40(2) of the PPA as read together with the provisions of article 165 of *the constitution*, I am persuaded by the respondents' contention that JR was not the proper route to engage this court.
50. It is trite that the ex parte applicants herein being members of Azimio la Umoja coalition are bound by the regulations provided for by their respective parties and they can only depart from the same if a good reason is therefore given. See the case of Clerk, Nairobi City County Assembly v Speaker Nairobi City County Assembly & another; Orange Democratic Party & 4 others (Interested Parties) [2019] eKLR, where the Court held as follows: -
- “ ...
41. The foregoing dispute relating to party nominations arising from decisions by the respective political parties under section 12(3) (c) of the *County Governments Act*. The proponents of the PO cited several precedents which are unanimous that nominations by political parties are not justiciable and they should be left, in the first instance, to the political parties' internal dispute resolution mechanisms and the PPDT where the need to escalate the same arises. In *Gabriel Bukachi Chapia vs ODM & Another (2017) eKLR* the Court of Appeal held that
- “In effect the PPDT should not entertain disputes between members of a political party, disputes between a member of a political party and a political party, disputes between political parties and disputes between coalition partners, unless such dispute is in the first instance heard and determined by the internal political party dispute resolution mechanism.”
42. The foregoing judicial precedent binds this court and in my view, it is a good law which encourages alternative dispute resolution mechanisms as provided under Article 159 of *the Constitution* and also the doctrine of exhaustion.
51. This court is therefore of the considered view that due process required that the ex parte applicants first subject the matter to the party to deal with internally before escalating the dispute to the Tribunal. The Tribunal could only thereafter assume jurisdiction after being satisfied of exploration of the IDRM; and thereafter, if the parties are not happy with the outcome, then the appellate jurisdiction of this court could thus be invoked.
52. Taking into consideration the foregoing reasons and the findings and in the absence of any evidence by the ex parte applicants demonstrating an attempt to invoke IDRM as was directed by the Tribunal and thereafter moving this court by way of an appeal, I find that jurisdiction cannot, at this stage vest in this Court.
53. As a consequence of the above holding, I am accordingly inclined to find as follows:
- i. The Preliminary Objection dated 01.12.2023 and the interested parties' application dated 21-09-23 are hereby found meritorious and thereby upheld.
 - i. The suit herein is struck out for want of jurisdiction and the exparte orders in place set aside.
 - iii. For purposes of cohesion in the County Assembly, each party shall bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 11TH DAY OF APRIL 2024



J. N. ONYIEGO
JUDGE

