



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**PETITION NO.E012 OF 2021**

**HON. SAMUEL RIMUI KAIYANI.....1<sup>ST</sup> PETITIONER**

**HON.REUBEN GITAU KARANJA.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**HON. KIERU JOHN WAMBUI.....1<sup>ST</sup> RESPONDENT**

**HON. KARIUKI MUCHIRI.....2<sup>ND</sup> RESPONDENT**

**THE NYANDARUA COUNTY ASSEMBLY**

**SERVICE BOARD.....1<sup>ST</sup> INTERESTED PARTY**

**THE SPEAKER, COUNTY ASSEMBLY OF**

**NYANDARUA.....2<sup>ND</sup> INTERESTED PARTY**

**COUNTY ASSEMBLY OF**

**NYANDARUA.....3<sup>RD</sup> INTERESTED PARTY**

**THE COUNTY GOVERNMENT OF**

**NYANDARUA.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The Petitioners herein filed this Petition on the 21<sup>st</sup> April, 2021 together with an application Notice of Motion seeking to restrain the Respondents from interfering with their duties as officials of Nyandarua County Assembly Service Board.

2. They alleged that they were appointed by jubilee party in place of the Respondents whose appointments were revoked by letter of 11<sup>th</sup> January, 2021. Subsequently that they were sworn in on the 11<sup>th</sup> February, 2021 to conduct all the duties pertaining to the said office however that the Respondent are still holding themselves out as members of the board misleading the members of the public and illegally discharging a mandate that is no longer within their purview and in effect causing inefficiency and confusion in their discharge of duties.

3. In response the Respondents filed a replying affidavit maintaining that they are members of Nyandarua County Assembly Service Board having been nominated by Jubilee party pursuant to section 12(3) (b) &(c) of the County Government Act. They also filed a Notice of preliminary Objection based on the following grounds; -

**1) That this Honourable Court has no jurisdiction to hear the petition by didn't of section 40(1) of the Political Parties Act 2011.**

**2) That the Petition and the Notice of Motion are *subjudice* under the political parties Dispute Tribunal Complaint Number E013 of 2021.**

**3) That the Notice of Motion and the Petition should be struck out with costs for being bad in law, fatally defective, totally misconceived and an abuse of Court process.**

4. This Ruling is therefore in respect of the Preliminary Objection raised by the Respondent which Court found it necessary to decide first since it touches on its jurisdiction.

5. The parties agreed to dispose of the Preliminary Objection by way of written submissions, with the Respondent filing on the 8<sup>th</sup>, July, 2021, the Petitioners on 13<sup>th</sup> July, 2021 and the 1<sup>st</sup> and 3<sup>rd</sup> Interested parties on 7<sup>th</sup> July, 2021.

**Respondent's Submissions.**

6. It was submitted on behalf of the Respondent that the main issue for determination in this Court is who between the petitioners and the Respondents are the legitimate members of Nyandarua County Assembly service Board and therefore the dispute is between members of a political party appointed to represent the interest of their political party in the said Board. They therefore argued that based on the foregoing this Court lacks jurisdiction to determine the issue raised before it by didn't of section 40 (1) of the Political Parties Act

7. It is submitted that the Respondents had already instituted a Complaint at the Political Parties Dispute Tribunal Being **Complaint Number E13 of 2021- Hon John kiero Wambu and Hon Kariuki Muchiri –v- Jubilee Party and others** before this Petition was filed which complaint was challenging their alleged removal therefore the issues in this petition are similar to the issue raised at the Political Parties Tribunal which makes it subjudice.

8. They submitted further that the issue raised in the preliminary Objection is on pure points of law as envisioned in *Mukisa Biscuits case*. Further that the issue raised by the Petitioner is an issue under section 40 of the Political Parties Act, which can be resolved by the political parties Tribunal and not this Court which ought to have been firstly subjected to political parties' internal dispute resolution mechanism pursuant to proviso under section 40(2) of the Political Parties Act. In this they cited the case of **Republic –v- Registrar of Political Parties & 6 others exparte Edward Kings Onyancha Maina & 7 others [2017] eKlr.**

9. The Respondents submitted that the proceedings before this court offends the mandatory provisions of section 6 of the Civil Procedure Act and prayed that the Preliminary objection be upheld and the Petition dismissed.

**Petitioners' Submissions.**

10. It was submitted for the Petitioners that the issue of whether the instant Petition is subjudice would require the probing of evidence which will oust it out of the confines of *Mukisa Biscuits case*. He reinforced its argument by citing the case of **Njowabu Kenya Limited –v- Jinit Mohamed Shah [2020] eKlr.**

11. The Petitioners submitted that the Court is vested with jurisdiction under Article 162(2)(a) of the Constitution of Kenya 2010 to determine the issue herein. He argued that the petitioners have instituted this petition as employees of the 1<sup>st</sup> Interested party and on the basis that their constitutional rights have been violated by the Respondent while discharging their employment duties.

12. It was argued that as much as there is no direct employment relationship between the Petitioners and the Respondent, the issues raised in the Petition are incidental and auxiliary to their employment which therefore clothes this court with jurisdiction to determine. In this they cited the case of **Abdullahi Ah Mohamed –v- Kenya Ports Authority and another** and the case of **Clerk County city County Assembly –v- Speaker Nairobi City County Assembly and another; orange democratic party & 4 others [2019] eKlr.**

13. The Petitioner in conclusion submitted that the Respondent has not met the threshold required for a matter to be termed as res subjudice and prayed for the Preliminary objection be dismissed and the Petition be heard on merit.

**1<sup>st</sup> and 3<sup>rd</sup> Interested parties submissions.**

14. The interested parties herein in support of the Objection herein submitted that this Court does not have jurisdiction to hear and determine the Petition by dint of section 40(1) of the Political Parties Act. It was argued that the petitioners and the Respondents were all allegedly appointed by jubilee party therefore their issues ought to be dealt with by the political Parties Dispute Tribunal. Additionally, that before a matter is heard at the said Tribunal the political party internal dispute mechanism ought to be exhausted a fact which the interested parties submitted that the Petitioners have failed to exhaust.

15. Accordingly, it was submitted that the petitioner have offended the doctrine of exhaustion and cited the case of **Geoffrey Muthinjs Kabiru & 2 others –v- Samuel Munga Henry & 1756 others [2015] eKlr** and the case of **Clerk, Nairobi City County Assembly –v- Speaker Nairobi City County Assembly & Another; Orange Democratic Party & 4 others [2019] eKlr.**

16. The interested parties further submitted that the Petitioners have not demonstrated any efforts used in trying to sought out the issues with the internal dispute mechanisms before filing this Petition and also that since this matter stems from a party nomination and party appointment this Court lacks jurisdiction to preside over the issues raised herein.

17. I have examined the averments of the parties herein. The applicants have submitted that this matter falls under the purview of the political parties Tribunal and not this court.

18. Section 40 of the Political Parties Act provides for the jurisdiction of the Tribunal as follows;

**“40. (1) The Tribunal shall determine—**

- (a) disputes between the members of a political party;**
- (b) disputes between a member of a political party and a political party;**
- (c) disputes between political parties;**
- (d) disputes between an independent candidate and a political party;**
- (e) disputes between coalition partners; and**
- (f) appeals from decisions of the Registrar under this Act.**

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

19. Indeed the law is clear that when there is a dispute between members of a political party as herein then the Political Parties Tribunal has the jurisdiction and not this court.

20. This court’s jurisdiction is clearly spelt out under Section 12 of Employment and Labour Relations Act as follows;

**“Jurisdiction of the Court**

**(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—**

- (a) disputes relating to or arising out of employment between an employer and an employee;**
- (b) disputes between an employer and a trade union;**
- (c) disputes between an employers’ organisation and a trade union’s organisation;**
- (d) disputes between trade unions;**
- (e) disputes between employer organisations;**
- (f) disputes between an employers’ organisation and a trade union;**
- (g) disputes between a trade union and a member thereof;**
- (h) disputes between an employer’s organisation or a federation and a member thereof;**
- (i) disputes concerning the registration and election of trade union officials; and**
- (j) disputes relating to the registration and enforcement of collective agreements”.**

21. Disputes between members of a political party fall outside the jurisdiction of the Employment and Labour Relations Court. I therefore find that indeed the preliminary objection as raised has merit.

22. I find that this court lacks jurisdiction to entertain this petition.

23. I therefore allow the preliminary objection and strike out this petition accordingly with costs to the respondents.

**RULING DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Miss Kamau holding brief for Ngaruiya for petitioners – present

Mathea for 1<sup>st</sup> & 2<sup>nd</sup> respondents – present

Njeri Wanjiru holding brief County Attorney for 4<sup>th</sup> Interested party – present

Court Assistant – Fred