



**Parent Multi-Purpose Development Group & another v Independent  
Electoral and Boundaries Commission (Judicial Review Cause  
E003 of 2023) [2024] KEHC 15551 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15551 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
JUDICIAL REVIEW CAUSE E003 OF 2023  
DK KEMEL, J  
DECEMBER 6, 2024**

**BETWEEN**

**PARENT MULTI-PURPOSE DEVELOPMENT GROUP ..... 1<sup>ST</sup> APPLICANT**

**JAPHETH MANYALA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. Before this court is a Judicial Review Application dated 2<sup>nd</sup> May 2023. The said application seeks inter alia the following orders:
  - i. An order of Certiorari to remove into this Honorable court and quash the Nomination list for members of the County Assemblies for the 47 Counties.
  - ii. That the Honorable court do grant the Applicant leave to apply for order of Certiorari and Mandamus
  - iii. That an Order of Mandamus do issue directing the Respondent to regulate the process of nomination of women, persons with disabilities, youth and other minorities and marginalized communities.
  - iv. Costs for the application.
2. The application is supported by the affidavit of Japheth Manyala Adew sworn on 2/8/2022 wherein he averred inter alia; that he is the Chairman of the Multipurpose Development Group; that the Group is an organization of persons with disabilities, youth, and women; that on 16/1/2020 the group wrote a letter to the Respondent in which they complained about the way persons with disabilities



were nominated in the National Assembly, Senate and County Assemblies and which letter was not responded to; that on 2/8/2021 they wrote another letter to the clerk of the National Assembly and Senate for the amendment of the Disability Act 2003; that they seek to be granted the orders sought.

3. The Respondent replied to the said application vide a replying affidavit dated 4<sup>th</sup> June 2024 sworn by Chrispine Owiye, the Director Legal Services of the Respondent herein who averred inter alia; that the application is premature, misguided, an afterthought and an abuse of the court process; that the grounds upon which the application is based cannot support the prayers sought; that the establishment and mandate of the Respondent to discharge its functions as set out under Article 88 as read with Article 90 of *the Constitution* and relevant election laws in accordance with its authority as an independent commission; that Article 90 has provided for proportional representation of special interest groups in Legislative Assemblies by way of political party lists, from which the Commission draws and allocates party lists seats based on the order of priority issued by political parties and in proportion to the seats garnered by that political party in that assembly; that *the Constitution* has conferred political parties with the mandate to prepare and amend party lists as well as include the order of priority of allocation of the special interests seats and that the mandate of the Commission is limited to ascertain that the submitted lists conform to Constitutional and statutory threshold set in the law. To buttress this the Respondent relied on Supreme Court decision in *Mwicigi & 14 others Vs. IEBC & 5 Others* (Petition Number 1 of 2015) [2016] KESC 2 KLR at paragraphs 92 and 93; that the Respondent, pursuant to its mandate under Article 90 as read with section 34 of the *Elections Act* published guidelines on preparation and submission of party lists in the Kenya Gazette and two Newspapers with a country wide circulation on 3<sup>rd</sup> June 2022; that in enforcing its constitutional and legal mandate under Article 90 of *the Constitution*, political parties submitted their party lists to the Commission on or before 25<sup>th</sup> June 2022; that the Respondent together with the Political Parties Dispute Tribunal (PPDT) published a joint presser on the hearing of disputes arising from published Party lists for allocation of special seats and that it further notified the general public of the nature of complaints to be lodged with the IEBC Dispute Resolution Committee (DRC) and the Political Parties Dispute Tribunal (PPDT) with the 28<sup>th</sup> July 2022 to 6<sup>th</sup> August 2022 provided as the period for hearing such disputes as per the annexed copy of the joint press release; that it was therefore evident that there was a mechanism provided for lodging complaints, resolving and managing disputes emanating from the Party lists; that it conformed with Article 90(2) of *the Constitution* which states that IEBC shall be responsible for the conduct and supervision of elections for seats; that the Commission has no obligation other than to allocate party seats as submitted by the respective political parties in proportion to their seats at the respective legislative assembly and in that regard it relied on the case of *National Gender and Equity Commission Vs. IEBC & Another* [2013] EKLR where the court held that IEBC is obliged in accepting the party lists to ensure that the provisions of statute are adhered to Regulations 55(2) of the General Regulations which empowers IEBC to ensure the party lists comply with the requirements of *the Constitution*, the *Elections Act* and the Attendant Regulations; that the Commission is therefore not in breach of and not in contravention of the provisions of *the Constitution*, the *Elections Act* or any other statute; that the election of ALL Nominated Members of Legislative Assemblies was conducted in accordance with *the Constitution*, *Elections Act* and all other relevant statutes and the consequential gazzettement was done in accordance to the party lists submitted by the political parties; that the election related petitions and applications are time bound and any filling done out of time ought to be struck out with costs as provided under section 76 of the *Elections Act*; that the application dated 2<sup>nd</sup> May 2023 and the entire affidavit of the Applicant is therefore false, misplaced and an abuse of the court process; that it is in the interest of justice the application be dismissed as it does not disclose any material elements of breach of any of the Applicants rights.



4. The application was canvassed by way of written submissions. Both parties duly complied. The Applicant filed submissions dated 23<sup>rd</sup> September 2024. The Applicant submitted on the provisions of Article 90 that:

- (i) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of County Assemblies under 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.
- (ii) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—
  - (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
  - (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
  - (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.
- (iii) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.
- (iv) The Applicant likewise submitted on Article 88(4)(d) which provides thus:
  - (4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for the regulation of the process by which parties nominate candidates for elections.
- (v) That since 2013, 2017, 2022 elections, they, as the special interest group, have not yet been called by the Respondent or political parties to nominate their candidates to go and contest for the seats.
- (iv) That the Applicant also submitted on Article 22(3)(d) of *the Constitution* that the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities.

#### Article 20 Application of Bill of Rights

- (1) The Bill of Rights applies to all law and binds all State organs and all persons.
- (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- (3) In applying a provision of the Bill of Rights, a court shall—
  - (a) Develop the law to the extent that it gives effect to a right or fundamental freedom; and
  - (b) Adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
- (4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—



- (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
  - (b) the spirit, purport and objects of the Bill of Rights.
- 5. The Applicant finally submitted that they are entitled to compensation in line with Article 23(3)(e) and thus in any proceedings brought under Article 22, a court may grant appropriate relief, including an order for compensation.
- 6. The Respondent, in its submissions dated 4<sup>th</sup> June 2024, submitted on three limbs as issues for determination:
  - i. What is the role of the Respondent in preparation and submission of party lists;
  - ii. Whether special interest groups could be nominated to Legislative Assembly without doing so through Political Parties; and
  - iii. Whether the court can issue judgment with detrimental impact to persons not parties in the present suit.
- 7. On the first issue on the role of the Respondent in the preparation and submission of political party lists, the Respondent submitted that Article 90 of *the Constitution* confers the Respondent with a mandate of conducting and supervising elections by way of party lists. It confers the Political Parties with the responsibility of preparation and submission of the said party lists in order of priority for allocation of special interest seats. It provides:
 

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  - (1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of County Assemblies under 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.
  - (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—
    - (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
    - (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
    - (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.
  - (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.
- 8. The Respondent submitted that the conduct and supervision of the election by the Respondent is limited to reviewing the Party lists submitted to ascertain that they meet the Constitutional and



statutory threshold. The Respondent placed reliance on National Gender and Equality Commission vs. Independent Electoral and Boundaries Commission and Another [2013] eKLR.

This position was likewise buttressed by the Supreme Court in Moses Mucigi & 4 others vs. IEBC [2016] EKLR.

9. On whether special interest groups could be nominated to legislative assembly without doing so through political parties, the Respondent submitted that in their opinion Article 90(2) of *the Constitution* only contemplates the allocation of special seats through Political parties. In fact, it mandates each political party participating in the general election to nominate and submit a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for in that respective legislative assembly.

The Respondent submitted that the Applicant has failed to grasp *the Constitution* and legislative framework on the allocation of special interest seats by way of party lists seats and as such his application is defective.

10. On whether the court can issue judgment with detrimental impact to persons not parties in the present suit, the Respondent submitted that the Applicant is inviting the Honorable Court to grant prayers that will have such adverse effects and impact on all Nominated Members of the 47 County Assemblies, the National Assembly and Senate without this court granting them a fair hearing which would be tantamount to a breach of the Constitutional principles of fair hearing. Reliance was placed in the High Court decision in Geothermal Development Company Limited vs AG & 3 Others [2013] EKLR
11. Based on the foregoing, the Respondent submitted that the applicant's application should be dismissed with costs.

### **Analysis and determination**

12. I have given due consideration to the application, rival affidavits and the submissions filed. I find the issue for determination is whether the application has merit.

- iv. What is the responsibility of the IEBC under Article 90 of *the Constitution*;
- v. Whether special interest groups could be nominated to Legislative Assembly without doing so through Political Parties; and
- vi. Whether the court can issue judgment with detrimental impact to persons not parties in the present suit.

13. It is not in dispute that the Respondent herein is the body charged with the conduct and supervision of elections in the country. The last election was conducted in 2022. The particular role performed by the Respondent and in which the Applicant and his group has an interest is found in Article 90 of *the Constitution* which confers the Respondent with a mandate of conducting and supervising elections by way of party lists. It confers the Political Parties with the responsibility of preparation and submission of the said party lists in order of priority for allocation of special interest seats. It provides as follows:

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- (1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of County Assemblies under 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.



- (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—
  - (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
  - (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
  - (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.
- (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

14. It is clear from the foregoing that the role of the Respondent is well cut out namely to conduct, supervise elections as well as review Party lists submitted so as to ascertain that they meet the constitutional threshold. This position was reiterated in the case of *National Gender and Equality Commission Vs. Independent Electoral and Boundaries Commission and Another* [2013] eKLR, the court held thus:

44. “In our view, the word “elections” in Article 90 must be read in light of the context in which it appears in *the Constitution* and other provisions governing elections. We therefore agree with the position taken by the respondents and KI that the word “elections” in Article 90 does not refer to internal party elections for positions on the party lists. As the opening title suggests, Article 90 deals with the allocation of party seats. It is the allocation of those party seats that results in an election of the party members based on the lists submitted by the political parties to the IEBC.
45. We therefore find and hold that Article 90(2) does not deal with elections leading to *the constitution* of party lists nor concern itself with the manner in which parties come up with the names on the lists. How the election of persons on the list is carried out is a matter entirely within the mandate of the respective political parties. It is for this reason that regulation 55 (1) of the General Regulations provides that, “The party list contemplated under regulation 54 [the lists under Article 90(1) of *the Constitution*] shall be prepared in accordance with the rules of the political party.” Furthermore, paragraph 19 of the Second Schedule to the *Political Parties Act (Act No. 11 of 2011)* requires every party to have, “nomination rules and regulations with respect to elections of the party and rules governing the preparation of party lists.”
46. Despite what we have stated, we agree with the submission by Mr Lando, learned counsel for KNCHR, that the process of developing the party lists must at a minimum, bear the hallmarks of a democratic, transparent and participatory process. Although the parties have submitted at length on what constitutes an election within a political party, we do not think that this issue falls for consideration in this case as this matter concerns the conduct of the IEBC with regard to party lists and not that of the political parties.



47. Having found that the election contemplated in Article 90 does not involve or contemplate the direct involvement of the IEBC in the preparation of party lists, it follows that the extent of IEBC's duty to conduct and supervise elections for seats provided under Article 90(1) must be determined in this light.
48. The ordinary meaning of the word conduct can be found in Concise Oxford English Dictionary, 2011 as, "directing or managing something." While supervise means, "observe and direct the execution of (a task or activity) or the work of a person)." Given our finding on the meaning of "election" for purposes of Article 90, it follows that the "directing or managing" of the election must be in reference to the lists submitted by the political parties.
49. The role of IEBC in conducting and supervising the elections of seats is located in the context of the Article 90 which are given effect by the provisions of the *Elections Act*, 2011. Sections 35, 36 and 37 provide a framework for the implementation of Article 90. The IEBC is obliged, in accepting party lists, to ensure that the provisions of the statute are adhered to. Regulation 55(2) of the General Regulations also empowers the IEBC to ensure that the party lists comply with the requirements of *the Constitution*, the *Elections Act*, 2011 and the General Regulations.
50. Section 34(6) of the *Elections Act*, 2011 specifically provides that, "The party lists submitted to the Commission under this section shall be in accordance with *the Constitution* or nomination rules of the political party concerned." This role does not extend to directing the manner in which the lists are prepared as these are matters within the jurisdiction of the parties but in considering the lists, the IEBC must nevertheless be satisfied that the lists meet constitutional and statutory criteria. We would hasten to add that in the event there is a dispute in the manner in which the parties conduct themselves in conducting their internal elections then recourse may be had by the aggrieved party members, inter-alia, to the Political Parties Disputes Tribunal established under section 39, Part VI of the *Political Parties Act*, 2011 or to the High Court in appropriate circumstance."
14. And in the case of *Moses Mwigigi & 4 others Vs Independent Electoral & Boundaries Commission* (2016) eKLR, the Supreme Court held:
  - "(85) Article 90 clearly spells out, and bestows upon IEBC certain duties and responsibilities, which include being responsible for the conduct and supervision of election for seats for nomination purposes. IEBC is also required to ensure that each participating political party nominates and submits a party list, indicating the appropriate number of qualified candidates and alternates between male and female candidates, in the priority in which they are listed.
  - (92) From the legislative set out above, it is clear that political parties have a responsibility to prepare and submit to IEBC, a party list of all persons who would stand elected if the party were entitled to all the seats. Section 34 (4), 35 and 36 of the Election Act together with Regulation 54 of the Elections (General) Regulations bear the phraseology "political party submitting" or a party list submitted by the political party".
  - (93) The foregoing provisions place upon the IEBC the duty to ensure that the party list submitted comply with the relevant provisions of the law, as set out earlier on. IEBC is expressly designated as the regulatory body to ensure compliance with the law. *The Constitution*, by Article 88 (4) (e), mandates the IEBC to intervene and settle disputes relating to, or arising from nominations. *The Constitution*, at the same time, denies the



IEBC the competence to adjudicate election disputes, and disputes subsequent to the declaration of election results.

- (94) Nowhere does the law grant powers to the IEBC to adjudicate upon the nomination process of a political party: such a role has been left entirely to the political parties. The IEBC only ensures that the party list, as tendered, complies with the relevant laws and regulations. The position has been aptly remarked in the case of National Gender and Equality Commission, where the High Court thus observed (paragraph 50: Section 34 (6) of the Elections Act, 2011 specifically provides that, ‘The party lists submitted to the Commission under this Section shall be in accordance with the Constitution or nomination role of the political party concerned.’ This role does not extend to directing the manner in which the list are prepared as these are matters within the jurisdiction of the parties but in considering the list, the IEBC must nevertheless be satisfied that the lists meet constitution and statutory criteria. We would hasten to add that in the event there is a dispute in the manner in which the parties conduct themselves in conducting their internal elections then recourse may be had by the aggrieved party member, inter alia, to the Political Parties Dispute Tribunal established under Section 39, Part VI of the Political Parties Act, 2011 or to the High Court in appropriate circumstances.
- (95) The effect is that, the process of preparation of the party list is an internal affair of the Political Party, which ought to proceed in accordance with the national Constitution, the Political Party Constitution, and the nomination rules as prescribed under Regulation 55.
- (96) A political party has the obligation to present the party list to IEBC, which after ensuring compliance, takes the requisite steps to finalize the “elections” for these special seats. In the event of non compliance by political party, IEBC has power to reject the party list, and to require the omission to be rectified, by submitting a fresh party list or by amending the list already submitted.”

From the foregoing, it is quite clear that the Respondent complied with the laid legal framework in the conduct and supervision of election by way of party list. The Applicant has not shown that he and his group had participated in the previous elections and that their rights were violated. Further, the said elections were concluded and that all disputes determined. The Applicant is fully aware that this court is not currently sitting as an election court because there is no election dispute in existence. Again, the Respondent’s duty has since been performed and that it is premature to force the Respondent to perform a lawful task but which the condition therefor is yet to materialize. Hence, the Respondent cannot act in vain. The Applicant must wait until the next elections when he can exercise his rights appropriately. The Applicant must wait until the opportune time when he and his group could participate in elections. Again, the Applicant has failed to demonstrate how the Respondent breached the law in the process of allocation of Party list seats and how the same impacted on his constitutional rights. In any event, the Applicant if he was aggrieved by the just concluded elections, he should have presented his grievances before the relevant dispute resolution mechanisms.

15. The Applicant’s main grouse is that he and his group should be nominated directly to legislative assemblies without having to go through political parties. I find this to be a tall order indeed because elections all over the world is about political parties. Every candidate and those nominated must first



be cleared by their political parties. I am convinced that the proposal the Applicant is putting forth is unworkable and must therefore be rejected. It should be noted that the Respondent's considered opinion of Article 90 (2) of *the Constitution* only contemplates the allocation of the Special Interest Seats through Political Parties. In fact, it is the mandate of the political party to participate in the general election to nominate and submit a list of the persons who would stand elected if the party were to be entitled to all the seats provided for in that Respective Legislative Assembly.

This constitutional provision is operationalized by section 34 of the Election Act which provides for the submission of Party lists and the allocation and re-allocation of Party lists seats. As such, the law does not contemplate situations where different special interest groups nominate persons to Legislative Assemblies to represent their interest without such persons being nominated by Political parties to represent those interests.

It is noted in Article 100 of *the Constitution* of Kenya on the representation of marginalized groups is yet to be operationalized through a statute of Parliament. Therefore, the claims by the Applicant are far-fetched and not founded on any law requiring the Respondent to nominate the Members of the Applicant and or his organization to different Legislative Assembly. It is inconceivable for the Applicant to seek for a judicial review order of Mandamus against the Respondent yet it has no such duty known in law.

The Applicant seems to have missed the point regarding *the Constitution* and legislative framework on the allocation of special interest seats by way of party list seats and as such his application is a misapprehension of the law.

16. It is noted that the Applicant herein has sought for a drastic order which affects all the 47 County Assemblies across Kenya yet none of them were cited or roped in as Respondents or interested parties so as to enable them to defend themselves against the Applicant's claim or onslaught. The Applicant and his group are deemed to be aware of the right of every Kenyan to access justice as provided for in articles 48 and 50 of *the Constitution* 2010. Looking at the Ex-parte Applicant's raft of prayers in this Judicial Review application, the same are quite drastic in nature requiring the persons to be so affected to be served with the pleadings. The Applicant did not do so. The Applicant's conduct in inviting this Honourable court to grant prayers that will have such adverse impacts of all nominated members of the 47 County Assemblies, the National Assembly and Senate without this court granting them a fair hearing must be rejected out rightly since if such prayers are to be granted, it would be tantamount to breach of the constitutional principles of fair hearing. This position was espoused by High Court in *Geothermal Development Company Limited Vs. Attorney General & 3 Others* (2013) eKLR where it held:

"28. As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response. The right is not limited only in cases of hearing as in the case of a court or before a tribunal, but when taking administrative action as well. (See *Donoghue v. South Eastern Health Board* (2005) 41R 217). Hilary Dalany in his book, *Judicial Review of Administrative Action*, Thomson Reuters 2<sup>nd</sup> edition at page 272, notes that "Even where no actual hearing is to hold in relation to the making of an administrative or quasi-judicial decision, an individual may be entitled to be informed that a decision which will have adverse consequences for him may be taken and to notification of the possible consequences of the decision."

17. Further, it is a principle of law that nobody should be condemned unheard and that it was incumbent upon the Applicant to have ensured that all the parties sought to be affected by the orders he seeks from the court are made parties herein. In the case of *Republic v. National Land Commission & 2 Others*



Ex Archdiocese of Nairobi Kenya Registered Trustees (St. Joseph Mukasa Catholic Church Kahawa West [2018] eKLR expounded on *the constitution* threshold of fair hearing where it held:

(57) It is my view that fair hearing must be meaningful for it to meet the constitutional threshold. On this aspect, Halsbury's Laws of England, 5<sup>th</sup> edition, Vol 61 page 545 at para 640 states:

Q“‘The audi alteram partem rule requires that those who are likely to be directly affected by the outcome should be given prior notification of the action proposed to be taken, of the time and place of any hearing that is to be conducted, and of the charge or case they will be called upon to meet. Similar notice ought to be given of a change in the original date and time, or of an adjournment hearing. the particulars set out in the notice should be sufficiently explicit to enable the interested parties to understand the case they have to meet and to prepare their answer and their own cases.’”

The Applicant vide this application is beseeching this Court to condemn the over 500 nominated members of different legislative assemblies unheard which goes against the cardinal rule of Natural Justice. This cannot be countenanced. The Applicant had the opportunity during the just concluded elections to stake his interest but it seems he did not and now wants to stir the waters and mess everything for many innocent persons. In *Egal Mohamed Osman vs. Inspector General of Police & 3 Others* Eklr at page 7 the Court at the time referred to the *Management of Committee of Makondo Primary School and Another v. Uganda National Examination Board*, HC Civil Misc Application No. 18 of 2010. The Ugandan Supreme Court stated as follows regarding the rules of natural justice;

“it is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of human kind. It was ordained by the divine hand of the Lord hence the rule enjoys superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice is null and void and of no effect. The rule as captured in the Latin Phrase audi alteram partem literally translates into ‘hear the parties in turn’, and has been appropriately paraphrased as do not condemn anyone unheard.’ This means a person against whom there is a complaint must be given a just and fair hearing.”

18 It is noted that the Applicant has hinged his claim under the provisions of Article 90(2) of *the constitution*. It is clear that the Applicant is mistaken and has not understood the purport of the said provision. Indeed, Article 90(2) of *the Constitution* only contemplates the allocation of special seats through Political parties. In fact, it mandates each political party participating in the general election to nominate and submit a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for in that respective legislative assembly. Hence, Article 90(2) does not deal with elections leading to *the constitution* of party lists nor concern itself with the manner in which parties come up with the names on the lists. How the election of persons on the list is carried out is a matter entirely within the mandate of the respective political parties. It is for this reason that regulation 55 (1) of the General Regulations provides that, “The party list contemplated under regulation 54 [the lists under Article 90(1) of *the Constitution*] shall be prepared in accordance with the rules of the political party.” Furthermore, paragraph 19 of the Second Schedule to the *Political Parties Act (Act No. 11 of 2011)* requires every party to have, “nomination rules and regulations with respect to elections of the party and rules governing the preparation of party lists.” With the foregoing, the Applicant’s request to compel the Respondent to do that which it has no power or control, must be rejected.

19. A keen perusal of the Applicant’s application, reveals that the claims made thereunder relate to an election dispute provided for under Article 90 as read with section 36 of the *Elections Act* 2011. As such, the same ought to have been filed within 28 days after publication in the Kenya Gazette pursuant to Section 76(1)(b) of the *Elections Act*, 2011. The grievances of the Applicant must be deemed as spent



since he ought to have challenged the process during the elections conducted by the Respondent in August 2022. He is thus time barred since the Respondent is already functus officio and only waiting for the next cycle of elections in 2027. The Applicant and his group is best advised to bide their time and wait for the right time to participate and then lodge claims, if any, once the same crystallizes.

20. In view of the foregoing observations, it is my finding that the Applicant's application lacks merit. The same is dismissed. As this is a public interest litigation, i make no order as to costs.

Orders accordingly.

**DATED, AND DELIVERED AT SIAYA THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE.**

In the presence of:

Japheth Manyala .....Applicant

N/A Bargoret.....for Respondent

Ogendo.....Court Assistant

