



REPUBLIC OF KENYA



**Kariuki v Anunda & 3 others (Civil Appeal E404 of 2022)
[2023] KEHC 20087 (KLR) (Civ) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20087 (KLR)

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

CIVIL

CIVIL APPEAL E404 OF 2022

AN ONGERI, J

JULY 6, 2023

BETWEEN

KELVIN KARIUKI APPELLANT

AND

JOHN OKEMWA ANUNDA 1ST RESPONDENT

DAVID KAMAU NG'ANG'A 2ND RESPONDENT

PETER GATIRAU MUNYA 3RD RESPONDENT

PARTY OF NATIONAL UNITY 4TH RESPONDENT

*(Being an appeal from the judgment and decree of the Political Parties
Disputes Tribunal (PPDT) made by Hon. Wilfred Mutubea (chairman)
with members in complaint no. E006 of 2022 delivered on 23/5/2022)*

JUDGMENT

1. The appellant was the complaint in PPDT no. E006 of 2022 where he approached the PPDT on May 4, 2022 on the basis that on February 24, 2022 the 3rd respondent Peter Gatirau Munya announced removal of six officials whereby the complainant who was the Deputy Secretary General was one of the removed officials.
2. The appellant said at the PPDT that he was never informed of the reasons for his removal and further that he was not subjected to any disciplinary hearings or told to answer any charges by the political party or any government organ.
3. The appellant also stated that the 3rd respondent who made the announcement was not an official of the Party Of National Unity (PNU) (the 4th respondent).



4. The respondents on their part stated that on February 24, 2022 during the National delegates convention, the following positions were declared vacant
 - a. National treasurer
 - b. National organizing secretary
 - c. Deputy secretary General
 - d. 2nd deputy organizing secretary
 - e. 2nd deputy chairperson – league woman
 - f. National chairperson woman league
5. Further that the authority to reach the decision was anchored on Article 6(b) (ii) of the 4th respondent’s constitution.
6. It was also found that several national officials including the appellant had been hobnobbing with the other political parties contrary to the pledge of commitment of the party which would have prejudiced the interests of the party.
7. The respondents also said there were several members of the National Executive Committee (NEC) who were not attending meetings and their seats were declared vacant in accordance with Article 8(d) of the party constitution which stated that a member of the NEC who absented themselves from three (3) consecutive meetings without presenting a written apology shall forfeit his or her position and the NEC had power in such a case to nominate another member.
8. The 1st, 3rd and 4th respondents stated that the resolution to amend the agenda was done legally in the interest of the party during the special delegates conference and in compliance with the provision of the 4th respondent’s constitution.
9. The appellant’s complaint was dismissed. The appellant has now appealed to this court against the dismissal(removal) on the following grounds;
 - a. The learned members of the Political Parties Dispute’s Tribunal erred in law and in fact and misdirected themselves when they misinterpreted the provisions of Article 16 (d) of the PNU Constitution without any evidence adduced to show that any voting via secret ballot took place or that there was consequences in dismissing the appellant’s complaint.
 - b. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they ignored article 16 (f) of the PNU constitution which states that “Only fully paid-up members may attend the party’s meetings and vote. Any other persons may attend only upon invitation”
 - c. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they ignored the provision of article 6 (a) and article 16 (a) on the composition and quorum of an NDC.
 - d. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they considered invitation of the 3rd respondent as being proper without any evidence of any invitation letter being adduced.
 - e. The learned members of the political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they failed to take into consideration the provisions of Article



28 of the Constitution of party of National Unity which provides on the procedures to be followed on removal of an official.

- f. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they made a determination without any evidence adduced by the respondents on any NEC resolution proposing the removal of the appellant together with five (5) other officials.
 - g. The learned members of the Political Parties Dispute Tribunal erred on law and misdirected themselves when they made a determination without any evidence or minutes of any resolution by NEC to refer any matter on removal of the appellant alongside five other officials to the NDC
 - h. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they relied on allegations where no evidence was adduced that the appellant and other officials were hobnobbing with other political parties contrary to the pledge of commitment of the party.
 - i. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they relied on allegations where no evidence was produced that some of the officials had failed to attend several NED meetings or of any ineptitude.
 - j. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they failed to take into consideration the provisions of article 47 (1) of the Constitution of Kenya which provides *inter alia* “every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair”.
 - j. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they failed to take into consideration the provisions of article 50 (1) of the Constitution of Kenya which provides *inter alia* “every person has a right to have any dispute that can be resolved by the application of law decided by a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body”.
 - k. The learned members of The Political Parties Dispute Tribunal erred in law in fact and misdirected themselves when they failed to take into consideration the provisions of Section 4 (1) of the Fair Administrative Action Act 2015 which provides *inter alia* “every person has the right to administrative action which is expeditious, efficient. Lawful, reasonable and procedurally fair.
 - l. The learned members of the Political Parties Dispute Tribunal erred in law and in fact and misdirected themselves when they failed to take into consideration the provisions of article 5 (1) (b) of the Fair Administrative Action Act which provides *inter alia* “in any case where any proposed administrative action likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall consider all views submitted in relation to the matter before taking the administrative action”
10. The parties filed written submissions in the appeal as follows;
11. The appellant submitted that this court has jurisdiction to hear and determine this appeal pursuant to section 41 (2) of the Political Parties Act Rule 34 of the political Parties Disputes Tribunal (Procedure) Regulations, 2017 and Rule 20(1) of the High Court (Organizational and Administration) (General) Rules 2016.



12. It was the appellants submission that that during his tenure as the deputy Secretary General of Party of National Unity he did not receive any complaint by any member nor the Party addressing him of any allegation against him pertaining his office. The Appellant further contends that during the hearing of the matter before the Political Parties Disputes Tribunal, the Respondents failed to produce any form of complaint against him.
13. The appellant contended further that that Party of National Unity constitution lays down the procedure of calling meetings and decision making within the party as article 16(d)states that resolutions, unless otherwise stated in the constitution, shall be decided by consensus or simple majority and voting shall be by secret ballot. However,that during hearing before the Tribunal, the respondents failed to produce any minutes on how the meeting was conducted and if voting was conducted, what was the number of members who voted for inclusion of the agenda item for removal of officials during the NDC.
14. It was therefore the appellants submission that, the process to remove him and five other officials was conducted in a clandestine manner which denied him an opportunity of being heard. The Appellant was neither served with adequate notice nor furnished with particulars of the charges or allegations made against him and was subjected to a trial by acclamation. His removal thus violated the provisions of section 4 of *Fair Administrative Action Act*, 2015.
15. The appellant submitted that the respondents through an advert on a newspaper dated February 13, 2022 invited members for a Special National Delegates Convention to be held on February 24, 2022. The agenda of the National Delegates Convention was to discuss and ratify coalition building and the parties working relationship with other like -minded political parties /to deliberate and resolve that PNU joins the Jubilee/Azimio Coalition". Surprisingly during the NDC the respondents introduced an additional agenda for removal of the Appellant together with Five other officials from the party leadership. The resolution was therefore null and void guided by the reasoning of Judge B N Olao who in *Joseph Kamau Kiguoya v Rose Wambui Muthike* [2016] eKLR adopted the reasoning in *Mistry Amar Singh v Kulubya* 1963 E A 408, where the Court cited the following passage from *Scott Vs Brown, Doering, Mc Nab & Co. (3)*, (1892)2 QB 724 as follows:

“ Ex turpi causa non oritur actio. This old and well-known legal maxim is founded in good sense, and expresses a clear and well recognized legal principal which is not confined to indicate offences. No Court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves illegality, the Court ought not to assist him”.
16. The 1st 3rd and 4th respondents submitted that The National Delegates Convention (NDC) meeting is a creature of Article 6 of the 4th Respondent's Constitution and is described therein as-the supreme authority of the party. Article 6(b) (ii) of the 4th Respondent's Constitution provides as follows:-

“The National Delegates Conference shall be the highest authority of the Party and shall determine the Party's policies. It shall have the following specific powers, duties and obligations:- To elect from among the eligible members of the party national officials of the party”



17. A special session of the National Delegates Convention was summoned by the National Chairman in accordance with Article 6(d) of the PNU Constitution to be held on February 24, 2022 with the main agenda being a resolution to join Jubilee/Azimio coalition. On the said date, there were Eight (8) other resolutions that did not form part of the main agenda, discussed and adopted by the National Delegates Convention. The Appellant took issue with the resolution to declare certain national positions vacant and not the legality and constitution of the National Delegates Convention. The impugned resolution was necessitated by the apparent hobnobbing by officials of the party with other political parties contrary to the pledge of commitment and loyalty to the party. The NEC procedurally made a resolution for the removal of the Appellant among other officials which was then presented to NDC for ratification.
18. The removal of the Appellant and other officials was a swift decision by the National Delegates Convention, being the highest authority of the party, to protect the interests of the party. That Article 16(d) of the 4th Respondent's Constitution provides as follows:-
- “resolutions unless otherwise stated in the constitution, shall be decided by consensus or simple majority and voting shall be by secret ballot”
19. The Appellant lost the confidence of his peers in the 4th Respondent Party and attempted to erode the vision and mission of the 4th Respondent which eventually led to his removal. That in the supreme court affirmed that a court cannot interfere when constitutional processes have taken place in *Petition 17 of 2014; Chris Munga Bichage -vs- Richard Nyagaka Tong'1 & 2 others* when it held that;
- “Consequently, it was urged, no competing constitutional process can be invoked at this stage, to impugn his election, and as thus, the petition herein has been rendered moot, on account of the subsequent constitutional processes. ”
- “That is an argument in good standing, juristically, and was thus articulated in the Ugandan case of *An Application for Judicial Review Between Julius Maganda v. National Resistance Movement (HCMA NO. 154 OF 2010) (HCMA NO. 154 OF2010) [2011] UGHC 4 (11 January 2011)*:
- “Courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or merely no longer exist. ”
20. It was their submission therefore that Appellant being an official is well aware of the procedure of invoking the Internal Dispute Resolution Mechanisms of the party under the Party's constitution as provided under Appendix V Part B of the 4th Respondent's constitution, but opted not to pursue the same. As such there is no justifiable reason for the 3rd Respondent to be included in the instant appeal.
21. The issues for determination in this appeal are as follows;
- i. Whether this court has jurisdiction to hear the appeal.
 - ii. Whether the removal of the appellant was procedural.
 - iii. Whether the presentation of additional agenda during the national Delegates Convention (NDC) was procedural.
22. On the issue of jurisdiction, this court is properly ceased of the matter. Like all other tribunals, the PPDT decisions can be appealed to the high court.



- 23. On the issue as to whether the removal of the appellant was procedural, the appellant submitted that he was not informed of the reason for his removal.
- 24. Further that there was a single agenda and his removal and that of 6 others was not in the agenda and the same was unprocedural and not in accordance with laid down procedures.
- 25. The appellant submitted that Article 28(b) (c) and (d) of their constitution was contravened. The same provide for the procedure for removal of members. The same state as follows;

Article 28

Party Discipline

- b A complaint by any person alleging than an offence has been committed shall be made in writing to the secretary General who shall forward the same to NEC
 - c NEC shall appoint Ad Hoc Disciplinary Committees if and when necessary and such committees shall investigate the allegations and accord the persons against whom the complaints are made, a hearing in accordance with the rules of natural justice.
 - d After considering the complaint, the disciplinary committee shall make its recommendations to NEC including appropriate sanctions.
- 26. I have looked at the provisions relied on by both sides. I find that the ones relied on by the appellant relate to members who are alleged to have committed offences.
 - 27. The appellant was an official of NEC and I find that Article 8(d) and 30(b) of their constitution were applicable to him.
 - 28. I therefore find that the removal of the appellant was in accordance with the PNU constitution.
 - 29. On the issue as to whether the presentation of the additional agenda during the NDC was procedural, I find there were eight (8) other resolutions that did not form part of the main agenda which were adopted by the NDC. The NDC as the supreme organ of the party, is not bound by the agenda as published. It can adopt or vary on the floor of the meeting as deemed necessary by the delegates.
 - 30. I find that the said resolutions were ratified by the NDC which is the highest authority of the party mandated with authority to elect from among eligible members of the party officials of the party.
 - 31. The appeal herein lacks merit and I dismiss it. Each party to bear its own costs of this appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 6TH DAY OF JULY, 2023.

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A N ONGERI

JUDGE

In the presence of:

-for the Appellant
-for the 1st Respondent
- for the 2nd Respondent
- for the 3rd Respondent



..... for the 4th Respondent

