



**Guracha & 3 others v Guyo & 5 others; Jubilee Party of Kenya & another  
(Interested Parties) (Petition E195 of 2023) [2025] KEHC 18233 (KLR)  
(Constitutional and Human Rights) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18233 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E195 OF 2023  
J NGAAH, JM CHIGITI & LN MUGAMBI, JJ  
DECEMBER 5, 2025**

**BETWEEN**

**GUYO ALI GURACHA ..... 1<sup>ST</sup> PETITIONER  
MOHAMED WARIO JATTANI ..... 2<sup>ND</sup> PETITIONER  
TEDDY M MUTURI ..... 3<sup>RD</sup> PETITIONER  
STEVEN KIHONGE NDUNG'U ..... 4<sup>TH</sup> PETITIONER**

**AND**

**HON ABDI GUYO ..... 1<sup>ST</sup> RESPONDENT  
HON JOHN LOWASA ..... 2<sup>ND</sup> RESPONDENT  
UNITED DEMOCRATIC ALLIANCE ..... 3<sup>RD</sup> RESPONDENT  
REGISTRAR OF POLITICAL PARTIES ..... 4<sup>TH</sup> RESPONDENT  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION  
(IEBC) ..... 5<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**JUBILEE PARTY OF KENYA ..... INTERESTED PARTY  
AZIMIO LA UMOJA ONE KENYA COALITION ..... INTERESTED PARTY**



## JUDGMENT

### Introduction

1. The Petition before this Court is dated 13<sup>th</sup> June, 2023. It is supported by the affidavit of the 1<sup>st</sup> Petitioner, Guyo Ali Guracha sworn on even date.
2. At the very outset we need to state that the facts of the petitioners' case were set out in our ruling dated 4 April 2024 on a preliminary objection filed against the petition by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. We reproduce those facts in this judgment, in the same terms as set out in our said ruling.
3. The petitioners describe themselves in the petition as "citizens of Kenya and registered voters" and that they are "members and/or supporters of Jubilee Party and the Azimio la Umoja Kenya One coalition".

### The Petitioners' case:

4. It is the petitioners' case that, Kenya, being a sovereign and a multi party democratic State founded on particular national values and principles of governance, election of an official to a public office establishes a sacred socio political contract that binds the elected official to serve the electors during a fixed term of office. To be precise, under Article 1 of *the Constitution*, the elected official serves in his office and exercises power as a delegate of his electors. If he is sponsored into office by a political party or coalition of parties, he is constitutionally obligated to remain a member of that party or the coalition of parties throughout his term of office. Further, he is constitutionally obligated to observe, promote and uphold the party's agenda, objectives, mission and vision during his term in office.
5. The petitioners aver that in light of the foregoing understanding, the 1<sup>st</sup> and 2<sup>nd</sup> respondents were respectively candidates for the County Governor and Deputy Governor of Isiolo County during the General Elections held on 9 August, 2022. They contested for these seats as members of Jubilee Party of Kenya. The objectives of this political party are set out in Article 4 of its Constitution as follows:
  - “ 1) To be a national party that promotes the unity of all the people of the Republic of Kenya.
  - 2) To form national and county governments that will at all times act in the best interests of the people of Kenya at national and county levels.
  - 3) To support, promote and facilitate devolution as a system of governance in Kenya.
  - 4) To promote vigilance in safeguarding the national interests of Kenya.
  - 5) To serve as a vigorous and conscious political vanguard for eradicating tribal, racial and social bigotry, economic discrimination, and exploitation and elimination of all forms of oppression.
  - 6) To implement political, economic, social and cultural policies, including Vision 2030 and future national visions and strategies for a modern, prosperous Kenya which will raise the standards of living for all Kenyans.
  - 7) To promote a national value system and national social transformation policies that will build a cohesive, stable and productive society.



- 8) To conserve and protect the natural resources, environment and wildlife of Kenya for the benefit of present and future generations.
  - 9) To strive for East and Central African unity and also African unity and integration in even; sphere of economic, social and political life based on economic prosperity, social justice, human dignity, and the sovereignty of all African states.
  - 10) To encourage and subscribe to the need for the creation of space for groups and individuals in the enjoyment of their human rights, freedoms and liberties.
  - 11) To establish partnerships and I or associations with local, foreign and international organisations whose objectives are similar to those of Jubilee Party.”
6. Vide a Gazette Notice no. 7995, dated 1 July 2022, the 5<sup>th</sup> respondent published the names of the candidates for the County Governor seat for Isiolo County. Following the elections held on 9 August, 2022, the County Returning Officer, Isiolo County announced that the 1<sup>st</sup> and 2<sup>nd</sup> respondents had respectively been elected as the Governor and Deputy Governor of Isiolo County. These election results were subsequently published in Kenya gazette notice no. 9948 dated 23 August, 2022.
  7. The Petitioners aver that the Jubilee Party which nominated the 1<sup>st</sup> respondent to contest for the gubernatorial seat of Isiolo County is one of the corporate members of the Azimio la Umoja One Kenya Coalition under whose banner and manifesto all the Jubilee Party candidates campaigned. It is under the same platform that the 1<sup>st</sup> and 2<sup>nd</sup> respondents campaigned and were elected.
  8. It is their case that according to Articles 1, 38, 92, 103 of *the Constitution*, the election of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as respectively the Governor and Deputy Governor of Isiolo County established a socio-political contract between themselves and the people of Isiolo County. Consequently, their election to these offices was on the understanding that:
    - “ a) The 1<sup>st</sup> and 2<sup>nd</sup> respondents would serve for five years as Governor and Deputy Governor of Isiolo County elected on the ticket of Jubilee Party and advance its policies, visions and interests.
    - b) In discharging their respective functions and powers as the Governor and Deputy Governor of Isiolo County, the 1<sup>st</sup> and 2<sup>nd</sup> respondents would implement the policies and priorities of manifesto of the Azimio la Umoja One Kenya Coalition.
    - c) As a member of the Council of Governors representing Isiolo County, the 1<sup>st</sup> respondent would promote the values, objectives, interest and policies of Jubilee Party and Azimio Coalition.”
  9. Accordingly, the election of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as Governor and Deputy Governor of Isiolo County enjoined them to subscribe to Jubilee Party and Azimio Coalition and, in the same breath, prohibited them from supporting any other political party or political coalition including the United Democratic Alliance and the Kenya Kwanza Coalition during their five years’ tenure as the Governor and Deputy Governor of Isiolo County.



10. That notwithstanding, the petitioners contend that on 2 June, 2023, the 1<sup>st</sup> and 2<sup>nd</sup> respondents defected from Jubilee Party and joined the United Democratic Alliance, the 3<sup>rd</sup> respondent in these proceedings. The defection, according to the petitioners, is a violation of the law on grounds that:

- i. It constitutes a breach of public trust and the socio-political contract between the 1<sup>st</sup> and 2<sup>nd</sup> respondents, on the one hand, and their electors, residents of Isiolo County and Jubilee Party members, on the other hand, to serve and exercise power as delegates elected to uphold observe and promote the governance agenda objectives, mission and vision of the Jubilee Party and Azirnio Coalition.
- ii. The principles and sanctity of multi-party democracy enjoins all state organs and officials to desist from compromising, undermining or usurping the electoral positions garnered by political parties during elections.
- iii. The defection of the 1<sup>st</sup> and 2<sup>nd</sup> respondents constitute a blatant breach of the national values and principles of governance set out in Article 10 of *the Constitution* particularly the rule of law, democracy and participation of the people, inclusiveness, good governance, integrity, transparency and accountability.”

11. The Petitioners further contend that in defecting to the 3<sup>rd</sup> respondent, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have violated Chapter Six of *the Constitution* on Leadership and Integrity in the following ways:

- i. They have violated the public trust as elected officials by undermining the essence and sanctifying of multi-party democracy in Isiolo County.
- ii. The defection constitutes a gross demonstration of disrespect for the people particularly the members and/or supporters of Jubilee and Azimio Coalition who voted them into office.
- iii. The said defection has undermined public confidence in the integrity of the office of Governor and Deputy Governor of Isiolo County.
- iv. The said defection constitutes a conflict of interest between the individual right of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to change their political allegiance and their public duty to observe the socio-political contract to serve and exercise power as elected delegates of the people sponsored into office by Jubilee Party and members and supporters of Azimio Coalition.

12. And by inducing, soliciting, aiding and abetting the defection of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to the 3<sup>rd</sup> respondent, the latter has violated Articles 1, 3, 4, 10, 38, 73 and 91 of *the Constitution* in the following ways: -

- i. The habit of poaching elected leaders to join the ruling Party amounts to blatant violation of the people's sovereignty in the multi-party democratic State established by Kenya's 2010 Constitution.
- ii. The 3<sup>rd</sup> respondent and its leaders have contravened their individual and collective obligation to respect, uphold collective obligation to respect, uphold and defend Kenya's 2010 Constitution.
- iii. The 3<sup>rd</sup> respondent's policy and schemes to "poach" elected leaders, coax, coerce and brainwash them to undermine their political parties amount to



subversion of multi-party democracy in Kenya in violation of Article 4 of *the Constitution*.

- iv. The 3<sup>rd</sup> respondent and its leaders have violated the national values and principles of governance set out in Article 10(2) of *the Constitution* by undermining the people's sovereignty to be served by elected officials who are not its members and subverted multi-party democracy through systematic weakening of Jubilee Party and other political parties.”
  - v. The 3<sup>rd</sup> respondent and its leaders have violated the political rights of voters in Isiolo County to be served on the basis of the mandate vested on the 1<sup>st</sup> and 2<sup>nd</sup> respondents during the General Election held on 9 August, 2022.
  - vi. The 3<sup>rd</sup> respondent and its leaders have violated the public trust vested in them to exercise their power consistent with the sacred purposes and objects of *the Constitution* to uphold and respect the people's sovereignty and to protect the viability and existence of multi-party democracy in Kenya.
  - vii. The 3<sup>rd</sup> respondents and its leaders have violated and basic requirement, for political parties set out in Article 91 of *the Constitution*, particularly: -
    - a) to promote and uphold national unity;
    - b) to respect the right of all persons to participate in the political process, including minorities and marginalized groups;
    - c) to promote the objects and principles of Kenya's 2010 Constitution and the rule of law.”
13. As far as the petitioners' grievances against the Registrar of Political Parties are concerned, the petitioners contend that by dint of Sections 9, 14, 21 and 34 of the *Political Parties Act*, 2011 as read with Articles 3, 90 and 91 of *the Constitution*, the Registrar of Political Parties is enjoined to ensure: -
- i. The constitutions of all political parties require them to, inter-alia, uphold the Rule of Law, and recognize the validity of the multi-party constitutional democracy established pursuant to Article 4(1) of Kenya's 2010 Constitution.
  - ii. No person shall enjoy the rights privileges and opportunities of membership in two or more political parties.
  - iii. Elected persons, like the 1<sup>st</sup> and 2<sup>nd</sup> respondents, who resign from their sponsoring political parties, cease to hold the positions to which they were elected.
  - iv. Commencement of the process for registration of the 3<sup>rd</sup> respondent (UDA) for its willful and unapologetic violation of the provisions of Article 91 of *the Constitution*.
  - v. Notification to the 5<sup>th</sup> respondent - the IEBC - about the resignation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from Jubilee Party.
14. However, contrary to what the petitioners believe are the Registrar of Political Parties' obligations, the petitioners contend that the Registrar of Political Parties has aided and abetted the violation of Articles



1, 4, 38 and 108 of *the Constitution* and the subversion of multiparty democracy in Kenya on grounds that:

- i. Despite the provisions of Articles 3(1) and 10(1) of *the Constitution*, the Registrar of Political Parties has failed to uphold the will of the people of Kenya expressed during the General Election held on 9 August, 2022.
- ii. The Registrar of Political Parties failure to enforce the *Political Parties Act* has emboldened the 3<sup>rd</sup> respondent to engage in unprecedented and systematic subversion of multi-party democracy in Kenya over the last eight months, prior to the filing of the instant petition.
- iii. In failing to ensure that the 3<sup>rd</sup> respondent adheres to the Code of Conduct for Political Parties set out in the First Schedule of the *Political Parties Act*, 2011, the Registrar of Political Parties has encouraged, aided and abetted the violation of the petitioners' political rights and those of other Jubilee Party members guaranteed by Article 38 of *the Constitution*.
- iv. In order to promote, aid and abet her conspiracy with the 3<sup>rd</sup> respondent to subvert multi-party democracy and to displace Kenya's constitutional state, the 4<sup>th</sup> respondent has provided immunity from legal consequences to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and other elected leaders of Jubilee Party who have resigned from their party but continue to hang onto their political seats sponsored by Jubilee Party during the General Election held on 9th August, 2022.”

15. The Petitioners further state that within the meaning of Article 103 of *the Constitution* as read together with Section 14 of the *Political Parties Act*, in defecting to the UDA Party, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have ceased to be members of the Jubilee Party and, consequently, they are deemed to have resigned from their positions as Governor and Deputy Governor of Isiolo County.

16. As a result of her actions and omission, the Registrar of Political Parties is unfit to continue holding the position of Registrar of Political Parties on account of her willful violation of Articles 1, 3, 4, 10, 73 and 75 of *the Constitution*.

17. In view of the foregoing, the petitioners have petitioned this Honourable Court for the following prayers:

- a) A declaration be issued to declare that the 1st and 2nd Respondents resigned from their positions as governor and deputy governor of Isiolo County upon defecting from Jubilee Party to the United Democratic Alliance Party on 2nd June, 2023.
- b) A declaration be issued to declare that in defecting from Jubilee Party to United Democratic Alliance the 1st and 2nd Respondents breached and served their socio political contract with the electors of Isiolo and members of the Jubilee party to continue serving as Governor and Deputy Governor of Isiolo County.
- c) A declaration be issued to declare that within the meaning of Articles 1, 38 and 81 of *the Constitution* all elected officials are delegates and trustees of their electors in discharging their functions and duties in their respective positions during their terms of office.



- d) An order of permanent injunction be issued to restrain the 1st and 2nd Respondents from discharging any function or duty as Governor and Deputy Governor of Isiolo County.
- e) A declaration be issued to declare that the United Democratic Alliance - the 3rd Respondent herein- violated Articles 1 and 4 of *the Constitution* in soliciting for, in aiding and abetting the defection of the 1st and 2nd Respondents from Jubilee Party of Kenya and Azimio la Umoja One Kenya Coalition to the United Democratic Alliance.
- f) A declaration be issued to declare that the Registrar of Political Parties - the 4th Respondent herein - has violated Article 3, 38 and 180 of *the Constitution* in condoning, aiding, abetting and accepting the registration of the 1st and 2nd Respondents as members of the United Democratic alliance before they have resigned from their positions as Governor and Deputy Governor of Isiolo County.
- g) A declaration be issued to declare that by dint of Articles 1, 4 and 38 of *the Constitution* an elected official sponsored by a political party cannot join another political party until he or she has resigned from his or her elective position.
- h) A declaration be issued to declare that the 1st and 2nd Respondents cannot lawfully resign from Jubilee Party to join the United Democratic Alliance unless and until they have resigned from their positions as governor and deputy governor of Isiolo County.
- i) An order of mandamus to compel the 4th Respondent to notify the 5th Respondent about the resignation of the 1st and 2nd Respondent as members of the Jubilee Party.”
- j) An order of mandamus to compel the Independent Electoral and Boundaries Commission - the 5th Respondent herein to degazette the 1st and 2nd Respondent as the governors and deputy governor of Isiolo County.
- k) A declaration be issued to declare that the incumbent Registrar of Political Parties, Madam Anne Nderitu has violated Articles 1, 3, 4, 10, 38, 73 and 75 of *the Constitution* which renders her unfit to continue serving as the registrar of Political Parties.
- l) A declaration be issued to declare that the 3rd Respondent has violated Articles, 1, 3, 4, 38 and 91 of *the Constitution*.
- m) An order of mandamus to compel the 4th Respondent to commence an inquiry into the deregistration of the 3rd Respondent on account of its willful violation of Article of Article 91 of *the Constitution*.
- n) An order of compensation of the Petitioners for violation of their constitutional rights within the meaning of Articles 10, 27, 38 and 50 of *the Constitution*.
- o) Costs of this Petition be borne by the Respondents



### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case**

18. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a replying affidavit sworn by the 1<sup>st</sup> Respondent on 19<sup>th</sup> June 2023. The 1<sup>st</sup> Respondent states that he is the Governor of Isiolo County with the 2<sup>nd</sup> Respondent as his Deputy Governor, having been duly elected by the people of Isiolo County under the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties' ticket.
19. Opposing the Petitioners' main averments, the 1<sup>st</sup> Respondent contends that Articles 38 and 91 of *the Constitution* do not provide for any political office and, in particular, those provisions do not provide that the governor and deputy governor should be tied to any political party membership.
20. Further, he asserts that the provisions of Article 181 and 182 of *the Constitution* as read with Section 33 of the *County Governments Act* on removal of a governor from office, do not state political affiliation as a ground for removal. Be that as it may, he contends that in the context of this case, the conditions of the office of Governor being vacant have not been met. He adds that it is misleading for the Petitioners to imply that resignation from a sponsoring political party automatically leads to a vacancy in the office of a Governor.
21. Further still, the 1<sup>st</sup> Respondent emphasizes that Articles 38 and 39 of *the Constitution* do not confer to the 1<sup>st</sup> Interested Party the power to take away their freedom to make political choices. He reiterates that the people of Isiolo have the political and democratic right to vote for candidates of their choice to fill the two positions.
22. The 1<sup>st</sup> Respondent also takes the position that no law obligates him and the 2<sup>nd</sup> Respondent to govern Isiolo County on the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties ideals, agenda, vision, manifesto and aspirations of their members and supporters. Instead, the 1<sup>st</sup> Respondent avers that he is bound by Articles 174, 175 and 179 of *the Constitution* to exercise the delegated executive county authority while adhering to the principles and objects of devolution.
23. The 1<sup>st</sup> Respondent in addition asserts that the provisions of Article 103 of *the Constitution* on vacation of office of Member of Parliament does not in their case.
24. Further, the 1<sup>st</sup> Respondent avers that the Petitioners have failed to establish any violation or breach of constitutional provisions particularly, Articles 38, 91 and 103 of *the Constitution* and the Bill of Rights and thus failed to meet the threshold set in Anarita Karimi Njeru (1979)1KLR 154.
25. The 1<sup>st</sup> Respondent claims that the Petition is based on unsubstantiated and hypothetical questions hence should be dismissed.
26. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have also questioned the jurisdiction of this Honourable Court arguing that the jurisdiction to determine this dispute is vested in the Political Parties Dispute Tribunal under Section 40 of the *Political Parties Act*.
27. For these reasons, these Respondents argue that the Petition is frivolous, vexatious and scandalous.
28. The third respondent did not file any response to the petition or submissions.

### **4<sup>th</sup> Respondent's case**

29. The 4<sup>th</sup> Respondent filed a Replying affidavit. The replying affidavit was sworn on 30 June 2023 by Joy Onyango who has introduced herself as the compliance officer in the office of the 4<sup>th</sup> respondent. According to the 4<sup>th</sup> respondent, she only executes those functions conferred upon her by *the*



- Constitution and the Political Parties Act, 2011, and cannot be compelled to assume powers not vested in her.
30. She further stated that the Political Parties Act, 2011 establishes a clear framework governing the rights of political parties and party members, including the right of parties to recruit members, the right of members to join or exit parties, and the corresponding right of parties to sever their relationship with members.
  31. The 4<sup>th</sup> Respondent maintains that these rights are to be exercised by the parties and members themselves, and that her mandate does not extend to interfering with or pre-empting such internal processes.
  32. She averred that the cessation of membership in a political party is a structured and sequential process governed by the party's internal rules. The 4<sup>th</sup> Respondent's mandate is confined to the updating of the party membership register upon the completion of all requisite internal processes of the political party and the formal communication of the resultant decision to the 4<sup>th</sup> Respondent.
  33. The 4<sup>th</sup> respondent acknowledged that according to the records she holds, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents remain duly registered members of the Jubilee Party. Neither notices of resignation from the said party have been lodged with the 4<sup>th</sup> Respondent, nor has the 1<sup>st</sup> Interested Party submitted any decision indicating that it has terminated its relationship with the two Respondents. In the absence of such formal notification, the 4<sup>th</sup> Respondent asserts that the legal threshold for resignation or defection, as contemplated under the Political Parties Act, 2011, has not been met.
  34. It is the 4<sup>th</sup> Respondent's position that allegations of defection raised by the Petitioners are unsubstantiated and remain unparticularized, contrary to the statutory requirements. The Petitioners have not identified with precision any constitutional or statutory provision allegedly violated by the office-holder of the 4<sup>th</sup> Respondent. As such, the claim of constitutional breach is said to lack evidentiary and legal foundation.
  35. The 4<sup>th</sup> Respondent asserts that it has at all times acted within the confines of the law, and that the Petition is premised on generalized allegations incapable of sustaining the reliefs sought.

#### **5<sup>th</sup> Respondent's case**

36. The 5<sup>th</sup> Respondent, through the replying affidavit of Chrispine Owiye, Director of Legal and Public Affairs of the Independent Electoral & Boundaries Commission, sworn on 21<sup>st</sup> August 2023, contends that the Petition and the accompanying application are unfounded, devoid of any constitutional or statutory basis, and improperly drag the IEBC into a dispute that lies wholly outside its mandate.
37. It is deposed that the IEBC's constitutional and statutory functions are confined to conducting or supervising elections and referenda, delimiting electoral units, registering voters, regulating party nomination processes, settling pre-election disputes, and performing related functions as set out under Articles 82, 84, 88, 89, and 90 of the Constitution as well as Sections 4 and 34 of the IEBC Act and the Elections Act.
38. The 5<sup>th</sup> Respondent maintains that these provisions do not impose upon the IEBC any obligation to monitor the political affiliations of elected office holders or to track resignations or defections from political parties, which is the domain of the Registrar of Political Parties under the Political Parties Act. It is averred that no notification has been received from the Registrar of Political Parties or any competent authority indicating that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have resigned from their sponsoring



political party or vacated office, and that neither the Constitution nor the relevant statutes prescribe any mechanism requiring the Registrar to notify the IEBC of such matters.

39. The 5<sup>th</sup> Respondent further asserts that the Constitution provides an exhaustive framework for vacancies in the offices of Governor and Deputy Governor under Articles 181 and 182 and Sections 32C and 33 of the County Governments Act, and that the resignation from a political party is not among the grounds that can trigger a vacancy. It is its position that the only election it may be required to conduct in relation to county executive offices is that contemplated under Article 182(5) of the Constitution, and that the Petitioners' attempt to invoke the IEBC's involvement outside these circumstances is legally untenable.
40. The 5<sup>th</sup> Respondent contends that the Petitioners have not demonstrated any violation or abdication of duty by the IEBC, nor have they sought any substantive or interim relief against it, rendering the Commission an unnecessary party to the proceedings.
41. The 6<sup>th</sup> respondent did not file any response or submissions.
42. The 1<sup>st</sup> interested party did not file any response and submissions to the Petition.

## **2<sup>nd</sup> Interested Party's Case**

43. The 2<sup>nd</sup> Interested Party filed grounds dated 10<sup>th</sup> November 2023 in support of the Petition.
44. The 2<sup>nd</sup> Interested Party has urged that the Constitution of Kenya, 2010 as read with various International law instruments underscore democracy as a constitutional value embodied in the right to vote and free and fair elections.
45. That the Constitution of Kenya, 2010 grants every Kenyan citizen the fundamental right to vote and take part in elections by choosing their preferred chosen candidate and representative.
46. It is the 2<sup>nd</sup> Interested Party's case that by exercising the right to vote under Article 38 of the Constitution of Kenya, 2010, the citizens delegate their powers to their chosen representatives who in turn exercise this power pursuant to Article 1 of the Constitution of Kenya, 2010, as delegated to them by the people.
47. The 2<sup>nd</sup> Interested Party states that pursuant to Article 1 (3) of the Constitution of Kenya, 2010, the sovereign power under the Constitution is delegated to Parliament and the legislative assemblies, which is composed of persons nominated and elected as such, through elections and direct involvement of the citizens.
48. Further, the Independent Electoral and Boundaries Commission duly gazetted and supervised elections in August 2022 wherein various persons who had been nominated under their respective political parties were elected.
49. That the 2<sup>nd</sup> Interested Party herein, as a registered coalition political party duly garnered a majority of seats at the National Assembly as its members won a majority of seats through the affiliate political parties under the Azimio umbrella.
50. According to the 2<sup>nd</sup> Interested Party by Gazette Notices Nos. 10505 dated 5<sup>th</sup> September 2022, 10537 dated 7<sup>th</sup> September 2022 and 10710 dated 9<sup>th</sup> September 2022, the Independent Electoral and Boundaries Commission published the names of the duly elected and nominated members of the National Assembly.



51. The 2<sup>nd</sup> Interested Party has urged that it is apparent that the Kenyan voters intended and preferred their candidates as reflected in the vote outcome. The persons nominated under their respective political parties were elected on their respective parties' tickets.
52. It is also the 2<sup>nd</sup> Interested Party's case that political parties and the electorate have a legitimate expectation that their members and chosen representatives shall align to their principles, manifesto and party rules and Constitution at all material times.
53. The 2<sup>nd</sup> Interested Party argues that candidates are nominated by political parties before elections, sign and are bound by electoral and party codes of conduct, and may only shift to another party upon resignation, which triggers loss of membership and requires seeking a fresh mandate through an election. It also contends that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were elected on the ticket of their sponsoring party but later defected and promoted another party, thereby violating Articles 1, 3, 4, 10, 38, 73, 75, and 103 of *the Constitution* of Kenya, 2010 as read with Section 14 of the *Political Parties Act*.
54. As a result, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are holding the offices of Governor and Deputy Governor, infringing the 2<sup>nd</sup> Interested Party's and the public's rights to free and fair elections, and depriving legitimate party members of the opportunity to contest under the Jubilee/Azimio Coalition. The 2<sup>nd</sup> Interested Party, therefore, urges the Court to intervene to remedy the alleged illegality.

### **Petitioners**

55. The Petitioners filed written submissions dated 11<sup>th</sup> September 2024. They submit that following the collapse of communism, Kenya repealed Section 2A to restore multi-partyism after mass protests that cost lives and property, but the restrictive constitutional framework prompted further agitation for a new Constitution.
56. The Petitioners rely on the case of *Mbae v. Speaker, County Assembly of Nakuru & another: others (Interested Parties) Constitutional Petition E004 of 2022 2022 KEHC 3313 (KLR)* where the court is said to have discussed the implication and effect of defecting from a political party. The court is said to have at paragraph 135 to 136 of its judgment observed that the framers of *the Constitution* anticipated the political challenges caused by party defections and addressed them by setting out a clear, lawful procedure to maintain order within political parties and county assemblies. That once a member commits to a party's ideals, leaving it becomes difficult unless the prescribed process is followed, and parties are expected to uphold the ideologies and manifestos they campaigned on if they change their ideology mid-term, it amounts to a betrayal of voters and elected leaders, potentially triggering mass resignations that undermine the party's stability and sustainability.
57. The Petitioners submit that guided by the foregoing judicial guidance, by defecting to the 3<sup>rd</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents breached the Leadership and Integrity provisions of *the Constitution*. It is also their submission that their actions betray the public trust placed upon them as elected leaders, erode public confidence in the offices of Governor and Deputy Governor of Isiolo County, and exhibit profound disrespect toward the people of Isiolo County.
58. The Petitioners also rely on the case of *Mbae v. Speaker, County Assembly of Nakuru & another: others (Interested Parties) Constitutional Petition E004 of 2022 as KEHC 3313 (KLR)* where the Honourable Court at paragraph 174 is said to have observed that Kenya's Constitution strikes a deliberate balance between party discipline and leaders' freedom of conscience by allowing elected officials to change parties, but requiring them to vacate their seats and seek a fresh mandate through a by-election to ensure that the electorate is not represented by someone whose ideology has shifted from what they originally endorsed.



59. They submit that the defection of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from Jubilee Party has created a vacancy in the offices of Governor and Deputy Governor of Isiolo County and it is necessary that the said vacancies be filled as provided for in *the Constitution* of Kenya.
60. The petitioners argue that under Articles 1, 4, 38 and 91 of *the Constitution*, political parties belong to their members and, therefore, party officials cannot lawfully defect from their parties or coalition obligations arising after the 9 August 2022 general election without first subjecting such a decision to public participation within the party.
61. They further contend that political parties are central to Kenya’s governance structure, shaping interactions among state organs, and endorse *the Constitution* of Kenya Review Commission’s view that parties are vital democratic institutions that should be treated as constitutional organs.
62. According to the Petitioners the issue before this Honourable Court was summarized at paragraphs 20 and 21 of a Ruling delivered on 29<sup>th</sup> September, 2023 by Honourable Justice L. Mugambi in this matter where he stated thus:-
- “ 20. ...it is important that I mention Article 4(2) on the Republic of Kenya; it states: The Republic of Kenya shall be a multi-party democratic state founded on national values and principles of governance referred to in Article.”
21. Article 4(2) signifies the centrality of political parties in the existence of Kenya as a democratic State. It underscores their importance in the functioning of democracy. Through elected representatives, the parties champion the interest of the electorate by policy and legislation. They act as agents of democracy and constitutionalism. The main grievance in this Petition is on the composition of the political parties in Parliament. It is claimed that the determination of the leadership of the parties in the House was done in complete disregard of laid down constitutional principles...Political parties must be safeguarded to guarantee a flourishing multi-party democratic State that the framers of *the Constitution* envisaged.”
63. It is their submission that Article 180 of *the Constitution* of Kenya provides for elections of Governors and Deputy Governors while Article 181(1) of *the Constitution* of Kenya sets out grounds of removal from office of a Governor. They urge that the said provisions should be read together with Article 194 (1) of *the Constitution* of Kenya which provides for instances where the office of Member of County Assembly becomes vacant.
64. It is submitted that the *Political Parties Act* specifically section 14A was enacted to, inter alia, give effect to Article 92 of *the Constitution* of Kenya and to provide for the registration and regulation of political parties. Further, that the Act provides for the instances when a member of a political party may be deemed to have resigned from a political party.
65. The Petitioners urge the Honourable Court to be guided by the provisions of Article 259 of *the Constitution* of Kenya and the decision of David Ndi & Others v Attorney General & Others 2021 eKLR, which captured with precision the manner in which our Constitution ought to be interpreted, to adopt a broad, liberal and purposive interpretation of *the Constitution* and to issue the prayers sought for in the Petition.
66. The Petitioners place reliance on Article 1(2) of *the Constitution* of Kenya on the sovereign power on the people of Kenya and they also rely on the case of International Centre for Policy and Conflict



- & 5 Others vs. Attorney General & 5 Others 2023 eKLR where a five-judge bench is said to have underscored the sanctity of the peoples' sovereignty and political rights of electors under Article 38 of *the Constitution*.
67. It is submitted that the 3<sup>rd</sup> Respondent has been involved in a grand scheme to undermine the Interested Parties herein, transform itself into a monolithic party and to disestablish and overthrow the constitutional multi-party democratic state that is Kenya as provided for and envisaged by Articles 1, 4, 10, 12 and 38 of *the Constitution* of Kenya.
68. The petitioners contend that the practice of enticing elected leaders to defect to the ruling UDA Party echoes the undemocratic tendencies and violates the people's sovereignty in Kenya's multiparty constitutional order. They argue that the 3<sup>rd</sup> Respondent and its leaders have breached Article 10 values by weakening opposition parties particularly Jubilee Party through orchestrated defections. It is argued the 3<sup>rd</sup> respondent has infringed the electorate's political rights under Article 38 by disrupting the mandate given to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and violated public trust as well as multiple requirements for political parties under Article 91(1)(c)–(g). On these grounds, they urge the Court to find that the 3<sup>rd</sup> Respondent has undermined multiparty democracy and to grant the prayers (e) and (l) of the petition.
69. The Petitioners argue that the registrar of political parties has breached the values and principles of governance set out in Article 10 of *the Constitution* particularly as regards the rule of law, democracy and participation of the people, integrity, transparency and accountability, and that having violated public trust by acting contrary to the provisions of Article 73(1) and in contravention of Article 75 of *the Constitution* the prayers against the 4<sup>th</sup> respondent should be granted.
70. The petitioners rely on Article 91 of *the Constitution* which, according to them, sets out the obligations and requirements for political parties. They urge that any political party that does not comply with *the Constitution* may be suspended and deregistered in accordance with the provisions of Sections 21 and 22 of the *Political Parties Act*.
71. The Petitioners also submit that the 4<sup>th</sup> Respondent has contravened Section 21 (1) (a) and (d) of the *Political Parties Act*. In seeking the prayers, the 4<sup>th</sup> respondent they have relied on the case of Republic vs. Kenya National Examinations Council ex parte Gathengi & Others Civil Appeal No. 234 of 1996 where the court discussed the nature of an order of mandamus.
72. On the issue of costs, the Petitioners submit that costs follow the event, and that having proved every issue raised in this Petition, they beseech the Court to award costs to them.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents**

73. On 29<sup>th</sup> October 2024, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed written submissions on behalf of these Respondents and set out the main issue for determination as whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are deemed to have resigned from the 1<sup>st</sup> Interested Party's political party.
74. By way of background, Counsel highlighted that the Petition is primarily founded on the alleged resignation which in turn supposedly means that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents lost their elective seats.
75. While relying on the predominant issue test set out in Lydia Nyambura Mbugua v Diamond Trust Bank Kenya Limited & Another 2018 eKLR and Suzanne Achieng Butler & 4 Others v Redhill Heights Investments Limited & Another (2016) eKLR, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the core issue is one of internal party governance as opposed to external legal rights entitlements.



76. In light of this, Counsel stated that the appropriate forum to determine this matter would be the 1<sup>st</sup> Interested Party's internal dispute resolution mechanism not this Honourable Court. Counsel pointed out that this structure is envisaged under Article 92 of *the Constitution* as read with the *Political Parties Act*.
77. In addition, it was submitted that the Act established the 4<sup>th</sup> Respondent, inter alia, to supervise political parties. Counsel stressed that the *Political Parties Act* creates adequate mechanisms for resolving disputes over membership of a political party; whether a member can be deemed to have resigned and the procedures to be undertaken to deal with this issue including appropriate internal and external dispute resolution mechanisms. Furthermore, it was stated that Political Parties have their own Constitutions which guide the parties in this regard. Accordingly, Counsel submitted that unless these mechanisms are exhausted, judicial intervention remains unwarranted.
78. To buttress this point reliance was placed in *Speaker of the National Assembly v James Njenga Karume* 1992 eKLR where it was held 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 strictly followed.
79. For the same point, the learned counsel relied on *Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others* 2019 eKLR, *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* 2015 eKLR, and *Bernard Murage v Fineserve Africa Limited & 3 Others* 2015 eKLR.
80. Counsel also submitted that the law governing resignation from political parties is provided for in the *Political Parties Act* under Sections 14 and 14A. Equally, Counsel citing the case of *William Omondi v Independent Electoral & Boundaries Commission & 2 others* 2014 eKLR noted that the Court held that Section 14(3) demands that a member of a political party who intends to resign from the Political Party must give a written notice of his resignation to his Political Party. As such, that resignation according to the provisions of Section 14(2) takes effects upon the same being received by the Political Party or the Clerk of the relevant House.
81. For the same argument counsel relied on *George Obuya Owuor & 2 others v Zachary Okoth Obado & 3 others* 2017 eKLR and *William Omondi v Independent Electoral & Boundaries Commission & 2 others* (Petition 288 of 2014) 2014 KEHC 8070 (KLR).
82. On the question of proof, Counsel invoked section 107(1) of the *Evidence Act*, cap. 80 for the argument that the Petitioners had the onus to prove the alleged resignation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the 1<sup>st</sup> Interested Party. However, the petitioners failed to discharge their evidentiary burden. To be precise, no document was exhibited by the Petitioners to demonstrate that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' notice of resignation and acknowledgement of the same by the party. Counsel maintained that a clear procedure is provided for in law on how resignation and deemed resignation is to be dealt with. As such, Counsel stressed that the Court cannot overlook these clear and unambiguous statutory provisions.
83. Counsel added that the legal process that governs defection from a political party serves to protect the integrity of a political office and the will of the electorate. To support this point, reliance was placed on *George Obuya Owuor & 2 others v Zachary Okoth Obado & 3 others* 2017 eKLR where it was observed that there are clear provisions for the qualifications for one to be elected to the various elective positions created under *the Constitution*, and similarly, clear provisions on the circumstances under which the offices become vacant.
84. Further to this, Counsel questioned whether, if at all, this Court found that the Petitioners rights had been infringed whether the same can override the rights of the people of Isiolo County who voted



for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and are not offended by the alleged resignation. According to counsel, there was no crystallization of violation of any legal right as purported by the Petitioners, that qualifies under the test set out in Anarita Karimi Njeru (supra).

85. Counsel as well argued that this Court cannot issue an order of mandamus to compel the 4<sup>th</sup> Respondent to act on the alleged resignation, as the condition of issuing the same had not been met. He further submitted there was no formal documentation produced by the petitioners to substantiate the Petitioners' claims as required under Section 14 A (3) and (4) of the *Political Parties Act*.
86. In sum, Counsel noted that the 4<sup>th</sup> Respondent had not received any notices or communications indicating any intent to resign from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Further, Counsel argued that issuance of the Order would be tantamount to usurping the functions and powers of the 4<sup>th</sup> Respondent.
87. Further reliance was placed on Republic vs. Town Clerk, Kisumu Municipality, Ex Parte East African Engineering Consultants 2007 2 EA 441 where it was held that a Court can only compel the satisfaction of a public duty if it has become due and so if there is a condition precedent necessary for the duty to accrue, an order of mandamus will not be granted until that condition precedent comes to pass. In further of this argument, the 1<sup>st</sup> and 2<sup>nd</sup> respondents relied on Apotex Inc. v. Canada (Attorney General), 1994 3 S.C.R. 1100.
88. In closing, Counsel submitted that the Order sought to degazette the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as a governor and deputy governor is unfounded, as such a removal is subject to conditions set out in Article 181 and 182 of *the Constitution*. Counsel argues, that the petitioners have not met these conditions.

#### **4<sup>th</sup> Respondent's case**

89. The 4<sup>th</sup> Respondent urges the Court to examine the substratum of the Petition. The Petitioners, who self-identify as Jubilee Party members, predicate their entire case on the alleged resignation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the 1<sup>st</sup> Interested Party. Absent this allegation, the present Petition would not lie. Even the complaints levelled against the 4<sup>th</sup> Respondent arise from the relationship between political parties and their members matters squarely within the purview of specialized dispute resolution bodies.
90. The *Political Parties Act*, 2011 establishes such a mechanism. Section 40 expressly donates jurisdiction to the Political Parties Disputes Tribunal to determine disputes between members of a political party, and between a member and the political party. Moreover, Sections 14 and 14A of the same Act set out the legal framework governing resignation from political parties, including resignation by governors or deputy governors. These provisions fall to be interpreted and applied by the Tribunal under Section 40.
91. Despite the availability of this dedicated statutory forum, the Petitioners have bypassed it without any justification. The 4<sup>th</sup> Respondent placed reliance on Rich Productions Limited vs. Kenya Pipeline Company & Another 2014 eKLR, where the court emphasized that *the Constitution* creates sector-specific dispute-resolution mechanisms to ensure matters are addressed by institutions with appropriate technical competence. While the High Court retains supervisory jurisdiction under Article 165, such jurisdiction cannot be invoked where legislation has provided clear mechanisms that litigants deliberately avoid.
92. The principle underlying these authorities is encapsulated in the doctrine of exhaustion. In Geoffrey Muthiga Kabiru (supra), the Court of Appeal stressed that where a dispute-resolution mechanism exists outside the courts, it must be exhausted before the courts are approached. Courts are intended to be fora of last resort, not first instance; Article 159 of *the Constitution* reinforces this by encouraging alternative means of dispute resolution.



93. The 4<sup>th</sup> Respondent maintains that no exceptional circumstances have been demonstrated to justify a departure from the exhaustion doctrine. Rather, the Petitioners have simply chosen to ignore the statutory processes available to them.
94. The Court is invited to be guided by Constitutional Petition No. 356 of 2012, *Franck Gitau Panimeiri & 2 Others v National Alliance Party & 4 Others*, where the High Court held that public interest demands restraint from litigation where effective statutory mechanisms exist for resolution of the dispute. In the present case, such mechanisms exist in the form of the Political Parties Disputes Tribunal; they have merely been disregarded by the Petitioners.
95. In view of the foregoing, the 4<sup>th</sup> Respondent submits that this Court lacks jurisdiction to entertain the Petition and should not assume jurisdiction where the law has clearly provided an alternative, specialized forum.

### 5<sup>th</sup> Respondent

96. The 5<sup>th</sup> Respondent through its written submissions dated 13<sup>th</sup> September, 2024 submits that the Petition unjustifiably drags the IEBC into a dispute in which no allegation of constitutional or statutory breach has been made against it, and in which the only prayer touching on the Commission is entirely contingent upon prior action by the 4<sup>th</sup> Respondent.
97. It is urged that the IEBC's mandate is strictly circumscribed by *the Constitution* and relevant statutes, and does not extend to the supervisory or regulatory functions over political parties that the Petitioners appear to imply. The Commission reiterates that its constitutional obligations under Articles 82, 88, 89 and 90, as read with the *Elections Act* and the IEBC Act, relate exclusively to the conduct and supervision of elections and referenda, voter registration, delimitation of boundaries, regulation of nominations, settlement of pre-election disputes, and the use of appropriate electoral technology. It is submitted that the legislation contemplated under Article 92 of *the Constitution*, namely the *Political Parties Act*, 2011, vests the regulation and supervision of political parties in the Registrar of Political Parties, and that the IEBC has no mandate in this domain outside the election period.
98. The 5<sup>th</sup> Respondent further argues that compliance with the Election Code of Conduct is required only during an election period as defined under Section 2 of the *Elections Act*, and that the present circumstances do not fall within such a period, the last election period having concluded on 23<sup>rd</sup> August 2022 upon the gazettement of the general election results. It is emphasised that no law obliges the IEBC, after elections, to monitor the political affiliations of elected leaders, and that the Commission has not received any notification from the Registrar of Political Parties or any authorised entity regarding the alleged resignation or defection of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Commission maintains that neither *the Constitution* nor the *Political Parties Act* prescribes any mechanism requiring such notification, and that Articles 181 and 182 of *the Constitution* and Sections 32C and 33 of the *County Governments Act* do not contemplate a vacancy in the office of Governor or Deputy Governor arising from resignation from a political party.
99. It is further submitted that the prayers sought against the IEBC disclose no actionable breach and are in any event incapable of implementation. The Commission urges the Court to take judicial notice of its current incapacity to conduct elections owing to lack of quorum, a position affirmed in *Abdullahi v Attorney General & 2 others* (Constitutional Petition E148 of 2023) 2024 KEHC 434 (KLR), where the Court observed that “for IEBC, a critical constitutional commission, to remain without commissioners since January 2023, is untenable” and that the absence of commissioners renders it unable to discharge its mandate under Article 88(4). On this basis, the IEBC submits that granting the orders sought would result in an absurdity, as the Commission is not presently able to conduct



any by-election that might arise, thereby risking a governance vacuum and impairing service delivery to the people of Isiolo.

100. The 5<sup>th</sup> Respondent contends that the Petitioners have established no cause of action against the Commission, that no violation or abdication of duty has been demonstrated, and that the Petition as against the IEBC is wholly unmerited and should be dismissed with costs.

## 2<sup>nd</sup> Interested Party

101. The 2<sup>nd</sup> Interested Party filed written submissions dated 22<sup>nd</sup> April 2024.
102. The 2<sup>nd</sup> Interested Party, Azimio la Umoja One Kenya Coalition, submits that it secured a majority of National Assembly seats in the 2022 general election through its constituent parties, as confirmed in several Gazette Notices. It argues that the central issue is whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, by leaving Jubilee and the Azimio La Umoja coalition are deemed to have resigned from their positions as Governor and Deputy Governor.
103. The 2<sup>nd</sup> Interested Party also relies on Articles 180 and 181 of *the Constitution*, read together with Article 194(1)(e)(i), and Section 14 of the *Political Parties Act* on resignation or deemed resignation from a party. It is also submitted that the Respondents are deemed to have vacated their offices by virtue of their defection.
104. According to the 2<sup>nd</sup> Interested Party, the above provisions have been the subject of judicial interpretation and application by several courts, and an example is in the case of Mbae vs. Speaker, County Assembly of Nakuru & Another; Others (Interested Party) (Constitutional Petition E004 of 2022) 2022 KEHC 3313 (KLR) (7 July 2022) Judgment) also relied on by the Petitioners.
105. The 2<sup>nd</sup> Interested Party also relies on the case of George Obuya & 2 Others vs. Zachary Okoth Obado & 3 Others, Kisii High Court Petition No. 3 of 2017. Whereas the court is said to have held the anti-defection principle does not apply to governors, like members of parliament and county assemblies, governors are expected to uphold party loyalty and remain consistent with the ideologies on which they were elected, as voters reasonably rely on those principles. However, the court lamented the poor state of party discipline in Kenya's political landscape, noting that it has become unrealistic to expect elected leaders to remain committed to the same party or coalition across electoral cycles in the country's still-developing democracy.
106. It is the 2<sup>nd</sup> Interested Party's submission that *the Constitution* of Kenya, intended to stop political infidelity and it could not have been the intention that the law was only applicable to other elective positions and not in regard to the office of the governors and deputy governors.
107. The 2<sup>nd</sup> Interested Party also submits that the question of political infidelity is not unique to Kenya. It was argued it is phenomenon that is common in other countries such as India and that in the case of Deepak K. vs. The Kerala State Election Commission and Others, High Court of Kerala At Ernakulam, WP(C) NO. 15253 OF 2023, the Indian Court is said to have observed that the anti-defection law was enacted to protect democracy from repeated party-hopping, as political defections betray both the party and the electorate's mandate, and any attempts to evade the law undermine its purpose and threaten the integrity of representative democracy.
108. The 2<sup>nd</sup> Interested Party also submits that Section 110 of the *Elections Act* mandates candidates to an election to subscribe to and observe the Electoral Code of Conduct. Further, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were nominated and campaigned through its sponsoring party and the 2<sup>nd</sup> Interested Party and it is on that basis that the people elected them.



109. It follows, therefore, that the acts by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of defecting and championing for causes for another political party amount to a violation of Articles 1, 3, 4, 10, 38, 73, 75, and 103 of *the Constitution* of Kenya, 2010 as read with Section 14 of the *Political Parties Act*.
110. The 2<sup>nd</sup> Interested Party further urges that their conduct of resigning and being deemed to have resigned is also an infringement of the sponsoring parties' political rights. They rely on the case of Diana Kethi Kilonzo & Another vs. Independent Electoral & Boundaries Commission & 10 Others, Petition NO. 359 of 2013, 2013 eKLR where the is said to have observed that Articles 1, 38, 81, and 91 of *the Constitution* collectively vest sovereign power in the people, guarantee citizens' political participation and fair representation, and require political parties to respect these rights while promoting constitutional principles. Further, that the right to political participation enshrined under Article 38 can only be enjoyed where there is vibrant and free competition among political parties.
111. The 2<sup>nd</sup> Interested Party urges the Honourable Court to be guided by the provisions of Article 259 of *the Constitution* of Kenya, and adopt a broad purposive interpretation of the provisions of *the Constitution*. The broad and purposive interpretation entails reading the provisions of *the Constitution* alongside each other with each provision complementing and supplementing the other. They refer to refer to book titled "Constitutional Law, Doctrines and Litigation of Fundamental Rights and Freedoms (Law Africa, Nairobi, 2023), by Lenaola SCJ and Arnold Ochieng. In that book, the authors are said to have cited various judicial authorities for the proposition that *the Constitution* must be interpreted broadly, purposively, and harmoniously, giving effect to both its letter and spirit, while precise and unambiguous language is applied according to its ordinary meaning.
112. The 2<sup>nd</sup> Interested Party invites the Honourable Court to invoke the doctrine of constitutional silence which is to the effect that the framers of *the Constitution* deliberately left out an express provision on anti-defection for the office of Governor and Deputy Governor for the Court to interpret and apply the same as intended by *the Constitution* and Section 14 of the *Political Parties Act*. On this argument, the learned has relied Constitutional Law, Doctrines and Litigation of Fundamental Rights and Freedoms (supra).
113. The 2<sup>nd</sup> Interested Party submits that in the instant circumstances, the framers of *the Constitution* did not anticipate that an elected governor and deputy governor would shift from their sponsoring political party and coalition immediately after an election and hence they deliberately left the question for the Court's interpretation.

### **Analysis and Determination**

114. We have considered the pleadings of the parties as well as submissions of respective counsel and we now discern the following to be the issues for determination:
1. Whether the jurisdiction of this Court to hear and determine this Petition is ousted by doctrine of exhaustion of remedies in the light of Section 40 (2) of the *Political Parties Act*.
  2. Whether based on provisions of Article 181 and 182 of *the Constitution* as read with Section 33 of the County Government's Act. 2012 this Court can assume jurisdiction over this matter.
  3. Whether from a Constitutional and statutory standpoint, a Governor or a Deputy Governor who has defected from a political party that they vied on during elections has any legal consequence on their holding office.
  4. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent defected in fact or can be deemed to have defected from Jubilee Party on 2/6/2023 given the circumstances of this case.



5. Whether the Petition is merited.
  6. Whether the Petitioner is entitled to reliefs sought.
115. For reasons that will become clearer in due course, the first two issues can conveniently be disposed of together.
116. The two-fold jurisdictional questions were raised against the jurisdiction of this Court by 1<sup>st</sup> and 2<sup>nd</sup> Respondent in their submissions who contended that based on Section 40 of the *Political Parties Act* and Article 181 and 182 as read with Section 33 of the *County Governments Act*, 2012 this Court lacks jurisdiction to entertain the instant Petition.
117. We observe that similar arguments were raised and advanced in a notice of preliminary objection which, as earlier noted, was disposed of on 4<sup>th</sup> April, 2024. In our ruling we noted as follows:

“ ... The first ground of preliminary objection is anchored on section 40 of the *Political Parties Act*. This section reads as follows:

40. Jurisdiction of Tribunal

- (1) 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; and
    - (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 (fa) unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute resolution mechanisms.
- (3) A coalition agreement shall provide for internal dispute resolution mechanisms

The 1<sup>st</sup> and 2<sup>nd</sup> respondents’ argument is that this provision of the law ousts the jurisdiction of this Honourable Court as the dispute before it is a dispute between members of a political party and hence subject to the Political Parties Disputes Tribunal.

A scrutiny of the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ pleadings leads us to the conclusion that this may not be a proper ground upon which



this petition can be determined in time. We say so because, as much as these respondents are proceeding on the assumption that the petitioners are members of the Jubilee Party, they have in their submissions prevaricated or flip-flopped and denied that the petitioners are such members.

In particular, in paragraph 1.17 of the submissions filed on behalf of 1<sup>st</sup> and 2<sup>nd</sup> respondents, it has been submitted as follows:

“1.17 The Petitioners have also not demonstrated to this Court that they are members of the Jubilee Party hence entitled to present this dispute for determination before this Court. They cannot purport to bring these proceedings as members of the Jubilee Party before first satisfying the Court that they are bona fide members of the Party.”

This submission betrays the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ stance that the petitioners are members of the same political party as the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It also undermines the argument that the dispute before court ought to have been subjected to the political parties disputes tribunal on the basis that the petitioners, on the one hand, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents, on the other hand, are members of the same party.

If we were to take the 1<sup>st</sup> and 2<sup>nd</sup> respondents at their own word, and we have no reason not to, the question of whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents are members of the same party as the petitioners is a question of evidence which can only be interrogated at the hearing of the petition and not at the preliminary stage of these proceedings. This is because, while the 1<sup>st</sup> and 2<sup>nd</sup> respondents deny that the petitioners are members of the Jubilee Party, the petitioners have themselves categorically sworn on oath that they are members of that party.

In paragraph 3 of the affidavit of Guyo Ali Guracha sworn on 13 June 2023, in support of the petition, he has stated as follows:

“3. That my co-petitioners and I are members of the Jubilee Party of Kenya and Kenyan citizens. We are filing this Constitutional Petition in order to defend *the Constitution* of Kenya as declared by Article 3(2) of *the Constitution*.”

We need not belabor the point save to state that where there is a dispute as to facts, such facts cannot be a basis for a preliminary objection. The case in point on this proposition is the oft-cited *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors*



Ltd 1969) EA 696 at page 700 paragraphs D-F Law JA, as he then was, had this to say on what a preliminary objection entails:

“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.”

At page 701 paragraph B-C Sir Charles Newbold, P. stated:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually 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...” (Emphasis added).

The first ground of the preliminary objection would fail for the reasons that the 1<sup>st</sup> and 2<sup>nd</sup> respondents appear to approbate and reprobate on the question of the petitioners’ membership of the Jubilee Party and, secondly, that fact may need to be ascertained.

118. The 2<sup>nd</sup> limb of objection also featured prominently in the preliminary objection and our decision on it was as follows:

“... The second ground of the preliminary objection is that this Honourable Court’s jurisdiction is ousted by the provisions of Articles 181 and 182 of *the Constitution* and section 33 of the *County Governments Act*.

Perhaps, to understand the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ objection on this ground, it is necessary that we reproduce these provisions of the law here; Article 181 of *the Constitution* reads as follows:

181.

- (1) A county governor may be removed from office on any of the following grounds—
  - (a) gross violation of this Constitution or any other law;
  - (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
  - (c) abuse of office or gross misconduct; or
  - (d) physical or mental incapacity to perform the functions of office of county governor.
- (2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in clause (1).



182.

- (1) The office of the county governor shall become vacant if the holder of the office—
  - (a) dies;
  - (b) resigns, in writing, addressed to the speaker of the county assembly;
  - (c) ceases to be eligible to be elected county governor under Article 180 (2);
  - (d) is convicted of an offence punishable by imprisonment for at least twelve months; or
  - (e) is removed from office under this Constitution.
- (2) If a vacancy occurs in the office of county governor, the deputy county governor shall assume office as county governor for the remainder of the term of the county governor.
- (3) If a person assumes office as county governor under clause (2), the person shall be deemed for the purposes of Article 180 (7)—
  - (a) to have served a full term as county governor if, at the date on which the person assumed office, more than two and a half years remain before the date of the next regularly scheduled election under Article 180 (1); or
  - (b) not to have served a term of office as county governor, in any other case.
- (4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.
- (5) If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor.
- (6) A person who assumes the office of county governor under this Article shall, unless otherwise removed from office under this Constitution, hold office until the newly elected county governor assumes office following the next election held under Article 180 (1).

TABLE

Section 33 of the *County Governments Act*, cap. 265, on the other hand states as follows:

33. Removal of a Governor



- (1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the Governor under Article 181 of *the Constitution*.
- (2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—
  - (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and
  - (b) the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.
- (3) Within seven days after receiving notice of a resolution from the speaker of the county assembly—
  - (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the Governor; and
  - (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.
- (4) A special committee appointed under subsection (3)(b) shall—
  - (a) investigate the matter; and
  - (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.
- (5) The Governor shall have the right to appear and be represented before the special committee during its investigations.
- (6) If the special committee reports that the particulars of any allegation against the Governor—
  - (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or
  - (b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.
- (7) If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.
- (8) If a vote in the Senate fails to result in the removal of the Governor, the Speaker of the Senate shall notify the speaker of



the concerned county assembly accordingly and the motion by the assembly for the removal of the Governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

- (9) The procedure for the removal of the President on grounds of incapacity under Article 144 of *the Constitution* shall apply, with necessary modifications, to the removal of a Governor.
- (9A) Subsections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy Governor.
- (10) A vacancy in the office of the Governor or deputy Governor arising under this section shall be filled in the manner provided for by Article 182 of *the Constitution*. Article 181 prescribes instances when a governor may be removed from office while Article 182 provides circumstances under which the office of the Governor may become vacant. Section 33 of the *County Governments Act* prescribes the procedure to be followed in the quest to remove a Governor from office. This section gives effect to Article 181(2) of *the Constitution* which, as noted, tasks the legislature with the duty of enacting legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in clause (1) of Article 181. Of the fifteen prayers the petitioners have sought, there is none that specifically seeks removal of the governor; at least, as contemplated under Article 181(1) of *the Constitution*. The only prayer that comes close to touching the office of the Governor but is nowhere near seeking the removal of the Governor is prayer (d) which is to the effect that:

“d) An order of permanent injunction be issued to restrain the 1<sup>st</sup> and 2<sup>nd</sup> respondents from discharging any function or duty as Governor and deputy Governor of Isiolo County”.

We are of the humble view that an injunction sought in terms of prayer (d) in the prayers in the petition and a prayer for removal of the Governor on any of the grounds prescribed in Article 181(1) of *the Constitution* are two different things and one cannot be assumed to mean the other.

As far as we understand the petitioners, their case is that, by their conduct, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have subverted *the Constitution* in various respects including undermining multiparty democracy which *the Constitution* espouses. If, at the close of the hearing of the petition the petitioners are vindicated in this regard or the court finds that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have violated *the Constitution* in any way, that may be a ground for their removal, in which event, section 33 of the *County*



Governments Act will kick in and the process of their removal may be commenced.

We think the 1<sup>st</sup> and 2<sup>nd</sup> respondents' apprehension that the petitioners are seeking their removal from the office in this petition is misplaced. We are also of the humble opinion that the argument that this Honourable Court is deficient of jurisdiction to dispose of this petition on the ground that the petition seeks the removal of a governor and his deputy is premature and, at best, misconceived.

In any event, even if it was to be assumed that the petitioners have, in one of their fifteen prayers, sought for removal of the Governor, that alone would not be fatal to petition. The most the 1<sup>st</sup> and 2<sup>nd</sup> respondents can derive out of what they think are the petitioners' misstep is to persuade the court to decline to grant that particular prayer; the entire petition would not fail at the preliminary stage only because the petitioners have prayed for an order that cannot be granted."

119. We will thus not belabour the point on the first two issues raised in this petition save to reiterate that we adopt the position we took on these issues in our ruling on the preliminary objection.
120. The next issue on whether from a Constitutional and statutory standpoint, a Governor or a Deputy Governor who has defected from a political party that they vied on during elections has any legal consequence on their continued holding of those offices calls for an in-depth analysis and, of course, determination.
121. In our view this is the overarching issue upon which the Petition turns. The Petitioners assail the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's conduct on 2<sup>nd</sup> June, 2023 alleging that it was a defection to another political party which undermines the principles governing multi-party democracy and, thus, the Court should declare that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by their action resigned from their positions as governor and deputy governor of Isiolo County.
122. This contention presents two secondary issues each of which we will address at a time. These issues are whether a Governor or Deputy Governor's resignation from the sponsoring political party can trigger the loss of the seat of Governor or Deputy Governor and whether, in reality, there was resignation of the 1<sup>st</sup> or 2<sup>nd</sup> Respondent, or they could, by whatever conduct complained of, be deemed to have resigned from the Jubilee political party as to bear the consequences that, legally, may ensue from such a conduct.
123. Turning to the first limb, we start by restating Prayers (a) & (b) of the Petition, they read:
  - a) A declaration be issued to declare that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents resigned from their positions as governor and deputy governor of Isiolo County upon defecting from Jubilee Party to the United Democratic Alliance Party on 2<sup>nd</sup> June, 2023.
  - b) A declaration be issued to declare that in defecting from Jubilee Party to United Democratic Alliance the 1<sup>st</sup> and 2<sup>nd</sup> Respondents breached and servered their socio-political contract with the electors of Isiolo and members of the



Jubilee party to continue serving as Governor and Deputy Governor of Isiolo County.”

124. The question thus becomes, would defection of a Governor or Deputy Governor per-se constitute resignation from the seat of the Governor or the Deputy Governor under *the Constitution* or legislation?

125. We must commence by restating that a core pillar of Kenya’s identity as a Republic is the affirmation that it is a multi-party democratic state.

Article 4 (2) of *the Constitution* states:

“The Republic of Kenya shall be a multi-party democratic state founded on national values and principles of governance referred to in Article 10.”

126. The other key feature that is included in our identity as a Republic are the national values and principles of governance.

127. It is important to remind ourselves that this Article did not casually find its way into our constitutional architecture. It was a culmination of decades of struggle and sacrifices made by Kenyans for the democratic governance and political freedom from the repressive one-party rule. That historical context is richly captured in the Final Report of the Committee of Experts on Constitutional Review dated 11<sup>th</sup> October, 2010 as follows:

“The Struggle for Constitutional Reform: 1992 - 2010

2.

6.1. The Advent of Multi-Party Democracy and the beginning of a formal process of constitutional reform: 1992-2002

A wind of change swept across Africa in the early 1990s and popular resistance to dictatorial and self-perpetuating regimes grew. In Kenya, political pressure for the restoration of multi-party democracy intensified and in 1991, section 2A was repealed.”

128. Section 2A to which reference has been made in this quotation introduced a de jure one party State. It is thus not difficult to appreciate why Kenyans deliberately chose to protect multi-party democracy as a key component of their collective identity as a Republic in August, 2010. Needless to say, the quest for multi-party democracy was a major driving force for the constitutional reforms that culminated in *the Constitution* of Kenya, 2010.

129. This Honourable Court has a constitutional duty as the guardian of *the Constitution* under Articles 3, 23 and 165 of *the Constitution* to ensure these gains do not dissipate through any form of action or inaction on the part of the political class or as a result of the conduct of any person or entity. Kenyans are not prepared to relive the dark and painful one party state experience.

130. In interpreting *the Constitution*, Article 259 (1) directs that *the Constitution* be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of rights, permits the development of the law; and, contributes to good governance.



131. Bearing this background in mind, the pertinent question that presents itself is whether party hopping, if we may call it that way, outside the legal framework for political parties' co-operation such as coalitions or mergers contribute and promote good governance or promote values, purposes and principles of *the Constitution*. Turning to the case at hand, would migration by the governor and his deputy from the party that sponsored their candidature for election to these offices to another after their election outside the legal parameters contribute these constitutional virtues? We think not.
132. Our approach to these questions respectfully contrasts with the position on the same questions which arose in *George Obuya Owuor & 2 others v Zachary Okoth Obado & 3 others* 2017 eKLR.
133. The brief facts in that case were that, the Governor of Migori County decamped from PDP, a political party in which the Governor was a member and, on whose ticket, he was elected as Governor, and joined another party, Orange Democratic Movement. According to the petitioners in that case, the decamping was contrary to the provisions of *the Constitution* and the *Political Parties Act*, specifically sections 14(4), (5) and 34(f) thereof which outlaw concurrent membership of political parties.
134. The Court dismissed the Petitioner's argument and in doing so it held as follows:
- “In our view, had the intention of the drafters of *the constitution* been that the office of the governor and President should fall vacant once the holders of those offices change their political party allegiance, then Articles 182 and 146 of *the Constitution* would have made specific provisions to that effect. We say this upon due consideration of the functions of the governor at the county government level, and those of the President at the national government level. The powers of these two offices are executive in nature. The governor and President perform executive functions in the county and national governments respectively. Their duties entail working for every resident in the county or nation as dictated by *the Constitution* and relevant legislation, irrespective of their party affiliations. This is to be contrasted with the duties and functions of members of county assemblies and Parliament, whose core mandate is representative and legislative in nature, and who have to support and propagate the ideologies and agendas of their respective sponsoring political parties in Parliament or county assemblies.”
135. The Court then concluded, inter alia, as follows:
- “... It is therefore our finding, and we so hold, that the seat of a county governor does not fall vacant upon the holder resigning from his sponsoring political party...”
136. We respectfully depart from this reasoning because Political parties are key drivers in nurturing democratic ideals and constitutionalism; they are not mere tools for contesting elections and thereafter discarding them. If that practice was to gain track, the political class will benignly claw back all the gains made and cripple political parties from their role of ensuring checks and balances necessary for the political stability of the country.
137. We are alive to the fact that *the Constitution* under Article 180 (2) provides that for election as county governor one must be eligible for election as a member of county assembly.
138. This would thus take us to Article 193 which provides for the qualifications for election as member of county assembly. These include the requirement that one must be a registered voter; he must satisfy any educational, moral and ethical requirements prescribed by *the Constitution* or an Act of Parliament; he is either- nominated by a political party or, an independent candidate supported by at least five hundred registered voters in the ward concerned among others.



139. Our focus here is the requirement for nomination by a political party under Article 193 (1) (c).
140. When one chooses to contest for elections on a political party, it has to be appreciated that the election is not just about the person alone, party affiliation and ideology also play a critical part in the in the decision made by the voters during such an election. It would, therefore, be a serious political deception and lack of regard for the electorate for one to go about changing political parties without regard for the electorate. If the culture of irregular party hopping is allowed to thrive, where would that leave principle of public participation as far as the electorate that participated in the election is concerned? What will become of the principles of accountability and transparency? Such culture, in our view, is a breach of public trust and undermines the national values and principles of governance under Article 10 which, with multi-partyism are co-joined twins in defining Kenya’s identity as a multi-party democratic state as set out in Article 4 (2) of *the Constitution*.
141. The haphazard and irregular defections are bound to weaken and erode political parties thereby breeding serious repercussions in the democratic environment as well as much-guarded national values and principles of governance thereby destroying the fragile substratum of multi-party democratic system of the country.
142. The question is, what would be the reason for haphazard party hopping when there is a legal mechanism for an open and genuine collaboration between parties to promote multi-party democracy as provided for under Section 10 and 11 of the *Political Parties Act*, Cap 7D? For the avoidance of doubt, these provisions provide as follows:

Section 10. Coalitions

- (1) Two or more political parties may form a coalition or a coalition political party before or after an election and shall deposit the coalition agreement with the Registrar.
- (2) A coalition agreement entered into before an election shall be deposited with the Registrar at least three months before that election.  
  
Provided that in the case of a coalition political party, the coalition political party shall submit the coalition agreement at least one hundred and twenty days before a general election.
- (3) A coalition agreement entered into after an election shall be deposited with the Registrar within twenty-one days of the signing of the coalition agreement.
- (4) A coalition agreement shall set out the matters specified in the Third Schedule.

Section 11. Mergers

- (1) A political party may merge with another political party by—
  - (a) forming a new political party; or
  - (b) merging into an already registered political party.
- (2) A political party shall not merge with another political party unless the merger is in accordance with *the constitution*, rules and procedures of the political parties.



- (3) The decision to merge shall be in writing and shall be duly executed by the political party officials authorized to execute agreements on behalf of the political parties.
- (4) The governing body of each political party that intends to merge under subsection (2) shall—
  - (a) determine *the constitution*, rules, regulations and the principles which shall form the basis of the merger in accordance with the constitutions of the respective political parties; and
  - (b) sign the merger agreement.
- (5) The merger agreement signed under subsection (4)(b) shall be deposited with the Registrar within twenty-one days of the signing of the agreement.
  - (5A) Upon receipt of the merger instrument under subsection (1)(a), the Registrar shall immediately withdraw and cancel the certificates of registration of all the political parties that have merged and shall gazette the dissolution of the merged parties within seven days and a certificate of full registration issued to the new political party.
- (6) Upon receipt of the merger instrument under subsection (1)(b), the Registrar shall gazette within seven days the dissolution of the parties that have resolved to dissolve and the registered party the parties have merged into;
- (7) Where a party merges under this section, a member of the political party that has merged with another political party shall be deemed to be a member of the new political party.
- (8) Despite subsection (7), a member who is a President, Deputy President, Governor or Deputy Governor, Member of Parliament or member of a County Assembly, and who does not desire to be a member of the new political party registered after the merger shall continue to serve in such elected office for the remainder of the term, and may join another political party or choose to be an independent member within thirty days of the registration of the new party.
- (9) Where political parties have merged and dissolved the particulars including their names, symbol, logo, slogan and colours shall be removed from the register of political parties and such names, symbols, logos, slogans and colours shall not be available for registration by any person as a political party in the subsequent election following the merger.
- (10) Despite subsection (9), where the merging parties wish to register and use any of the merging parties' names, symbols, logos, slogans and colours, such registration shall be permitted.
- (11) The records, assets and liabilities, rights and obligations of all the dissolved political parties shall be the records, assets and liabilities, rights and obligations



of the new political party including their entitlement to the Political Parties Fund under section 25 of the Act.

143. Section 14A (6) of the Parties Act clarifies that a member of political party cannot be deemed to have resigned from a political party if it can be shown his or her political party has entered or is proposing to enter into a merger or coalition with another political party.
144. Consequently, ‘party hopping’ without the involvement of the party as provided for in Section 10 and 11 of the *Political Parties Act* Cap 7D is a selfish practice that raises serious ethical and integrity concerns which, in themselves, are contrary to the national values and principles of governance under Article 10 (2) of *the Constitution*. If this culture is entrenched it will spell a death knell to our nascent multi-party democracy. Following these provisions of the law, Political party discipline is obligatory and parties have a responsibility to enforce discipline within their constitutive instruments and of course, the relevant legislation.
145. Given our Constitutional and legal framework, we can emphatically state that there is no room for indiscriminate and unauthorized defection from the sponsoring political party by any elected official. The consequences that would visit members of the County Assembly or members of Parliament who unprocedurally abandon their sponsoring parties after the election would similarly befall governors and their deputies.

Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent defected in fact or can be deemed to have defected from Jubilee Party on 2/6/2023 given the circumstances of this case.

146. It now becomes necessary to consider whether it was established that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent defected from the Jubilee Political Party on 2<sup>nd</sup> June, 2023 or if the conditions necessary for deeming them to have defected were fulfilled in the manner provided in *the Constitution* or legislation.
147. It is the responsibility of whoever alleges an allegation of fact to prove it. This is what Section 107 of the *Evidence Act* requires. It provides thus:
107. Burden of proof Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
148. The Supreme Court in *Gwer & 5 others v Kenya Medical Research Institute & 3 others* 2020 KESC 66 (KLR) restated the principle as follows:

“(49) Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

50. This Court in *Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others*, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:

“...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”



149. To begin with we observe that there is no direct evidence, written or otherwise expressly conveying the resignation of the 1<sup>st</sup> or 2<sup>nd</sup> Respondent from the Jubilee Party. There is no letter, recording or evidence of the witnesses that gives descriptive details of how the said resignation occurred on the said 2<sup>nd</sup> of June, 2023.
150. On resignation, the 1<sup>st</sup> Petitioner attests to the fact of resignation at paragraph 14 of his affidavit as follows:
- “ 14. That the foregoing notwithstanding on 2nd June, 2023 the 1st and 2nd Respondents suddenly changed their political affiliation when they announced their defection from Jubilee Party/Azimio la Umoja Coalition and joined the United Democratic Alliance (UDA), the 3rd Respondent herein.”
151. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents specifically denied the contents of paragraph 14 of the Petitioners’ supporting affidavit by stating as follows in their replying affidavit:
- “ 15. That the contents of paragraph 14 of the Supporting Affidavit of Guyo are denied in toto and the Petitioners are put to strict proof thereof.”
152. The denial by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents means that the Petitioner had the burden to adduce sufficient, credible and admissible evidence to prove the fact of defection.
153. According to the records held by The Registrar of Political Parties the 4<sup>th</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents remain duly registered members of the Jubilee Party. No notices of resignation from the said party have been lodged with the 4<sup>th</sup> Respondent, nor has the 1<sup>st</sup> Interested Party submitted any decision indicating that it has terminated its relationship with the two Respondents. In the absence of such formal notification, the 4<sup>th</sup> Respondent asserts that the legal threshold for resignation or defection, as contemplated under the *Political Parties Act*, 2011, has not been met.
154. According to IEBC no notification has been received from the Registrar of Political Parties or any competent authority indicating that the 1st and 2nd Respondents have resigned from their sponsoring political party or vacated office.
155. The affidavit of the Petitioner is completely silent on crucial facts. It does not indicate where the alleged defection actually took place, the medium through which the 1st and 2nd respondents communicated or manifested their defection or how the petitioner came to know about the defection. In our view, the petitioner made a barren claim that has not been substantiated. There is scanty information which in our view does not meet the evidential threshold for making a finding that the 1st and 2nd Respondent defected to UDA Party on 2/6/2023.
156. Without the evidence, we are unable to satisfy ourselves on the question of whether the conduct complained of constituted what is referred to as ‘deemed resignation from a Political Party’ under Article 103 (3) of *the Constitution* as read with Section 14 (a) of the *Political Parties Act*.
157. We thus find that the Petition lacks merit and is hereby dismissed.
158. We make no orders as to costs.

**SIGNED, DATED AND DELIVERED ON 5 DECEMBER 2024**

**NGAAH JAIRUS**

**JUDGE**



**JOHN CHIGITI, SC**

**JUDGE**

**L.N. MUGAMBI**

**JUDGE**

