



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI MILIMANI LAW COURTS**  
**CIVIL APPEAL. NO. 466 OF 2014**

**HON. MUSALIA MUDAVADI.....1<sup>ST</sup> APPELLANT**

**HON JEREMIAH KIONI.....2<sup>ND</sup> APPELLANT**

**KASSIM SAWA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**WYCLIFE OYONDI.....1<sup>ST</sup> RESPONDENT**

**CAROLINE MUTHONI BOY.....2<sup>ND</sup> RESPONDENT**

**PAULINE ACHIENG ABETTO.....3<sup>RD</sup> RESPONDENT**

**AND**

**PETRONILLA WERE.....1<sup>ST</sup> INTERESTED PARTY**

**UNITED DEMOCRATIC FORUM PARTY.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The subject matter of this Ruling is the Motion dated **29<sup>th</sup> October, 2014** in which Hon. Mudavadi, Hon. Kioni and Kassim Sawa the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants respectively sought for inter-alia an order for stay of Proceedings in Political Parties Disputes Tribunal Case No. 10 of 2014 pending the hearing and determination of this Appeal. The Motion is supported by the affidavit Kassim Sawa sworn on **29<sup>th</sup> October, 2014**. When served with the Motion, Wycliff Oyondi Okeo, Caroline Muthoni Boy and Pauline Achieng Abetto the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively filed the replying affidavit of Caroline Muthoni Boy to oppose the Motion. Petronilla Were and United Democratic for a party who were named as the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties did not file any response to the Motion.

2. The history behind this Motion is short and straightforward. On **19<sup>th</sup> September, 2014**, Wycliffe Oyondi Okeo, Caroline Muthoni Boy and Pauline Achieng Abetto (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) being the acting Chairman, Secretary and Women League Chair respectively of United Democratic Forum Party (UDF) Nairobi County Branch, filed a statement of claim before the Political Parties Disputes Tribunal in which they complained that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellant together with the 1<sup>st</sup> Interested Party herein had

purported to remove U.D.F National Chairman, Nominated MP Hassan Osman together with the National Executive Committee Members and replace them against the laid down Procedure under the Political Parties Act No. 11 of 2011 and in contravention of the U.D.F Party Constitution.

3. The Respondents alleged inter-alia that the 1<sup>st</sup> Appellant had purported to prepare a resolution to have U.D.F withdraw from Jubilee Coalition via gradual progressive Political disengagement and to have U.D.F rebranded **AMANI NATIONAL CONGRESS (ANC)**. They further alleged that the 1<sup>st</sup> Respondent had attempted to force on the U.D.F national Party Chairman to sign his unilaterally prepared resolutions. On 16<sup>th</sup> October, 2014, the Appellants herein filed a notice of Preliminary Objection in which they contended that the Political Parties Disputes Tribunal did not have jurisdiction to entertain the claim under Section 40 of the Political Parties Act No. 11 of 2011. The Political Parties Disputes Tribunal heard and determined the Preliminary Objection on 17<sup>th</sup> October, 2014. The Tribunal overruled the Preliminary Objection on the basis that in the absence of evidence of the existence of dispute resolution mechanism in the U.D.F Party, it had powers to exercise its original jurisdiction to hear and determine the dispute. Being aggrieved, by the Tribunal's ruling, the Appellants filed this appeal. Pending the hearing and determination of the appeal, the Appellants took out the Motion dated **29<sup>th</sup> October, 2014** beseeching this Court to stay further Proceedings of the Political Parties Disputes Tribunal.

4. I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavits filed in support and against the Application. I have further considered the oral submissions of Learned Counsels appearing in this appeal.

It is the submission of Mr. Eboso, Learned Counsel for the Appellants that when the appeal comes up for hearing he will be able to show that the Appellants appeal is not frivolous. He pointed out that the Appellants will show that the Political Parties Disputes Tribunal acted in blatant breach of Section 40(2) of the Political Parties Act. The Appellant's Leaned Advocate further argued that unless the Proceedings pending before the Political Parties Disputes Tribunal are stay the Appellants will suffer substantial loss in that the Tribunal will proceed to hear and determine the dispute in blatant violation of mandatory requirements and express prohibition by the Law. Mr. Ebosa also argued that the appeal will be rendered useless the order for stay is given. Mr. Mukule, Learned Advocate for Petronilla Were, the 1<sup>st</sup> Interested Party herein, was allowed to make oral submissions though the 1<sup>st</sup> Interested Party had not filed any response to the Motion. Mr. Mukele argued in support of the Appellants' Motion arguing that unless the order for stay of Proceedings is given the 1<sup>st</sup> Interested Party will be prejudiced. He adopted the submissions of Mr. Eboso.

5. Mr. Otieno, Learned Advocate for the Respondents vehemently opposed the motion and heavily relied on the replying affidavit of Caroline Muthoni Boy. He argued that the Motion put the Court in an awkward position in that there is a pending Judicial Review Application which seek near similar orders. Mr. Otieno presented to this Court copies of the Pleadings in Nairobi H.C. Miscellaneous Application No. 406 of 2014. Mr. Eboso contended that since the Appellants are not named as parties the Judicial Review Application, the same has no relevance to the Motion in question. I have looked at the Pleadings Miscellaneous Application No. 406 of 2014 and it is apparent that the aforesaid Proceedings were taken out by Petronilla Were, the 1<sup>st</sup> Interested Party herein in which she sought for inter alia leave to apply for Judicial Review orders of certiorari to quash the decision of the Political Disputes Tribunal made on 17<sup>th</sup> October, 2014 affirming the appointment of the firm of Muma and Kanjama Advocates as the Advocates representing U.D.F the 2<sup>nd</sup> Interested Party in this Appeal.

In the same Application, the 1<sup>st</sup> Interested Party also sought for the order of leave to operate as a stay of the orders given on 17<sup>th</sup> October, 2014. The 1<sup>st</sup> Interested Party also sought for leave to apply for an order of prohibition to prohibit the Political Parties Disputes Tribunal from further Proceeding with the hearing of the claim before it.

6. Mr. Otieno further pointed out that the order should not be given because it is likely to cause a considerable delay in that the Political Parties Dispute Tribunal may not determine the dispute within the

timeliness set under Section 40(1) of the Political Parties Act No. 11 of 2011. Mr. Otieno also argued that the Appellants will not suffer any prejudice because they will have their day before the Political Parties Disputes Tribunal to be heard. It is the Learned Advocate's argument that looking at the balance of convenience, the Respondents will be inconvenient more than the Appellants in that the dispute may not be determined within the time limited by statute.

7. The main issue which this Court has asked to determine is whether or not to grant the order for stay of Proceedings pending Appeal. As to whether or not to grant the order is a matter of Judicial discretion to be exercised in the interest of justice, which discretion is unlimited save that it should be exercised rationally and not whimsically. In determining the question, the Court exercises its inherent power saved under Sections 1A, 1B and 3A of the Civil Procedure Act. ***In Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 37 P. 330***, on implication of granting the order it was stated as follows:

***"The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue."***

8. It is not in dispute that the Political Parties Dispute Tribunal has set down to hear the claim before it on its merits having dismissed the Preliminary Objection questioning its jurisdiction. The Appellants are aggrieved that the question as to whether or not the Tribunal is seised with jurisdiction should be determined first before the claim can be determined on its merits. Let me begin by stating that the question posed by the Appellants on appeal is not frivolous but a serious one which needs to be critically examined on appeal. The outcome of the appeal on this question will guide the Political Parties Disputes Tribunal on how to deal in future with similar situations.

9. In determining whether or not to grant the order for stay of Proceedings, this Court is minded to consider whether or not the appeal is arguable. I have already come to the conclusion that the appeal is arguable.

The other Principle which I take into account is whether or not the pending appeal will be rendered nugatory. If the order is denied. I have carefully considered the issue and I think the appeal may not be rendered nugatory. I appreciate the fact that the Political Parties Disputes Tribunal has set down the dispute for hearing on its merits having disposed of the Preliminary Objection questioning its jurisdiction.

10. It is not in dispute that all the parties involved in this saga have been invited to attend the hearing and present oral evidence. At the end of the exercise, the Tribunal will render its decision and hopefully within the time fixed by Statute and any Party which feels aggrieved by the Tribunal's decision has a right to appeal to this Court under Section 41(2) of the Political Parties Act No. 11 of 2011.

11. The Law does not bar any aggrieved Party who has preferred an appeal from questioning the Political Parties Disputes Tribunal's jurisdiction to hear the matter.

In fact, the Appellants will have a second chance to raise the same question now pending on appeal. In disputes where time is expressly stated to be of essence Courts' are cautious in entertaining interlocutory appeals. The more accepted practice is to allow the dispute to go full course and thereafter any Party aggrieved may appeal once and for all. The idea is to protect the integrity of the process which requires that Political contests be resolved expeditiously. This is critical in this dispute because the Parties are entitled to access this Court, the Court of Appeal all the way to the Supreme Court on Appeal. One can imagine the amount of time spent following the appeal process.

12. Two Preliminary issues were raised by the Respondent's Advocate. Mr. Otieno had stated that the Respondents would be most inconvenienced if the order for stay of Proceedings is given. With respect, I agree. Such contests should quickly resolved as envisaged by the Statute. The second ground which was ably argued by the Respondent's Advocate is that this Court may be put in an awkward position in view

of the pendency of Miscellaneous Application No. 406 of 2014. I do not think this Court will be prejudice in any way the pendency or decision in the aforementioned Proceedings. This Court will be looking at the merits or otherwise of the dispute whereas the Court handling the Judicial Review Proceeding will be looking at the process used to arrive at the decision sought to be impugned.

13. In the end I find no merit in the Motion. The same is dismissed with costs abiding the outcome of the appeal.

**DATED, SIGNED and DELIVERED in OPEN COURT this 14<sup>th</sup> day of November, 2014.**

**J. SERGON**

**JUDGE**