



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO. 03 OF 2020

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2012

AND

IN THE MATTER OF THE STANDING ORDERS FOR THE COUNTY ASSEMBLY OF ISIOLO

AND

IN THE MATTER OF ARTICLES 10;22;23;27;47;50;165;176;185;

AND 258 OF THE CONSTITUTION OF KENYA, 2010 AS READ

WITH THE FAIR ADMINISTRATIVE ACTIONS ACT

BETWEEN

ALI DIMA DUBA.....1ST PETITIONER

NURA DIBA BILLA.....2ND PETITIONER

AND

SPEAKER, COUNTY ASSEMBLY OF ISIOLO.....1ST RESPONDENT

COUNTY ASSEMBLY OF ISIOLO.....2ND RESPONDENT

RULING

1) By a petition dated and filed on 30th October, 2019 under Articles 22, 23, 27, 47, 50, 165, 176, 185 and 258 of the constitution, the Petitioners challenge their removal from their positions as Leader of Minority and Member of the Budget, Finance and Appropriation Committee of County Assembly of Isiolo respectively.

2) In summary it is their contention that their removal on 16th October,2019 does not meet the threshold of the afore-cited articles of the constitution. Flowing from the foregoing, the Petitioners seek:

1. A declaration that the effect of the suspension and removal from the positions of Leader of Minority and Member of the Budget, Finance and Appropriation Committee respectively of County Assembly of Isiolo respectively was in breach of Articles 10,27(1), 28, 38, 47, 50 and 81 of the constitution and standing orders No. 106,107 and 108 of the County Assembly of Isiolo Standing Orders as read with the provisions of the Fair Administrative Actions Act.

2. An order of certiorari be issued quashing the said decision for being unconstitutional.

3. An order for damages and costs for infringement of the Petitioners' fundamental rights and freedoms

3. In the Notice of Motion filed simultaneously with the Petition, the Petitioners seek orders **THAT**:

1. An interim conservatory order do issue maintaining the status quo and restraining the County Assembly of Isiolo from electing a new Leader of Minority and removing the Petitioners from their respective positions pending the hearing and determination of the petition.

2. Costs

3. Any other relief that court may deem fit to grant

3) Both the Petition and the Notice of Motion are supported by the affidavits of **ALI DIMA DUBA (1st Petitioner)** sworn on 30th October, 2019 in which he reiterates the pleadings in the Petition and the Notice of Motion.

4) The Notice of Motion was opposed vide a replying affidavit sworn by Hussein Halake Roba, (**1st Responent**) sworn on 19th November, 2019. Concerning the 1st Petitioner, he denies removing him from the position of Leader of Majority and avers that the question of the constitution of the office of the Leader of Minority was debated in the Assembly on 17th October, 2019. That in his ruling, on 18th October, 2019, he ruled that a Single Party member did not take precedence over single Independent Members and subsequently, a Caucus of Independent Members was formed which in their meeting held on 18th October, 2019 elected ABDI SORA BALLA as the Leader of Minority.

5) He additionally avers that the election of ABDI SORA BALLA as the Leader of Minority was communicated to him by a letter dated 10th October, 2019 and he implemented in in tandem with the law.

6) Concerning the removal of the 2nd Petitioner from the Budget, Finance and Appropriation Committee, the deponent avers that the removal followed a resolution by Jubilee and Affiliate parties which was communicated to his office by a letter dated 15th October, 2019.

7) The deponent avers that his ruling conforms with Standing Orders No. 17 (2) which provided that deposed **that the Leader of Minority Party means the person who is the leader in the County Assembly of the second largest party or coalition of parties under Standing Order No. 17.**

8) The deponent additionally avers that the Caucus of Independent Members and Jubilee and Affiliate parties followed the right procedure in communicating to him the ouster and subsequent replacement of the 1st Petitioner and the ouster of the 2nd Petitioner respectively.

9) Together with the replying affidavit, the Respondents filed Grounds of Opposition and a Notice of Preliminary Objection dated 19th November, 2019.

10) The gist of the Grounds of Opposition and a Notice of Preliminary Objection and submissions on behalf of the parties together with the cited authorities concern the issue of whether this court has jurisdiction to entertain this Petition.

Jurisdiction

11) The locus classicus on Preliminary Objection is the celebrated case of **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd [1969] E.A. 696**, where Law J.A. stated:

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

12) Sir Charles Newbold, President stated in the same judgment as follows: -

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

13) **“.....Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” (See Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited [1989] KLR 1).**

14) I am alive to the fact that whereas this court has unlimited original jurisdiction in criminal and civil matters and jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened, courts have rendered themselves that political disputes require political solutions.

15) Section 39 of the Political Parties Act (**the Act**) establishes the Political Parties Tribunal. Section 40 of **the Act** stipulates **THAT**:

(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.

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a) (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.

16) The genesis of the 1st Petitioner's petition is the ruling of the 1st Respondent that culminated in his removal from the position of the Leader of Majority. A reading of Section 40 *the Act* no doubt reveals that the Speaker's ruling is not a dispute for the Political Parties Tribunal.

17) Concerning the removal of the 2nd Petitioner from the Budget, Finance and Appropriation Committee, the 1st Respondent only implemented a resolution by Jubilee and Affiliate parties which was communicated to his office by a letter dated 15th October, 2019.

18) The dispute thereof is therefore a political dispute contemplated by Section 40 *the Act* and no doubt false squarely within the mandate firstly of his internal party mechanisms and in the second instance, with the Political Parties Tribunal.

19) I am content to cite **Nyarangi, JA.** (as he then was), in the case of **Owners of the Motor Vessel Lillians Versus Caltex Oil (Kenya) Ltd [1989] KLR 1 THAT:** -

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

20) Consequently, the Preliminary Objection is upheld but only in so far as it relates to the 2nd Petitioner.

DATED AT MERU THIS 11TH DAY OF MARCH 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - N/A for J.A.B. Orengo Advocates

For Respondents -Mr. Muriuki for Mbogo & Muriuki Advocates