



Mawia & another v Mwinzi & another; Wiper Democratic Movement & another (Interested Parties) (Civil Appeal 001 of 2024) [2024] KEHC 14176 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL APPEAL 001 OF 2024**

RK LIMO, J

NOVEMBER 14, 2024

BETWEEN

HON HARRISON MALUKI MAWIA 1ST APPELLANT

HON BONIFACE MUKWATE KATULA 2ND APPELLANT

AND

HON MUNYOKI MWINZI 1ST RESPONDENT

HON DANIEL NGOIMA KIMANZI 2ND RESPONDENT

AND

WIPER DEMOCRATIC MOVEMENT INTERESTED PARTY

KITUI COUNTY ASSEMBLY INTERESTED PARTY

JUDGMENT

1. This is an appeal that arose from the decision of political Parties Disputes Tribunal (hereinafter to be referred as PPDT for ease of reference) dated 9/1/2024. That decision arose from a complaint filed by the respondents in this appeal vide PPDT NBI Complaint No. E019 of 2023.
2. The complaint was against the Speaker of the 2nd Interested Party in this appeal and the appellants herein for not effecting changes of House Leadership position in the County Assembly of Kitui. Apparently the 1st Interested Party had effected changes in respect of Leader of Majority and Majority whip positions held by 1st & 2nd appellants respectively.
3. The reasons given for the changes were that the majority of members of the Wiper Democratic Movement (the 1st Interested party) had voted to effect changes and since it was the party with the majority of members, the mandate to fill up the said positions fell on them.



4. The reasons given by the 2nd respondent for not effecting the changes were that the changes or the removal of the appellants from the said House Leadership position flouted its Standing Orders.
5. The 2nd respondent position supported by the appellants in this appeal is that the PPDT had no jurisdiction to entertain the complaint and grant the reliefs sought.
6. It might be essential in the determination of this appeal to set out the reliefs that the 1st and 2nd respondents in this appeal sought from the PPDT.
7. The complaint dated 12/10/2023 sought the following reliefs;
 - i. The complaints be declared the duly elected Leader of Majority and Majority Whip respectively.
 - ii. A declaration that the appellants were in office illegally as Leader of Majority and Majority Whip in Kitui County Assembly.
 - iii. That the appellants herein (who are respondents in the complaint) be restrained from representing the interests of Wiper Democratic Movement in Kitui County Assembly as Majority Leader and Majority Whip respectively.
 - iv. That the tribunal do make any further or such orders as it may deem necessary in the circumstances.
 - v. Costs.
8. The PPDT found that it had jurisdiction to deal with the complaint contrary to what the appellants and 2nd Interested party asserted. It found merit in the complaint and granted the following reliefs namely;
 - i. A declaration issued declaring that the process of removal of the appellants herein as Leader of Majority and Majority Whip respectively in the County Assembly of Kitui was proper and elections of the respondents in this appeal was lawful and proper.
 - ii. That unless otherwise elected as such, the appellants herein were restrained from holding themselves or acting as Leader of Majority and Majority Whip respectively in the County Assembly of Kitui.
9. The appellant aggrieved by the decision above and preferred this appeal citing the provisions of Section 41(2) of the *Political Parties Act*. They listed the following grounds namely;
 - i. The honourable Tribunal erred in law and facts by failing to find that the process of removal from office of 1st and 2nd appellants as the leader of majority and majority Whip respectively in the County Assembly of Kitui was unprocedurally, unlawful and void a initio.
 - ii. The Honourable Tribunal erred in law and facts by declaring that the election of the respondents herein as leader of Majority and Majority Whip respectively in the County Assembly of Kitui was lawful and proper.
 - iii. The Honourable Tribunal erred in law and facts by restraining the appellants from holding themselves or acting as the leader of Majority and Majority Whip respectively in the Country Assembly of Kitui.



- iv. The Honourable tribunal erred in law and facts by holding that proper notice was sent to the members of the 1st Interested Party for a meeting to discuss the removal of the appellant from their relevant offices of leader of Majority and Majority Whip respectively.
- v. The Honourable Tribunal erred in law and facts by disregarding the relevant legal provisions and procedures outlined in the 1st Interested Party's Constitution and the 2nd Interested Party's Standing Orders on the removal from office of leader of Majority and Majority Whip of the 2nd Interested Party.
- vi. The Honourable Tribunal erred in law and in facts by disregarding all the evidence adduced by the appellants demonstrating how the process of their removal from office was marred with irregularities, improprieties and procedural lapses.
- vii. The Honourable Tribunal erred in law and facts by disregarding the provisions of Order 15(8) of the 2nd Interested Party's Standing Orders which sets the threshold of removal of leader of Majority and Majority Whip as majority votes by a quorate meeting of the relevant membership.
- viii. The Honourable Tribunal erred in law and in facts by disregarding the provisions of paragraph 3.2(a) (ii) of the 1st Interested Party's Constitution which provides for the quorum for the conduct of business of the caucus of the 2nd Interested Party in the county Assembly of Kitui as 50% of the members.
- ix. The Honourable Tribunal erred in law and in fact by failing to take into consideration that the appellants were not removed from office by a majority vote of a quorate meeting since one of the members of the 1st Interested Party who allegedly took part in the proceedings was indisposed and could not have casted her vote as evident by her letter to the Speaker of the 2nd Interested Party and the Affidavit filed before the Tribunal by the Respondent.
- x. The Honourable Tribunal erred in law and in facts by failing to appreciate the mandatory requirement of voting in the process of changing leadership positions as set out in 1st Interested Party's constitution and the 2nd Interested Party's Standing Orders.
- xi. The Honourable Tribunal erred in law and in facts by failing to consider that the communication made to the Speaker for the alleged removal from office of the appellants herein and the alleged election of the respondents as leader of Majority and Majority Whip flouted the 2nd Interested Party's Standing Order 15(9) which expressly provides that the Whip of the largest party ought to communicate to the Speaker in writing of the decision together with the minutes of the meeting at which the decision was made and in the absence of the Majority Whip, the Deputy Majority Whip takes over the responsibility according to Standing Order 15(4).
- xii. The Honourable Tribunal erred in law and in facts by failing to find that the 2nd Respondent contrary to the provisions of Standing Order 15(4 & 9) illegally and unprocedurally relayed the communication of the removal from office of the 1st and 2nd appellants to the Speaker and their election to the said offices.
- xiii. The Honourable Tribunal erred in law and in facts by failing to uphold the Speaker of the 2nd Interested Party's decision to disregard the communication of the removal from office of the appellants by the respondents and the respondents election to the office since it was unprocedurally and illegally presented before the Speaker of the 2nd Interested Party.



- xiv. The Honourable Tribunal erred in law and in fact by holding that it has jurisdiction to hear and determine the complaint as it failed to adhere to Section 40(2) of the *Political Parties Act* which provides that the Tribunal shall not determine a dispute unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute resolution mechanisms which evidence was not adduced by the respondents.
- xv. The Honourable Tribunal erred in law and in facts by holding that it has jurisdiction to hear and determine the complaint while the dispute in question does not fall within the scope of disputes in Section 40(1) of the *Political Parties Act*.
10. Before I consider the grounds and submissions by the parties in this appeal it is necessary to note that the parties in this appeal all concur that the substratum of the appeal that is the replacements of the appellants in the contested house leadership is now water under the bridge and overtaken by events of subsequent elections carried out and filling of the said positions through elections held. The only and singular issue alive in this appeal is whether the PPDT had jurisdiction or overstepped its mandate in entertaining the complaint and rendering itself on the question of house leadership positions in the County Assembly of Kitui.
11. The Appellants contention is that the Tribunal erred by holding that proper notice was sent to the members of the 1st Interested Party to discuss the removal of the appellants, disregarding the relevant legal provisions and procedures outlined in the 1st Interested Party's Constitution and the 2nd Interested Party's Standing Orders, for example Standing Order 35(8) on removal of such leaders which is by majority vote and paragraph 3.2(a)(ii) of the 1st Interested Party's Constitution. Their contention is that the Tribunal disregarded the evidence of the Appellants demonstrating how their removal from office was marred by irregularities, improprieties and procedural lapses.
12. The Appellants also base their grounds of Appeal on the issue that the Tribunal failed to consider that the communication made to the Speaker for the alleged removal of office of the Appellants, and the alleged election of the Respondents as Leader of Majority and Majority Whip flouted Standing Order 15(4) and (9) of the 2nd Interested Party's Standing Orders.
13. Further, the Appellants contend that the Tribunal erred in law and in fact by holding that it had jurisdiction to hear and determine the Complaint contrary to Section 40(2) of the *Political Parties Act* which provides that the Tribunal shall not determine a dispute unless it is demonstrated by evidence that the dispute was first subjected to an internal political party dispute resolution mechanism, which evidence was not adduced by the Respondents.
14. The appellants also challenge the jurisdiction of the Tribunal stating that the dispute in question did not fall within the scope of disputes contemplated in Section 40(1) of the *Political Parties Act*. That is the main thrust in this appeal.
15. Submitting that jurisdiction is everything, and without it a court has no power to make one more step, it is the Appellant's position that the Tribunal did not have the jurisdiction to hear and determine Complaint E019 of 2023 and they relied on the cases of Owners of the Motor Vessel "Lilian S" v. Caltex Oil(Kenya) Ltd (1989) eKLR and Phoenix of E.A Assurance Company Limited vs S.M Thiga T/A Newspaper Service (2019) eKLR.
16. Their position is that the Tribunal erred because their removal was marred with legal and procedural lapses, making it unlawful and void ab initio since the process was not done as prescribed in the Kitui County Assembly Standing Orders and the Wiper Democratic Party Constitution as well as the principles of natural justice.



17. Counsel placed reliance on the authority in the case of *Nzioka v. County Assembly of Kitui & 3 others (Petition E007 of 2023)* (2024) KEHC 911(KLR) where this Honourable Court found that the process of removing the Petitioner was unfair and unprocedural.
18. Firstly, the Appellants submit the Respondents overlooked is that there was no notice to the members of the 1st Interested Party for the meeting which allegedly resolved to remove the Appellants from the positions of Leader of the Majority Party and the Majority Party Whip. They refer to the screenshots on pages 275-382 of the Record of Appeal which are annexures to the 2nd Interested Party which shows the names and not the numbers of the recipients of notices and state that it is impossible to verify that they were sent to the correct telephone numbers. On this point, they relied on the holding of *Mulatyia & another v. Kyalo & another (Civil Appeal E024 'B' of 2021)* (2022) KEHC 15393(eKLR) where it was held that a court should proceed with caution when determining the question of service electronically.
19. Secondly, it is their position that quorum was not attained at the alleged meeting and that the minutes of the said meeting seem to have been hawked to members to append their signatures thereafter. They rely on a letter of one Hon. Mary Mbithe on page 889 of the Record of the appeal and annexure MM2 in the Affidavit of the Respondent where she denied attending the impugned meeting, yet she is included in the list of the members of the 1st Interested Party who attended the meeting. They submit that she was actually bedridden at the time.
20. Counsel relies on the provision of Standing Order 15(8) of the 2nd Interested Party's Standing Orders which provides that persons holding office such as the Appellants may only be removed by a majority of votes of all the members of the largest party or coalition of parties in the Assembly.
21. It is further submitted that if indeed the meeting was conducted, it was done illegally and in violation of the relevant legal instruments, including the 1st Interested Party's Constitution as Paragraph 3.2(a) (11) provides for quorum of 50% of members pointing out that quorum of Kitui County Assembly constitutes at least 13 members of the County Assembly of Kitui. The exclusion of Hon. Mary Mbithe's Attendance only means that the meeting could have only been attended by 12 members.
22. The third point urged by the Appellants is that the communication of the alleged resolution of the members could only be communicated as per Standing Order 15(9) of the 1st Interested Party's Standing Orders which provides that the whip of the largest party or coalition of parties shall communicate in writing to the Speaker the decision together with the minutes.
23. That in the absence of the Majority Whip, Standing Order 15(4) kicks in which provides that the Deputy Majority Whip takes over the duties.
24. Their submission is that the 2nd Respondent ignored this procedure and proceeded to write directly to the Speaker of the 2nd Interested Party without any powers. They relied on the authority in the case of *Born Bob Marren -vs- Speaker Narok County Assembly & 3 others* (2015) eKLR where the process provided for by the Standing Orders, was found to be binding to members.
Their submission therefore is that the process of their removal was not lawful, procedurally unfair and not transparent but that the Tribunal chose to ignore the anomalies.
25. The Appellants' submission is that the Judgment by the Tribunal offended the doctrine of exhaustion as it did not adhere to Section 40(2) of the Political Parties Dispute Tribunal Act. They rely on the holding in the case of *Geoffrey Muthinja Kabiru & 2 others -vs- Samuel Munga Henry & 1756 others*.
26. The respondents have opposed this appeal. The Respondents submit on the history of the disputes, which has its genesis on the elections held on 4th September 2023, upon which the Respondents



- filed a complaint against the Appellants before the Political Parties Disputes Tribunal (PPDT) on 12th October 2023. The PPDT delivered its judgment, upholding the election of the Respondents and removal of the Appellants from the offices of Leader of Majority and Majority Whip in the County Assembly of Kitui.
27. The Respondents invite this Court to take judicial notice of the fact that fresh elections have since been held on 4th September 2024, resulting in the removal of the Respondents from the Offices of Leader of Majority and Majority Whip respectively. They rely on the case of *Evans Kidero v. Speaker of Nairobi City County Assembly* and another (2018) eKLR where Mativo J (as he then was) held that the court will not knowingly act in vain on a moot point.
 28. The Respondents submit that this matter has been rendered moot by the subsequent fresh elections, which resulted in the re-election of the Appellants as the Leader of Majority and Majority Whip and that the issue is now overtaken by events. The issue of the said subsequent elections is not contested.
 29. They dispute the appellant's contention that PPDT lacked jurisdiction to determine the dispute they referred to them. They claim that the appellants have not placed evidence to this court to prove their contention.
 30. It is the Respondents' submission that the 1st Interested Party's National Management Committee heard the dispute and upheld the removal of the Appellants from office. They stated that this was pleaded at Paragraph 6 of the Respondents' Affidavit dated 12th October 2023 and Respondent's Annexure "MM4", a letter dated 3rd October 2023 in which the 1st Interested Party's National Management Committee reaffirms the removal of the Appellants from their positions.
 31. The Respondents also referred the Court to note that in paragraph's 24 and 30 of the 1st Interested Party's Replying Affidavit dated 27th November 2023 on page 999 of the Record of Appeal, the party confirms that its National Management Committee heard the dispute and upheld the removal of the Appellants and the election of the Respondents as the Leader of the Majority and Majority Whip, which is an internal dispute resolution mechanism.
 32. The Respondents also submit that the Appellants were lawfully removed from office as per Standing Orders 15(8) and 15(9), which removal requires a simple majority of the largest party in the Assembly, which in this case was 13 members as per the page 919 of the Record of Appeal.
 33. On the issue of notices, the Respondents submit that paragraph 18 of the 1st Interested Party's Replying Affidavit dated 27th November 2023, the Secretary General of the party confirms that notices for the meeting held on 4th September 2023, were issued to all members, including the Appellants on 15th August 2023.
 34. Further, that at paragraph 21 of the 1st Interested Party's replying affidavit confirms that the Appellants attended a meeting held on 3rd September 2023, during which they were reminded to attend a follow-up meeting on 4th September 2023, but they failed to appear.
 35. Regarding the issue of communication to the Speaker, the Respondents referred to their annexure "MM2" which is a letter dated 5th September 2023 on page 919 of the Record of Appeal informing the Speaker of the changes in the offices that the Appellants held.
 36. The Respondents referred to Standing Order 15(9) of the Kitui County Assembly Standing Orders, stating that the Speaker and the Interested Party have no role in accepting, recognizing or in any manner affecting who holds the office if the Leader of Majority and Majority Whip and that their role is only



to notify the House. On this point, they cited the holding in the case of Wilson Boit Kipketer vs. Philemon Koech & 2 others (2016) eKLR.

37. On the question of costs of the suit, the respondents rely on the holding in the case of Cecilia Karuru Ngayu v. Barclays Bank of Kenya & another (2016) eKLR and contend that the Appellants deliberately refused to hand over the offices they occupied, hence necessitating these proceedings. They therefore prayed that the costs be awarded to them
38. 2nd Interested Party's Submissions
The 2nd Interested Party submits that the High Court has held that leadership changes in the Assembly can only take place upon adoption and formal communication by the Speaker and that the Speaker must satisfy himself that the changes in parliamentary party leadership was done in accordance with the Standing Orders, which position was settled in the authority of Yahya Ahmed Shee -vs- Speaker of the County Assembly of Lamu; Jubilee Party & 6 others (Interested Parties) (2021) eKLR.
39. They also submit that the Speaker of the County Assembly is not bound by decisions made outside the Assembly by political parties unless they are made within the Standing Orders and relied on the holding in the case of Republic v. County Assembly of Trans-Nzoia & 2 others ex-parte Emmanuel Waswa Simiyu; Forum for Restoration of Democracy-Kenya & 9 others (Interested Parties) (2021) eKLR.
40. The 2nd Interested Party submit that the position taken by the Speaker of the 2nd Interested Party and which was communicated to the Respondents and the Secretary General of the 1st Interested Party was that the Standing Orders were not followed in the purported removal of the Appellants and the subsequent purported election of the Respondents. They highlighted that by her own admission, Hon. Mary Mbithe admitted to having been sick and bedridden on the material day of the meeting at her affidavit marked as annexure "EM2", therefore quorum on that day could not have been 13 members as required.
41. The 2nd Interested Party on that basis throws its weight behind the appellant in this appeal.

Analysis & Determination

42. This court has set out and highlighted the appellants case, the respondents' and the position taken by the 2nd Interested Party.
43. This court has already made observations on what is still alive in this appeal in view of the events of 4th September 2024 that saw elections being conducted and the appellants being elected back to their coveted positions. The issue of their removal from office is therefore spent and I will not go into the same. The only singular issue for determination in this appeal is whether the PPDT had jurisdiction to entertain the complaint lodged by the respondents herein and make a determination.
44. This court will begin by examining the sphere of jurisdiction of PPDT before I examine *the Constitution* of Kenya visa vis the issues raised in the complaint or case referred to the PPDT.
45. The PPDT is a creature of *Political Parties Act* No. 11 of 2011 and from the preamble of that statute the legislation was intended by Parliament to provide for the registration, regulation and funding of Political Parties & connected disputes. Section 39 of the Act establishes PPDT and the key provision in so far as this matter is concern is the provision of Section 40 (1) which provides for the jurisdiction of the PPDT. It provides;

“The Tribunal shall determine:

- a. Disputes between the members of a political party;



- b. Disputes between a member of a political party and the political party;
- c. Disputes between political parties;
- d. Disputes between an independent candidate and a political party;
- e. Disputes between coalition partners;
- f. Appeals from decisions of the Registrar under this Act;
- (fa) Disputes arising out of party nominations.

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c), (e) or 45(fa) unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute resolution mechanisms.”

46. Now having considered the spheres of jurisdiction of PPDT, the next issue is to look at the nature of the complaint/case referred to the PPDT by respondents to determine if the said tribunal was seized with the requisite jurisdiction and mandate.
47. The 1st appellant in his affidavit sworn on 15/1/2024 exhibited the complaint dated 12/10/2023 filed by the respondents herein and the gist of the respondent’s case was that the appellants had been removed from their respective positions of Leader of Majority and Majority Whip respectively following a meeting held by the 1st Interested Party herein and that their removal was pursuant to Standing Order 15(8) of County Assembly of Kitui (the 2nd respondent herein). They faulted the Speaker of the 2nd respondent for not effecting changes despite communications to the effect reportedly received on 6/9/2023. They alleged that despite their removal, the appellants remained in office illegally with the backing of the Speaker.
48. Now let me pause their first to determine if the complaint as framed and presented to PPDT was proper. The complaint obviously faulted the Speaker for not effecting the changes but looking at the parties named in the complaint is that the appellants were 1st and 2nd respondents and the Kitui County Assembly was the 3rd respondent. The Speaker was not named and yet from the body of the complaint he was named as the main culprit.
49. That was the first procedural flaw of the complaint even before one looks at the question of jurisdiction to determine the dispute. It was improper to seek orders against a party (read the Speaker) without naming him as a substantive party and giving him a chance to be heard before seeking order against that officer of Speaker County Assembly of Kitui. It is true that the County Assembly of Kitui was named as party but the respondents herein trained their gum on the Speaker stating that it failed to carry out its statutory and constitutional duties. It was therefore imperative to name him as a principal party and give him a chance to be heard before being condemned. As it were, the Speaker Kitui County Assembly was denied a chance of being heard and this omission appears to have been deliberate and to cover some mischief which touched on the mandate or the jurisdiction of PPDT.
50. Secondly and more importantly is that the nature of a complaint filed before PPDT presented two facets. The first aspect touched on procedural issues like the Standing Orders of the 2nd Interested Party while the second aspect touched on the substantive aspect of enforcing the political rights of the respondent as well as those of Interested Party. (Wiper Democratic Movement).
51. I will begin with the substantive question. The respondents supported by the 1st Interested Party faulted the Speaker of the 2nd Interested Party for infringing on their political rights which are to foster



their political agenda in the County Assembly. Political rights without question is a fundamental right and freedom well stipulated under Article 38(1) of *the Constitution*. Article 38 (1) provides as follows;

“Every citizen is free to make political choices, which includes the right:-

- (a) to form, or participate in forming, a political party;
- (b) to participate in the activities of, or recruit members for, a political party; or
- (c) to campaign for a political party or cause.”

52. As observed the political right is one of the non derogable rights and fundamental freedoms well covered under Part 2 of *the Constitution* of Kenya. The avenue for enforcement of those rights where the same is infringed for threatened is clearly provided under Article 23(1) of *the Constitution* of Kenya. *The Constitution* gives exclusive jurisdiction to the High Court. It states;

“The High Court has jurisdiction in accordance with Article 165 to hear and determine applications for redress of a denial, violation or infringement of or threat to a right or fundamental freedom in the Bill of Rights.”

53. Article 165 (3) (b) provides that the High Court shall have;

“...jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened...”

54. This court has considered the response by the respondents in this appeal and the response made at the trial before PPDT. The position taken by the respondents and the determination by PPDT was that the dispute was related to leadership of a Political Party at the Assembly but what the PPDT failed to address is the correct avenue for redress where one claims that his or her rights (such as the one raised by the respondents herein) had been infringed. The PPDT also fell into error of judgement when it found that the complaint did not directly touch on the acts of omission by the Speaker when the body of the complaint clearly faulted the Speaker. By overlooking that fact, the PPDT assumed a mandate and jurisdiction which was clearly out of its statutory mandate under Section 40(1) of the *Political Parties Act*.

55. The other aspect of the respondent’s complaint impugned the procedural issues related to the Standing Order of the 2nd Interested Party. They hinged their complaint on Standing Order 15(8) of Standing Order of the County Assembly of Kitui and clause 38 of the party’s Constitution of Wiper Democratic Movement.

56. The questioned paused is whether the PPDT had jurisdiction to determine if the 2nd Interested Party or its Speaker had breached its own Standing Orders. This court takes the view that the PPDT has no such powers and the only avenue open for a party aggrieved by breaching of Standing Order or any procedure stipulated thereof is by way Judicial Review in the High Court. If the issue was partly between the respondents and the appellants or the 1st Interested Party herein then and only then can the jurisdiction of PPDT under Section 40 of *Political Parties Act* as cited above kick in and even then, going by the express provisions of Section 40(2) of the same Act the jurisdiction of the PPDT only kick in once a party has exhausted the Internal Party dispute resolution mechanism. The court of Appeal



in the case cited by the appellants to wit Gabriel Bukachi Chapia –vs- Orange Democratic Movement & Another [2017] eKLR is apt on that question. The court held as follows;

“The dispute is between a member of the political party and the political party and falls under Section 40(1)(b) of the Act and is required, under Section 40(2) of the Act to be heard by the party’s internal dispute resolution mechanism before the PPDT can take cognizance of it. There is ample authority for the proposition 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 be followed. [See Speaker of the National Assembly vs. Hon. James Njenga Karume, Civil Application No. 92 of 1992 (2008) 1KLR 425 and also Kimani Wanyoike vs. Electoral Commission & another [1995] eKLR.

The learned Judge of the High Court was therefore right in upholding the decision of the PPDT that the complaint before the PPDT was premature.”

57. Further to that decision, in the case of Dr. Lilian Gogo –vs- Joseph Mboya Nyamuthe & 4 Others [2017] eKLR the court of appeal made the following observations;

“A common denominator of the categories of disputes that must in the first instance be submitted to the internal political party dispute resolution mechanism is that the disputants would all be subject to the political party and therefore subject to such party’s internal party dispute resolution mechanism. It is also instructive that under Section 9 of the Act as read with paragraph 23 of the 2nd Schedule to the Act, it is a mandatory statutory requirement that every political party must have provision in its constitution and rules for “internal party dispute resolution mechanism in accordance with Article 47 and 50 of *the Constitution*.” Also noteworthy is Section 13(2A) of the *Elections Act*, No. 24 of 2011 that requires a political party to hear and determine “all intra party disputes arising from political party nominations” within thirty days.”

58. This court finds that even if the PPDT fell into error to hold that the dispute involved members and a political party, they should have found that the doctrine of exhaustion applied and demand for evidence of exhaustion of internal party mechanism pursuant to Section 40(2) before assuming jurisdiction. The same provision which underpin the said doctrine was overlooked and that was erroneous as well. The PPDT was quick to assume jurisdiction in a situation where none existed. It is always important to note that jurisdiction is donated either by statute or *the Constitution* and where no jurisdiction is expressly provided a court or tribunal would be overstepping its mandate if it assumes jurisdiction.

59. This court finds that this appeal to that extent is merited. The PPDT lacked the requisite jurisdiction to entertain a dispute falling outside the dispute stipulated under Section 40(1) & (2) of *Political Parties Act* and it acted in excess of their jurisdiction by purporting to determine a matter outside their jurisdiction and purport to issue orders against the Speaker County Assembly of Kitui when the Speaker was not named as a party in the first place. The issues of quorum or the business of the County Assembly and adherence to its Standing Orders is a no zone to the PPDT.

This courts finds merit in the prayer by the appellant to set aside the Judgement of the PPDT. Costs to the appellants to be paid by the respondents. I shall not make further orders given that the same have been overtaken by events.

DATED, SIGNED AND DELIVERED AT KITUI THIS 14TH DAY OF NOVEMBER, 2024

HON. JUSTICE R. K. LIMO



JUDGE

