



Muturo v Mudavadi & 4 others; United Democratic Alliance (Interested Party) (Constitutional Petition E141 of 2025) [2026] KEHC 426 (KLR) (Constitutional and Human Rights) (22 January 2026) (Judgment)

Neutral citation: [2026] KEHC 426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E141 OF 2025**

B MWAMUYE, J

JANUARY 22, 2026

IN THE MATTER OF ARTICLES 1, 2(4), 3(1), 4(2), 10, 19, 20, 21, 22, 23, 28, 35, 36, 38, 40, 47, 48, 91, 92, 159, 165 & 258(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION OF ARTICLES 4(2), 10, 36, 38, 91 AND 92 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE POLITICAL PARTIES ACT, CAP 7D LAWS OF KENYA

AND

IN THE MATTER OF THE POLITICAL PARTIES (MEMBERSHIP) REGULATIONS NO. 260 OF 2021

AND

IN THE MATTER OF THE PARTY CONSTITUTION OF THE AMANI NATIONAL CONGRESS PARTY

AND

IN THE MATTER OF THE ARBITRARY, UNLAWFUL AND UNPROCEDURAL DISSOLUTION OF THE AMANI NATIONAL CONGRESS PARTY

AND

IN THE MATTER OF THE ALLEGED MERGER OF THE AMANI NATIONAL CONGRESS PARTY WITH THE UNITED DEMOCRATIC ALLIANCE PARTY

BETWEEN

STEPHEN MUTORO PETITIONER



AND

WYCLIFFE MUSALIA MUDAVADI 1ST RESPONDENT
OMBOKO MILEMBA 2ND RESPONDENT
ISSA TIMAMY 3RD RESPONDENT
KELVIN LUNANI 4TH RESPONDENT
THE REGISTRAR OF POLITICAL PARTIES 5TH RESPONDENT

AND

THE UNITED DEMOCRATIC ALLIANCE INTERESTED PARTY

JUDGMENT

Introduction

1. This judgment concerns a constitutional petition of considerable importance to Kenya's political and democratic order. The petition, dated 19th March 2025, was instituted by Mr. Stephen Mutoro, who describes himself as a Life Member of the Amani National Congress (ANC), a registered political party. The Petitioner challenges the dissolution of the ANC, a party which, until its dissolution, constituted a notable participant in Kenya's multi-party democratic system. The impugned dissolution was communicated through Gazette Notice No. 3449 dated 7th March 2025, published by the 5th Respondent, the Registrar of Political Parties.
2. The Petitioner contends that the dissolution of the party was the culmination of a carefully orchestrated scheme by the 1st to 4th Respondents, implemented through what he characterises as a sham National Delegates Congress (NDC). He avers that the process was arbitrary, bereft of procedural legitimacy, and conducted in blatant contravention of *the Constitution* of Kenya, 2010, the *Political Parties Act*, and the ANC's duly registered constitution. The Petitioner further alleges that the impugned actions unlawfully deprived millions of Kenyan citizens of their constitutionally guaranteed rights to freedom of association, political participation, and property, and subverted the national values and principles of democracy, the rule of law, and public participation.
3. The Petitioner seeks the following reliefs from this Court:
 - a. Declaration be and is hereby issued that the actions of the Respondents in dissolving the Amani National Congress Party without the involvement, participation and taking of views from the duly registered and subscribed members of the party are unconstitutional, null and void;
 - b. A Declaration be and is hereby issued that the actions of the Respondents in dissolving the Amani National Congress without the participation of the registered members of the party violates articles 4(2), 10, 38 and 91 of *the Constitution* and are therefore unconstitutional, null and void;
 - c. A Declaration be and is hereby issued that the actions of the Respondents in arbitrarily dissolving the Amani National Congress violate article 36 of *the Constitution* and are therefore unconstitutional, null and void;



- d. A declaration be and is hereby issued that the actions of the Respondents in issuing a Notice for a Special National Delegates Conference just few hours to the scheduled meeting time amounts to an unreasonable and unfair action hence unconstitutional, null and void;
 - e. A declaration be and is hereby issued that the actions of the Respondents at the National Delegates Conference held on 7th February 2024 and the Bomas of Kenya violated *the Constitution* of the Amani National Congress, hence are illegal, null and void;
 - f. A declaration be and is hereby issued that the actions of the Respondents in purportedly entering into a merger between the Amani National Congress and the United Democratic Alliance without having tabled the same as an agenda at the National Delegates Conference are unconstitutional, null and void;
 - g. A declaration be and is hereby issued that the actions of the Respondent in transferring the assets of the Amani National Congress to the United Democratic Party without the involvement and participation of the members of the Amani National Congress are illegal, null and void;
 - h. An order be and is hereby issued in the form of a mandatory injunction for the reverting back to the Amani National Congress, of any property that may have already been transferred from the ownership of the Amani National Congress, to the ownership of the United Democratic Alliance.
 - i. An order be and is hereby issued, quashing the purported decision by the Respondent and their associates to dissolve the Amani National Congress;
 - j. An order be and is hereby issued, quashing the purported decision by the Respondent allegedly entering into a merger between the Amani National Congress and the United Democratic Alliance.
 - k. An order be and is hereby issued, to bring into this court and quash the Gazette Notice No. 3449 dated 7th March 2025, purportedly communicating the dissolution of the Amani National Congress.
4. The Respondents have mounted a robust defence to the petition. The 1st to 4th Respondents, through a Replying Affidavit, maintain that the dissolution of the party was undertaken in strict compliance with the party's internal mechanisms and applicable law, and further dispute the Petitioner's locus standi to institute these proceedings. The 5th Respondent, the Registrar of Political Parties, raises a preliminary jurisdictional objection, asserting that this Court is not the forum of first instance for the dispute and that the Petitioner failed to exhaust the statutory dispute resolution mechanisms provided for under the law.

Background

5. The Amani National Congress (ANC) was a political party duly registered under the laws of Kenya. Its internal affairs and governance were regulated by its constitution, which, in compliance with statutory requirements, was deposited with the Registrar of Political Parties.
6. The chronology of events giving rise to this petition is of central importance. The factual sequence is largely derived from the Petitioner's Supporting Affidavit and the annexed documentary evidence, the material aspects of which particularly as regards timing and sequence remain substantially uncontroverted.



7. On Thursday, 6th February 2025, a notice was disseminated via short message service (SMS) and published on the ANC's official website. The notice, though disseminated on that date, was back-dated to 29th January 2025, and convened a Special Meeting of the National Delegates Congress (NDC) scheduled for 10:00 a.m. on Friday, 7th February 2025, at the Bomas of Kenya, Nairobi. The interval between the dissemination of the notice and the scheduled meeting was approximately fifteen (15) hours.
8. The agenda for the Special National Delegates Congress meeting was explicit and narrowly framed as follows:
 - (ii) Transfer of all party assets and liabilities to the United Democratic Alliance (UDA) Party.”
 - “(i) Dissolution of the Amani National Congress Party; and
9. A meeting was held at the Bomas of Kenya on 7th February 2025 pursuant to the said notice. The Petitioner's case is that the meeting was procedurally defective. He deposes that there was no verification of quorum, which the Amani National Congress constitution stipulates at fifty per cent (50%) of National Delegates Congress members; that the venue was populated by individuals who were not bona fide National Delegates Congress delegates; that no substantive deliberations took place on the agenda; and that no formal vote was conducted to establish the constitutionally required two-thirds majority for dissolution.
10. Notwithstanding the foregoing alleged irregularities, the resolutions purportedly emanating from the meeting were transmitted to the 5th Respondent. By a letter dated 6th March 2025, the 5th Respondent, Registrar of Political Parties acknowledged receipt of the notice, the resolutions, and an attendance register, and concluded that the “voluntary dissolution of Amani National Congress conforms to the provisions of the *Political Parties Act* as read together with the Amani National Congress constitution.” On that basis, the 5th Respondent proceeded to declare the party dissolved.
11. This administrative determination was subsequently formalised through Kenya Gazette Notice No. 3449 dated 7th March 2025, which notified the public that the Amani National Congress had resolved to dissolve and accordingly stood dissolved.
12. Thereafter, on 15th March 2025, the 1st Respondent, Mr. Wycliffe Musalia Mudavadi, issued a press statement announcing that the Amani National Congress had merged with the United Democratic Alliance (UDA). The Petitioner asserts that the question of a merger was neither included in the agenda of the Special National Delegates Congress meeting nor presented to, or sanctioned by, the party's membership. It is against this factual backdrop that the Petitioner, acting in his own interest and in the public interest on behalf of millions of Amani National Congress members, invoked the jurisdiction of this Court under Articles 22 and 258 of *the Constitution*.

The Petitioner's Case

13. The Petitioner, Mr. Stephen Mutoro, swore a Supporting Affidavit on 19th March 2025 and a Further Affidavit on 9th May 2025. His case, as distilled from the petition, affidavits, and written submissions, is anchored on several interrelated grounds, which he contends disclose a cascading series of constitutional and statutory violations.
14. First, the Petitioner alleges a violation of the constitutional principle of public participation and the right to political participation. He invokes Articles 10 and 38 of *the Constitution*, arguing that the dissolution of a political party of national character and extensive membership is not a mere internal



- administrative matter but an existential decision requiring meaningful involvement of the party's members. He contends that the issuance of a mere fifteen (15) hours' notice for the Special National Delegates Congress (hereinafter NDC) meeting was deliberate, unreasonable, and fatal, as it rendered genuine participation illusory, foreclosed informed deliberation, and effectively excluded the majority of delegates particularly those residing outside Nairobi from attendance.
15. Second, the Petitioner asserts a blatant disregard of the ANC's internal governance framework, contrary to section 9 of the *Political Parties Act*. He relies on Article 91 of the ANC constitution, which prescribes dissolution by a resolution passed by a two-thirds majority of members present and voting at a Special NDC meeting, subject to a quorum of fifty per cent (50%) of the total NDC membership. He deposes that none of these constitutional preconditions were satisfied: there was no verification of quorum, no structured deliberation, and no voting. Instead, the resolutions were allegedly read out and adopted by acclamation or so-called "consensus" in a hall occupied by persons who were not bona fide delegates. He contends that this amounted to a fundamental breach of the contractual relationship between the party and its members.
 16. Third, flowing from the alleged procedural impropriety, the Petitioner contends that specific constitutional rights were directly infringed. He argues that the arbitrary dissolution of the ANC unlawfully curtailed his right, and that of other members, to freedom of association under Article 36 of *the Constitution*, and extinguished their political rights under Article 38, including the right to participate in the activities of a political party. He maintains that the party constituted the principal vehicle for collective political expression, and that its unlawful termination deprived members of that platform.
 17. Fourth, the Petitioner raises the question of property rights under Article 40 of *the Constitution*. He contends that party members, through subscriptions and other contributions over time, acquired a collective proprietary interest in the assets of the ANC. The resolution to transfer all party assets and liabilities to the United Democratic Alliance (UDA), purportedly made during the same impugned meeting, is said to have amounted to an arbitrary deprivation of that interest. He emphasises that the transfer was effected without consultation with the membership and was framed as a "donation" rather than a merger, thereby bypassing the statutory safeguards attendant to the latter.
 18. Fifth, the Petitioner characterises the entire process as constituting unfair administrative action in violation of Article 47 of *the Constitution* and the *Fair Administrative Action Act*. He contends that the impugned actions were neither lawful, reasonable, nor procedurally fair.
 19. In addition, in his Further Affidavit and submissions, the Petitioner challenges the competence of the Replying Affidavit filed on behalf of the 1st to 4th Respondents. He argues that the affidavit sworn by Ms. Margaret Emonde Ndanyi is incompetent on the ground that she is not a party to the proceedings, and relies on the decision of the Court of Appeal in *Moiyo Matanya Ole Keiwua v Chief Justice of Kenya & 6 Others* [2008] eKLR. He submits that, in the absence of written authority from the 1st to 4th Respondents, the affidavit is fatally defective and ought to be struck out.
 20. On the question of jurisdiction, the Petitioner distinguishes the act of gazettelement from an appealable administrative decision. He relies on *Charles Nyandusi & 3 Others v Registrar of Political Parties & Another* [2017] eKLR to argue that, once dissolution is gazetted, the political party and its internal organs cease to exist, rendering the exhaustion of internal or statutory remedies impracticable, if not impossible, and thereby justifying the invocation of this Court's jurisdiction.
 21. On public participation, the Petitioner places reliance on *William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others; Muslims for Human Rights & 2 Others (Interested Parties)* [2020]



KEHC 10266 (KLR) and the Supreme Court decision in *British American Tobacco Kenya PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & Another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* [2019] KESC 15 (KLR). He invokes these authorities to articulate the hallmarks of meaningful public participation adequate notice, inclusivity, and the opportunity for informed input and submits that a fifteen-hour notice is the very antithesis of these principles.

22. With respect to procedural compliance, the Petitioner undertakes a detailed comparison between the mandatory provisions of the ANC constitution and the events alleged to have occurred on 7th February 2025, and concludes that there was a wholesale failure to meet the prescribed quorum and voting thresholds.
23. Finally, the Petitioner contends that the impugned dissolution, being both unlawful and procedurally defective, directly and consequentially infringed his constitutional rights, as well as those of other members of the ANC, under Articles 36, 38, and 47 of *the Constitution*. He submits that the arbitrary termination of the party not only curtailed freedom of association and political participation but also constituted an act of unfair administrative action, thereby warranting the intervention of this Court.

The 1st, 2nd, 3rd And 4th Respondents' Case

24. The 1st to 4th Respondents filed a joint Replying Affidavit sworn by Ms. Margaret Emonde Ndanyi on 7th April 2025 and further submitted written arguments dated 20th October 2025. Their defence is structured around three principal contentions: a challenge to the Petitioner's standing, a defence of the procedural propriety of the dissolution, and a denial of any violation of constitutional rights.
25. The Respondents vigorously defended the competency of Ms. Ndanyi's affidavit. They aver that she was the immediate former Executive Director of the ANC, duly authorised by the Respondents to depose the affidavit, and fully conversant with the facts. They invoke Article 159(2)(d) of *the Constitution* to caution against undue formalism, relying also on *Research International East Africa Ltd v Julius Arisi & 213 Others* [2007] eKLR to support the proposition that affidavits may be sworn by non-parties with knowledge of relevant facts. Further reliance was placed in *Damani Drums Limited & Another v George Kimani Mbugua & 3 Others* [2015] eKLR and *Kandara Residence Association & Another v Ananas Holdings Limited & 4 Others; Director of Survey & 3 Others (Interested Parties)* [2020] eKLR.
26. The Respondents' principal preliminary challenge is to the Petitioner's locus standi. They contend that the Petitioner's claim of "Silver Category Life Membership" from 2017 is invalid, given that the ANC constitution was amended in October 2021 to introduce new "Stardom" membership categories and required existing members to renew membership within twelve months. They submit that the Petitioner failed to renew, and was therefore not a member as of February 2025, and consequently lacks the legal standing to challenge internal party decisions. They assert that this threshold defect is fatal to the petition.
27. The Respondents further seek to expunge the 1st Respondent's name from the proceedings, submitting that, as a state officer (Prime Cabinet Secretary), he is prohibited from holding office in a political party under Article 77(2) of *the Constitution* and Section 12 of the *Political Parties Act*. They argue that his joinder constitutes misjoinder, placing reliance on *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 and *Mueke & Another v Co-operative Bank of Kenya Ltd & Another* [2024] KEELC 3992 (KLR). The Respondents describe the suit against the 1st Respondent as misconceived and motivated by a desire to generate adverse publicity.



28. On the merits, the Respondents provide a detailed, chronological account of the dissolution process, supported by annexed minutes and attendance lists. They assert that the process originated from a lawful Council Bureau meeting held on 24th July 2024, which recommended the dissolution, and that this recommendation was subsequently ratified by the Amani Council on 3rd August 2024, thereby authorizing the convening of the National Delegates Congress. They further contend that the National Delegates Congress meeting held on 7th February 2025 was duly convened in accordance with both the Amani National Congress Constitution and the relevant statutory requirements.
29. The Respondents jointly contend that the Petition is entirely without merit, speculative, and procedurally defective. They assert that the dissolution of the Amani National Congress was conducted in strict compliance with both the Amani National Congress Constitution and the *Political Parties Act*. They further submit that security personnel were deployed to verify the attendance of delegates, and that the resolutions were duly proposed, seconded, and approved by an “overwhelming consensus,” which, in their submission, satisfied the constitutional requirement of a two-thirds majority.
30. They further argue that by satisfying the required quorum and majority thresholds, the Amani National Congress acted in accordance with Section 11 of the *Political Parties Act* and its constitution, and that the Registrar was consequently duty-bound to gazette the dissolution. Reliance was placed on *Republic v Registrar of Political Parties & Another Ex Parte Kennedy Okong’o* [2017] eKLR.
31. The Respondents submit that, by joining the ANC, members accepted the binding effects of resolutions passed in accordance with *the constitution*. They contend that the Petitioner’s claim of violation of Articles 36 and 38 reflects a misapprehension of collective party democracy. Citing *International Centre for Policy and Conflict v Attorney General & Another* [2019] eKLR and *Law Society of Kenya v Attorney General & Another* [2019] eKLR, they argue that political rights must be balanced against collective decision-making, and that compliance with constitutional thresholds by the majority cannot be invalidated by minority dissent.
32. On public participation, the Respondents argue that, in the context of a political party, participation is effected through representative organs as set out in the party constitution. They submit that requiring direct plebiscites of millions of members for every decision is impractical and not envisaged by law. The National Delegates Congress, as the supreme representative organ, was the appropriate forum. They rely on *Legal Advice Centre & 2 Others v County Government of Mombasa & 2 Others* [2021] eKLR to assert that public participation is limited to those immediately affected by a decision.
33. The Respondents further submit that “consensus” is a valid method of achieving the two-thirds majority and that the Petitioner has not demonstrated any specific provisions of the PPA, ANC constitution, or Rule Book that were breached.
34. On property rights, the Respondents rely on Section 16 of the *Political Parties Act*, which confers corporate personality on a registered party. They argue that the ANC, as a corporate entity, lawfully owned its assets and that the transfer of assets to United Democratic Alliance upon dissolution was a lawful act of the corporate body, not an infringement of individual members’ personal property rights.
35. Regarding whether the Petitioner has made out a case, the Respondents contend that he has failed to plead with sufficient particularity the exact provisions of *the Constitution* allegedly violated, and the manner of such violation. They rely on *Nasra Ibrahim Ibren v Independent Electoral and Boundaries Commission & 2 Others* [2018] eKLR in support of this submission.



36. The Respondents assert that all actions taken were within statutory and constitutional bounds, and that the Petitioner has failed to discharge the burden of proof. They therefore pray that the petition be dismissed with costs.

The 5th Respondent's Case

37. The 5th Respondent, the Registrar of Political Parties filed a Replying Affidavit sworn by Mr. Wafula Wakoko on 13th May 2025, together with detailed written submissions. Its defence is predominantly jurisdictional and procedural in nature.
38. The 5th Respondent describes its role as essentially administrative and verificatory. It deposes that upon receipt of the dissolution documents including the notice, resolutions, and attendance list from the Amani National Congress officials, its statutory duty under Sections 9 and 11 of the *Political Parties Act* was to examine them for facial compliance with both the Act and the party's constitution. Having concluded that the requirements were satisfied, the Registrar of Political Parties issued Gazette Notice No. 3449, formally communicating the dissolution.
39. The Registrar of Political Parties' principal submission is that this Court lacks jurisdiction to entertain the Petition as a first-instance matter. It invokes the doctrine of exhaustion of remedies, anchored in Section 9 of the *Fair Administrative Action Act* and Section 40 of the *Political Parties Act*. It submits that the Petitioner's proper recourse was twofold: (i) to exhaust the internal dispute resolution mechanisms of the ANC, and (ii) failing that, or in relation to the Registrar of Political Parties' action, to appeal to the Political Parties Disputes Tribunal ("PPDT") under Section 40(1)(f) of the Act. The Registrar of Political Parties contends that the Petitioner's failure to follow this statutory dispute resolution pathway precludes him from invoking this Court's original jurisdiction. Reliance is placed on the decisions in *Kweri v Beehive Media Limited; Capwel Industries Limited (Interested Party)* (Constitutional Petition E321 of 2021) [2023] KEHC 2684 (KLR), *Republic v Registrar of Political Parties & 6 Others Ex Parte Edward Kings Onyancha Maina & 7 Others* [2017] eKLR, *Ribathi & 2 Others v Office of Registrar of Political Parties & 2 Others* (Petition E442 of 2021) [2023] KEHC 1851 (KLR), and *Geoffrey Muthiga Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* [2015] eKLR.
40. Further reliance was placed on *Godfrey Osotsi v Amani National Congress Party* [2019] eKLR and *Stephen Asuna Achieng & 2 Others v Orange Democratic Movement Party & 2 Others* [2011] eKLR], demonstrating the consistent judicial practice of directing internal political party disputes first to party mechanisms and the PPDT.
41. The 5th Respondent also argues that the gazettelement was a mere administrative communication of a decision already made by the party, and not an independent or appealable "decision" of the Registrar. It submits that the Petition discloses no cause of action against the Registrar of Political Parties, as the Petitioner has not shown how the act of gazettelement, performed pursuant to statutory duty, independently violated any of his constitutional rights. The allegations concerning denial or infringement of rights, it contends, relate specifically to the actions of the 1st to 4th Respondents.
42. The 5th Respondent further submits that the Petitioner has failed to establish any ground for quashing the decision to dissolve the Amani National Congress as communicated in Gazette Notice No. 3449. Relying on *Republic v Registrar of Political Parties & 6 Others Ex Parte Edward Kings Onyancha Maina* (supra), it contends that the Gazette Notice was issued in full compliance with the *Political Parties Act*.



43. The 5th Respondent, the Registrar of Political Parties argues that the Petitioner has failed to properly challenge its action under Section 40(1)(f) of the *Political Parties Act*, having not filed any appeal before the Political Parties Disputes Tribunal in relation to the Gazette Notice. On this basis, it urges that the Petition be dismissed with costs.

Analysis And Determination

44. Having carefully considered the pleadings, affidavit evidence, the rival written submissions, and the applicable constitutional and statutory framework, the Court is of the view that the following issues properly arise for determination:
- a. Whether the Replying Affidavit sworn by Margaret Emonde Ndanyi on behalf of the 1st to 4th Respondents is competent and admissible in these proceedings;
 - b. Whether the Petitioner, Stephen Mutoro, possesses the requisite locus standi to institute and maintain this constitutional petition;
 - c. Whether this Honourable Court has jurisdiction to entertain this petition, or whether the Petitioner is precluded by the doctrine of exhaustion of alternative statutory remedies;
 - d. Whether the process leading to the purported dissolution of the Amani National Congress party was conducted in compliance with: The constitutional principles of public participation, fairness, and legitimate expectation; and the specific procedural mandates prescribed by the registered constitution of the Amani National Congress party;
 - e. Whether the actions of the Respondents, collectively and severally, violated the Petitioner's (and other ANC members') fundamental rights and freedoms under Articles 36, 38, and 40 of *the Constitution*; and
 - f. What final orders and remedies, if any, should this Court grant in respect of the Petition

The Competency of the Affidavit by Margaret Emonde Ndanyi

45. The threshold procedural objection raised by the Petitioner warrants immediate consideration, as it bears directly on the evidential foundation of the 1st to 4th Respondents' case. The Petitioner seeks the expungement of the Replying Affidavit sworn on 7th April 2025 by Ms. Margaret Emonde Ndanyi, who is not a party to these proceedings, relying on the Court of Appeal's definitive pronouncement in *Moiyo Matanya Ole Keiwua v Chief Justice of Kenya & 6 Others* (supra). The principle established therein is clear and unequivocal:

“Affidavits which are sworn by persons who are not parties to the proceedings before the court are incompetent and ought to be expunged from the court record.”

46. In further elucidation of this principle, the High Court in *David Gichiri & 3 Others v Emmah Kerubo Sese* [2021] KEHC 7144 (KLR) dismissed an application supported by an affidavit sworn by a person who was not a party to the proceedings, holding that such an affidavit was incompetent. In its reasoning, the Court emphasized that affidavits must be sworn by parties to the proceedings or by persons duly authorised and competent to depose, failing which the affidavit cannot form part of the evidential record. The court held;

“The court has considered the material canvassed in respect of the motion. As a preliminary point the Court must determine whether the motion before it is fatally defective as argued



by the Respondent. By her replying affidavit the Respondent raised objection to the fact that the motion was supported by an affidavit sworn by a stranger to the proceedings. The matter was further raised in her written submissions. On their part, the Applicants did not address themselves to the objection. The Court has considered the Respondent's submissions and the affidavit supporting the motion. No authority to plead on behalf of the Applicants has been filed by the deponent to the supporting affidavit...The motion before the Court is founded upon a premature invocation of the principle of subrogation by the insurance company. Hence the deponent to the affidavit supporting the motion is a stranger to these proceedings..."

47. The principle against affidavits sworn by non-parties is not a mere technicality; it serves the cause of substantive justice. It ensures that the evidentiary burden in litigation is borne by the parties themselves, or by persons so intimately connected to the dispute and the relief sought that they share in its consequences. It prevents the proliferation of evidence from "busybodies" or individuals with attenuated interest, who are neither accountable for costs nor bound by the Court's ultimate orders. Order 19 Rule 3 of the Civil Procedure Rules, which confines affidavits to facts within the deponent's knowledge, presupposes a deponent who is a competent witness. A stranger to the proceedings, without more, lacks this foundational competence.
48. The 1st to 4th Respondents' attempt to circumvent this principle is unpersuasive. Their reliance on Article 159(2)(d) of *the Constitution* is misplaced. The rule against non-party affidavits is not a mere technicality; it is a rule of evidence and procedure designed to guard against abuse of court process and to ensure fairness. The authorities cited, including *Research International East Africa Ltd. v Julius Arisi & 213 Others* (supra), are distinguishable. Those cases typically arise where a non-party deponent is the only person with direct knowledge such as a corporate officer speaking on behalf of a corporate party where authority is demonstrably conferred or clearly established.
49. In *Kandara Residence Association & Another v Ananas Holdings Limited & 4 Others; Director of Survey & 3 Others (Interested Parties)* (supra), the Court stressed the importance of establishing written authority. In the present matter, the deponent, Ms. Margaret Emonde Ndanyi, identifies herself merely as the "immediate former Executive Director." She claims verbal authority, but adduces no documentary proof, resolution, or letter of authorization from the 1st to 4th Respondents, all of whom are natural persons capable of swearing their own affidavits. Her connection to the dispute is historical and professional, not proprietary or personal, and does not justify her assuming the role of the named Respondents.
50. Further, the Respondents' argument that Ms. Ndanyi is the most conversant with the facts elevates convenience over principle. Where a deponent possesses exclusive knowledge, the proper course is to summon that person as a witness at the hearing, so that evidence may be tested under cross-examination. Allowing a non-party affidavit to stand would invert the principle, permitting crucial, contested evidence to be presented in a sworn but untested format, thereby depriving the Petitioner of the opportunity to subject the evidence to immediate adversarial testing and resulting in an uneven evidentiary landscape.
51. For these reasons, the Court upholds the Petitioner's objection. The Replying Affidavit of Margaret Emonde Ndanyi, sworn on 7th April 2025, is hereby struck out and expunged from the record. The practical consequence is that the detailed factual narrative, annexures, and assertions contained therein are not properly before the Court in determining the substantive merits. The 1st to 4th Respondents' case on the chronology of the dissolution process, the validity of the Petitioner's membership, and the



particulars of NDC meeting, as contained in that affidavit, therefore collapse. Their defence on the merits now rests solely on legal arguments advanced in their written submissions.

The Locus Standi of the Petitioner

52. The 1st to 4th Respondents' challenge to the Petitioner's standing is two-pronged: first, that he was not a member of the Amani National Congress at the material time; and second, that, accordingly, he cannot challenge internal party decisions. This issue must be assessed through the generous lens of constitutional standing, as articulated by the Supreme Court in *Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2014] KESC 6 (KLR). The Court departed from the restrictive, private-law conception of standing, which demands a direct personal or proprietary interest, and embraced instead a broader public-law approach focused on the protection and vindication of constitutional norms. In matters touching on the public interest and the enforcement of fundamental rights, the Court emphasised that overly rigid notions of locus standi should not impede access to justice.
53. Articles 22 and 258 of *the Constitution* provide the statutory and constitutional foundation for this liberal approach. They confer upon "every person" the right to institute proceedings for the enforcement of *the Constitution* or the Bill of Rights. Importantly, this entitlement is not conditional upon demonstrating a personal, pecuniary, or proprietary loss exceeding that of the general public. Particularly in cases raising significant public interest or questions affecting the rights of large groups, a narrow conception of standing would impermissibly shield unconstitutional conduct from judicial scrutiny.
54. Turning to the factual challenge to the Petitioner's membership, the evidentiary position is now clear. With the expunging of the affidavit of Ms. Ndanyi, the Respondents' claim that the Petitioner's membership had lapsed is unsupported by any admissible evidence. Conversely, the Petitioner has tendered his Membership Certificate, Serial No. 0000280, issued on 8th March 2017, identifying him as a Silver Category Life Member No. 03906622. This prima facie evidence stands uncontroverted. The Respondents' unsupported assertions in their written submissions, devoid of evidential foundation, cannot discharge the burden of disproving this fact.
55. Even assuming, arguendo, any doubt as to his individual membership status, the nature of this petition transcends a mere personal grievance. The Petitioner has framed it as an action brought also in the public interest under Article 258, on behalf of the millions of registered Amani National Congress members. The issues he raises namely, the lawfulness of the dissolution of a major national political party, adherence to democratic internal processes, the protection of political rights en masse, and the disposition of party assets are quintessential matters of high public importance. They bear directly on the integrity of political association, the exercise of fundamental freedoms, and the preservation of multi-party democracy under Articles 4(2) and 91 of *the Constitution*. In such circumstances, as held in *Matemu* (supra), the Court is obliged to adopt a flexible and purposive approach. A petitioner, even with a tangential connection, may be accorded standing where strict adherence to private-law thresholds would risk allowing constitutional violations to escape judicial scrutiny due to the diffusion of interest among the affected multitude.
56. This approach is further reinforced by the reasoning in *Njoya & 6 Others v Attorney General*, Miscellaneous Application 82 of 2004 (OS), which, adopting the principles in *Ruturi & Another v Minister of Finance & Another* (2001) 1 EA 253, stated inter alia:

"...we are persuaded by the second school of thought for reasons that, in our view, the Court's first role should be to uphold constitutionalism and the sanctity of *the Constitution*. We think such a role cannot be well performed by shutting the door of the Court on the face



of persons who seek to uphold *the Constitution* on the ground that such persons have no peculiarly personal stake in a matter which belongs to all.”

57. This pronouncement underscores the essential constitutional principle that locus standi in matters affecting public interest must be determined with a view to facilitating access to justice and ensuring the enforcement of constitutional norms, rather than restricting remedies to those with narrow personal stakes.
58. In the present case, the Petitioner has demonstrated a sufficient interest and cannot be regarded as a mere busybody. He raises matters of substantial public and constitutional importance, and the relief sought, if granted, would benefit a large constituency of affected members. In light of the foregoing, I find and hold that the Petitioner possesses the requisite locus standi to prosecute this petition.

Jurisdiction and the Doctrine of Exhaustion

59. The 5th Respondent’s jurisdictional objection is a serious preliminary matter that warrants close and careful scrutiny. Its resolution requires a detailed examination of the relevant statutory framework, the legislative intent underpinning the *Political Parties Act*, and the character and gravity of the dispute before this Court, particularly in light of the constitutional questions raised. The objection is grounded in Section 40 of the *Political Parties Act* and Section 9 of the *Fair Administrative Action Act*.
60. Section 40(1) of the *Political Parties Act* delineates the jurisdiction of the Political Parties Disputes Tribunal (PPDT). It expressly includes disputes between a member and a political party (40(1)(b)) and appeals from decisions of the Registrar (40(1)(f)). Section 40(2) further conditions the Tribunal’s hearing of internal disputes on the prior exhaustion of internal party mechanisms.
61. The 5th Respondent contends that the Petitioner’s grievance constitutes a dispute between a member and the party, and/or an appeal against the Registrar’s decision to gazette the dissolution, which must therefore first go to the PPDT. While this argument has structural merit, it falters upon a substantive examination of the nature of the present dispute and the function of the Registrar of Political Parties’ gazettment.
62. The doctrine of exhaustion of alternative remedies obliges parties to first explore mechanisms provided for dispute resolution before invoking the courts. To invoke this doctrine, the following conditions must ordinarily be satisfied:
- i. That a mechanism exists to resolve the dispute;
 - ii. That the mechanism is lawful, fair, and capable of providing an objective determination; and
 - iii. That the mechanism is expeditious, efficient, reasonable, and procedurally fair, in line with Article 47(1) of *the Constitution*.
63. The doctrine encourages parties to seek alternative resolution avenues and positions courts as fora of last resort. In *Geoffrey Muthinja Kabiru & 2 others v Samuel Muguna Henry & 1756 others* (supra), the Court of Appeal emphasized that courts ought to defer to pre-existing dispute resolution mechanisms to ensure parties are diligent in exhausting remedies before seeking judicial intervention.
64. In *Republic v Cabinet Secretary of the National Treasury & 5 others Ex parte Gitson Energy Ltd* [2021] eKLR, Nyamweya J highlighted that courts may bypass exhaustion where the alternative remedy is inadequate or cannot deliver the substantive outcome sought. Section 9(4) of the *Fair*



Administrative Action Act similarly allows courts to dispense with the exhaustion requirement where strict adherence would contravene constitutional values or fairness. The court held thus;

“In considering whether an alternative remedy is effective, the Court must consider the adequacy of the alternative remedy as a matter of substance in addition to its availability. In this respect the alternative remedy should be convenient, expeditious and effective in practical terms, and the procedure employed should provide the claimant with the outcome sought as a matter of substance. It is for this reason that section 9 (4) of the Fair Administrative Action Act, provides that the Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. (Emphasis added).

65. The court must assess the suitability of the statutory forum in resolving the specific dispute and whether the alternative forum can deliver an adequate remedy. While the exceptions to the exhaustion requirement are not clearly delimited, the Court of Appeal gave guidelines when they would apply. In *Republic v National Environment Management Authority*, Civil Appeal No. 84 of 2010, as follows

“... where there was an alternative remedy and especially where Parliament had provided a statutory appeal process it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the real issue is to be determined and whether the statutory appeal procedure was suitable to determine it...The learned judge, in our respectful view, considered these strictures and come to the conclusion that the Appellant had failed to demonstrate to her what exceptional circumstances existed in its case which would remove it from the appeal process set out in the statute.”

66. Kenyan jurisprudence consistently recognizes that courts may disregard the exhaustion requirement where the statutory forum is ineffective, inaccessible, or where the dispute raises significant public or constitutional questions beyond the competence of the alternative forum. Cases such as *Mui Coal Basin Local Community* [2013] eKLR and *R. v IEBC & Others Ex parte NASA Kenya & Others* [2018] eKLR underscore the need for courts to weigh the nature of the interests involved, the level of public importance, and the polycentricity of the issues.

67. In the present case, the Petitioner contends that the Amani National Congress has been dissolved; consequently, the party’s internal dispute resolution organs no longer exist. To compel the Petitioner to exhaust non-existent internal mechanisms would create a classic ‘Catch-22,’ an outcome that the law cannot reasonably require or countenance. Moreover, the gravamen of the petition is not a routine internal disciplinary or nomination dispute but a challenge to the constitutional validity of the very act terminating the party’s existence. Such issues were plainly not intended to be finally resolved by an internal party committee.

68. Regarding the 5th Respondent, the Registrar of Political Parties, the critical question is whether the gazettelement constitutes an appealable decision. In *Charles Nyandusi & 3 Others v Registrar of Political Parties & Another* (supra), the High Court held that the Registrar’s role upon receiving dissolution documents is mandatory and ministerial. The gazettelement is a formal communication of a *fait accompli*, not an exercise of quasi-judicial discretion, and thus is not an appealable decision. I adopt this reasoning. The Registrar of Political Parties’ letter of 6th March 2025 confirms that the documents



submitted conformed to statutory requirements a verification, not adjudication. To treat it otherwise would contravene the plain language of the Act.

69. The authorities cited by the 5th Respondent, including *Ribathi & 2 others v Office of Registrar of Political Parties & 2 others* (supra), are distinguishable. Those cases involved disputes clearly within the Political Parties Disputes Tribunal's primary remit or discretionary acts of the Registrar, such as issuance of registration certificates. In contrast, the present dispute raises fundamental constitutional questions regarding the dissolution of a political party and the protection of political rights, which are matters squarely within the original jurisdiction of this Court. As held in *Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others* (supra):

“Where a suit primarily seeks to enforce fundamental rights and freedoms, and the claimed violations are not mere ‘bootstraps’ or pretexts, it is not barred by the doctrine of exhaustion.”

70. Similarly, in *Fleur Investments Limited v Commissioner of Domestic Taxes & another* [2018] eKLR, the Court of Appeal held that courts may intervene notwithstanding statutory remedies where exceptional circumstances exist, particularly where there is clear abuse, arbitrariness, or malfeasance in the exercise of statutory powers. The court held the following while relying on an earlier decision in *Speaker of National Assembly v Njenga Karume* [1990-1994] EA 546:

“23. For the reasons we have given earlier and others that will become apparent, there were definitely exceptional circumstances that existed in this case that were outside the ambit of the Income Tax Tribunal which called for intervention by way of judicial review. Whereas Courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

71. Academic commentary supports this approach. Walter Khobe Ochieng observes that the principle of constitutional avoidance is not absolute. In circumstances where there is a palpable, direct, and clear violation of *the Constitution*, and where non-constitutional remedies are inadequate, unavailable, or incapable of providing effective relief, courts are duty-bound to address the matter directly. To do otherwise would risk allowing constitutional rights to be “wasted away.” As Ochieng notes in *From Constitutional Avoidance to the Primacy of Rights Approach to Adjudication in Kenya: A Case Study of the Interplay Between Constitutional Rights and the Law of Contract* (2022) 6 *Kabarak Journal of Law and Ethics* 160: -

“However, it should be noted that the principle that constitutional issues should be avoided is not an absolute rule. It does not require that litigants may only invoke *the Constitution* as a last resort. Just like all legal principles, context is a key imperative and circumstances of the case at hand will dictate the applicability of the doctrine of avoidance. In instances where a palpable, direct and clear violation of *the Constitution* is evident, and non-constitutional relief is not readily apparent, the dispute ought to be resolved through the direct application



of constitutional norms. An overly cautious attitude, comfortable with directing most litigants to statutory remedies, might abdicate the court's obligation to protect and promote the values that underpin the Bill of Rights.

On its face, this salutary rule of constitutional avoidance seems unobjectionable. However, misgivings have been expressed as to the propriety of a full-blown deployment of this approach with some scholars arguing that it 'wastes away rights'. Stu Woolman, for instance, has argued that the avoidance approach has deleterious consequences as it undermines the bill of rights and the rule of law. Woolman notes that a muscular maximalist approach could play the role of in."

72. In the present case, the petition raises direct, substantial, and complex constitutional questions regarding conformity with Articles 10, 36, 38, 40, and 47 of *the Constitution*. Under Article 165(3) (b) and (d)(ii), this Court has original and unlimited jurisdiction to interpret *the Constitution* and determine the validity of acts alleged to contravene it. The statutory alternative forum the Political Parties Disputes Tribunal is unsuitable to resolve the constitutional core of this dispute, and the Registrar of Political Parties' gazettement is not an appealable decision. Accordingly, the 5th Respondent's jurisdictional objection is unmerited and is hereby overruled.

Compliance with Due Process and the Amani National Congress Constitution

73. This issue constitutes the substantive core of the petition. It calls for a two-tiered analysis: first, compliance with constitutional standards of public participation and fairness; and second, adherence to the specific rules enshrined in the Amani National Congress party constitution.

Constitutional Standards: Public Participation, Legitimate Expectation & Fairness

74. The national value and principle of participation of the people is enshrined in Article 10(2)(a) of *the Constitution*. In the context of political parties, this principle is given practical effect by Article 38, which guarantees every citizen the right to participate in the activities of a political party. Political parties are not private fiefdoms; they are public entities whose governance must reflect democratic principles. They are central vehicles for realizing the sovereign will of the people under Article 1.
75. The right to participate in governance processes must be real and substantive, not illusory. Our law provides detailed requirements to operationalize constitutional participation. I am in full agreement with the reasoning of Odunga J. in *Robert N. Gakuru & Others v Governor Kiambu County & 3 Others* (2014) eKLR, wherein the learned Judge, relying on the South African Constitutional Court in *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC), elaborated:

"In my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behooves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough, in my view, to simply 'tweet' messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many



fora as possible such as churches, mosques, temples, public barazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action. Article 196(1) (b) just like the South African position requires just that. Dealing with the issue I wish to reiterate what was held in *Doctors for Life International v Speaker of the National Assembly and Others* (supra) to the effect that: ‘The phrase “facilitate public involvement” is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this phrase are “facilitate” and “involvement”. To “facilitate” means to “make easy or easier”, “promote” or “help forward”. The phrase “public involvement” is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of “involve” includes to “bring a person into a matter” while participation is defined as “[a] taking part with others (in an action or matter); ... the active involvement of members of a community or organization in decisions which affect them”. According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something...’

76. On appeal, the Court of Appeal affirmed the above principles in *Kiambu County Government & 3 others v Robert N. Gakuru & Others* [2017] eKLR, stating:

“ [20] ...The issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. *The Constitution* in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation...”

77. Public participation must include, and be seen to include, the dissemination of information, invitation to participate, and genuine consultation. It is incumbent upon the party or institution required to comply to prove, as a matter of fact, that these standards were met.

78. Meaningful public participation must be intentional, inclusive, and substantive not a cosmetic exercise or tokenistic formality. Those most affected by a policy, decision, or action must have the greatest voice in shaping it.

79. The Supreme Court, in *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* (supra), emphasized that effective public participation requires clarity of the subject matter, adequate notice, and inclusive representation.

80. Applying these standards to the dissolution of the Amani National Congress is starkly revealing. The National Delegates Congress (“NDC”) meeting called to effect dissolution was convened on a mere 15-hour notice. This timeframe is not merely inadequate; it is derisory. It effectively excluded the majority of delegates, particularly those outside Nairobi, from participating, creating an information asymmetry favoring a select, presumably Nairobi-based cohort. This process undermines inclusivity and suggests a pre-determined outcome rather than a genuine consultative exercise.

81. Furthermore, the process violated principles of legitimate expectation and fair administrative action under Article 47. Party members had a legitimate expectation, reinforced by the party constitution, that a decision of this magnitude would follow a process allowing representative input. A 15-hour notice is manifestly unreasonable and procedurally unfair, violating the essence of the *audi alteram partem*



rule. I therefore find that the process leading to the National Delegates Congress was constitutionally flawed and inconsistent with the principles of public participation and fair administrative action.

Compliance with the Amani National Congress Party Constitution

82. Internal party governance rules, embodied in the party constitution, constitute a binding contractual framework between the party and its members, underpinned by Section 9 of the *Political Parties Act*. The Petitioner tendered the Amani National Congress Constitution (SM-2). Article 91, titled “Dissolution,” provides unambiguously that the party may be dissolved by a resolution passed by a two-thirds majority of members present at a special National Delegates Congress meeting convened for that purpose. The quorum for such a meeting is 50% of the total National Delegates Congress membership.
83. The Petitioner’s uncontroverted sworn testimony establishes that:
- d. No formal vote was taken to ascertain a two-thirds majority; a call for acclamation or “consensus” was used instead.
 - c. Agenda items were not deliberated; pre-written resolutions were simply read out;
 - b. Non-delegate persons were admitted to the meeting;
 - a. No verification was conducted to confirm whether 50% of National Delegates Congress members were present;
84. The evidential burden accordingly shifted to the Respondents to prove compliance. That burden has not been met. The attendance list relied upon was part of the expunged affidavit and, in any event, provides no verification that those present were bona fide National Delegates Congress members or that the quorum requirement was satisfied.
85. The two-thirds majority requirement is a precise, quantifiable threshold, ensuring protection of the minority against domination by a simple majority. Claims of “consensus” or acclamation are legally insufficient. Consensus is unquantifiable and easily manipulated; it provides no verifiable record of support, opposition, or abstention. Accepting it as meeting a two-thirds vote would subvert the democratic safeguards enshrined in the party constitution. The absence of a verifiable vote is, by itself, a fatal procedural defect.
86. In light of the unchallenged evidence, I find that the special National Delegates Congress meeting of 7th February 2025 did not comply with the mandatory procedural requirements of notice, quorum, or method of resolution as required under the Amani National Congress constitution. The meeting was therefore unlawfully convened, and any resolutions purportedly adopted are null and void.

Violation of Constitutional Rights

87. The unlawful process, as identified above, has immediate and substantial consequences for the enjoyment of fundamental rights. In particular, it engages Articles 36 and 38 of *the Constitution*, which guarantee the freedoms of association and political participation.
88. The right to freedom of association under Article 36 is not confined to the mere act of registering membership in an association. It encompasses the right to the continued existence and democratic functioning of the association itself. Similarly, Article 38 guarantees every citizen the right to participate in the activities of a political party. The unlawful termination of the party constitutes the ultimate denial of this right. It effectively pulls the political platform from under the feet of its members. In *Charles Muturi Macharia & 6 Others v Standard Group & 4 Others SC Petition No.13*



(E015) of 2022, the Supreme Court emphasized that constitutional rights must be given a generous and purposive interpretation, highlighting this position as follows: -

“The canons of constitutional interpretation that have been infused in our judicial system over the years and which are today expressed in Article 259 of *the Constitution*, adjure the courts to interpret *the Constitution* in a manner that promotes its purposes, values and principles and contributes to good governance. Those constitutional values and principles are expressed in the Preamble to include a commitment to nurturing and protecting the well-being of the individual, the family, communities and the nation: the recognition of the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. This is in addition to the consideration of national values and principles of governance under Article 10 of *the Constitution*. They are also discoverable through purposive, holistic, organic and liberal interpretations of *the Constitution*.”

89. The arbitrary and procedurally defective dissolution of the Amani National Congress, as found, constitutes a severe and unjustifiable infringement of the Petitioner’s and other members’ rights under Articles 36 and 38. The members’ chosen vehicle for political association and participation was unlawfully dismantled, extinguishing their capacity to exercise these constitutionally protected rights.
90. Article 40 of *the Constitution* of Kenya, 2010 guarantees the right of every person, individually or collectively, to acquire, own, use, and dispose of property of any description, anywhere in Kenya. It protects individuals and groups from arbitrary deprivation of property or interests in property, ensuring that any interference with property rights is lawful, reasonable, and non-discriminatory. *The Constitution* permits deprivation of property only for a public purpose or in the public interest, and then strictly in accordance with the law, including the payment of prompt and just compensation. Article 40 further confers a right of access to the courts for any person aggrieved by a deprivation, ensuring judicial oversight of state or third-party actions affecting property. In essence, the provision safeguards the security of property, prevents arbitrary dispossession, and guarantees a legal and compensatory framework whenever property rights are affected.
91. The Respondents correctly note that, under Section 16 of the *Political Parties Act*, a registered party is a body corporate and that legal title to its assets vests in the corporate entity. However, the Petitioner’s claim is more nuanced. It does not concern individual title to specific assets, but rather challenges the process by which the corporate entity purportedly alienated all its assets, arguing that such process was unlawful and constituted an arbitrary deprivation of the collective property interest of members and stakeholders.
92. The decision to donate all assets to another party was made during the same flawed National Delegates Congress meeting. Since the foundational resolution to dissolve the party was unlawful, any consequential act flowing from it is likewise tainted by illegality. Members had a collective interest, grounded in both their financial and non-financial contributions, to ensure that the party’s assets were applied in accordance with lawful procedures or for lawful purposes. The purported donation, decided in an unlawful meeting without meaningful member consultation, was arbitrary. In *Wanderi & 106 others v Engineers Registration Board & 7 others; Egerton University & another (Interested Parties)* [2018] KESC 54 (KLR), the Supreme Court reiterated that a court cannot sanction an act done without legal authority, observing:

“In examining Article 47(1) of *the Constitution*, the starting point is a presumption that the person exercising the administrative power has the legal authority to exercise that authority.



Once satisfied as to the lawfulness of the power exercised, is when the court will delve into inquiring whether in the carrying out of that administrative action, there was violation of Article 47(1). This is the test of legality. So that the question of the unlawfulness or otherwise to act is at the onset of the inquiry. Where the act done was ultra vires the mandate of the administrative entity, the act is void ab initio and the inquiry stops there as there is an outright violation of *the Constitution*. The question of legality or the lawfulness of an act lies at the core Article 47(1).”

93. The asset transfer therefore lacked lawful authority, being predicated on a void resolution. This unlawful alienation infringed the members’ collective property interest and constituted a breach of Article 40 of *the Constitution*.

94. In conclusion, this petition is overwhelmingly meritorious. The process that culminated in the gazetted dissolution of the Amani National Congress, was irredeemably flawed. It violated the constitutional imperatives of public participation and fair administrative action, and brazenly disregarded the procedural safeguards enshrined in the party’s registered constitution. Consequently, the dissolution was arbitrary, unlawful, and unconstitutional, directly infringing upon the fundamental rights of association, political participation, and property of the party’s members.

95. In *Charles Muturi Macharia & 6 Others v Standard Group & 4 Others* (supra), the Supreme Court provided guidance regarding remedies in constitutional matters:

“By the provisions of Articles 22 and 23 of *the Constitution*, the High Court has the power and authority to enforce and uphold the Bill of Rights in claims of infringements. In proceedings brought by any person claiming that a right or fundamental freedom has been denied, violated or infringed, or is threatened, the court may, under Article 23 grant appropriate relief, including: a. a declaration of rights

- b. an injunction
- c. a conservatory order
- d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under article 24.
- e. an order for compensation
- f. an order of judicial review.”

96. Further, in *Gitobu Imanyara & 2 Others v Attorney General*, SC Petition No. 15 of 2017, the court described Article 23 as “the launching pad of any analysis on remedies for Constitutional violations.” The principle has been repeatedly affirmed, including in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; *Initiative for Strategic Litigation in Africa (Amicus Curiae)*, SC Petition No. 3 of 2018; [2021] KESC 34 (KLR). Article 23(3) provides a non-exhaustive list; the Court may grant any other appropriate relief, exercising judicial discretion guided by known legal principles, and not arbitrarily, whimsically, or capriciously.

97. In *Bitange Ndemo v Director of Public Prosecutions & 4 others* [2016] eKLR, the Court held:

“A declaration is a formal statement by the court pronouncing upon the existence or non-existence of a legal constitutional state of affairs. It declares what the legal position is and what are the rights of the parties. It does not contain an order which can be enforced against



the respondents, as it only declares what is the legal position. It is not a coercive remedy and can be carefully couched or tailored so as not to interfere with the activities of public authorities more than is necessary to ensure that those public authorities comply with the law.”

98. In view of the foregoing, I opine that the following reliefs commend themselves to this Court to grant in this Petition, which I hereby grant as follows: -

- a. A declaration be and is hereby issued that the convening of the Special Meeting of the National Delegates Congress of the Amani National Congress on 7th February 2025, and all resolutions purportedly passed therein, including the resolution to dissolve the party and to transfer its assets and liabilities, were conducted in violation of *the Constitution* of Kenya 2010, the *Political Parties Act*, and the registered Constitution of the Amani National Congress party; and are therefore individually and collectively unconstitutional, unlawful, null and void ab initio;
- b. A declaration be and is hereby issued that the Gazette Notice No. 3449 dated 7th March 2025, published by the 5th Respondent, the Registrar of Political Parties, which communicated the dissolution of the Amani National Congress party, is unconstitutional, unlawful, null and void.; and consequently, the said Gazette Notice be and is hereby quashed;
- c. A declaration be and is hereby issued that the Amani National Congress political party remains a duly registered political party under the Laws of Kenya, and its full registration status and legal personality are hereby restored and recognized as having never been lawfully terminated;
- d. An order of mandamus be and is hereby issued compelling the 5th Respondent, the Registrar of Political Parties, to take all necessary administrative steps to give immediate effect to Declarations above; including, but is not limited to, updating the register of political parties to reflect the Amani National Congress’s active status, removing any record of its dissolution, and communicating this restoration to all relevant State organs and the public;
- e. A permanent injunction be and is hereby issued restraining the 1st, 2nd, 3rd, 4th, and 5th Respondents, their agents, servants, employees, or any person acting under their authority or instruction, from transferring, assigning, alienating, charging, or in any other way interfering with the assets, properties, funds, and records that were held in the name of the Amani National Congress party as of 6th February 2025 without having followed due process and all applicable provisions internal to the party as well as applicable under the Law;
- f. An order be and is hereby issued directing the immediate reversion to the Amani National Congress party of any assets, properties, funds, or records that may have been transferred to the United Democratic Alliance or any other entity pursuant to or in reliance on the unlawful resolutions of 7th February 2025 or the consequent unlawful Gazette Notice; and
- g. Each party shall bear its own costs.

Orders accordingly.

File Closed Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY 22ND DAY OF JANUARY 2026.

BAHATI MWAMUYE MBS

JUDGE



In the presence of: -

Counsel for the Petitioner – Mr. Tali Tali

Counsel for the 1st to 4th Respondents – No appearance

Counsel for the 5th Respondents – Mr. J. B. Macharia

Counsel for the Interested Party- No appearance

Court Assistant – Ms. Lwambia

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