



**Chepngeny & another v Political Parties Disputes Tribunal & 3 others;
Devolution Empowerment Party & another (Interested Parties) (Constitutional
Petition E009 of 2024) [2025] KEHC 239 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CONSTITUTIONAL PETITION E009 OF 2024**

JK SERGON, J

JANUARY 23, 2025

**IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF
ARTICLES 1(1), 1(3),2(1), 2(4),10,19,20(1),20(2),20(3)(B),20(4),21(1), 21(3),22,23(1),
23(3),24(1),27(1),36,37,38(1),38(3),47,48,91,92,165(3),165(6),165(7),232(1)
(E),258,259(1),259(3), AND 260 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE POLITICAL PARTIES ACT

AND

**IN THE MATTER OF THE POLITICAL PARTIES DISPUTE
TRIBUNAL COMPLAINT NUMBER E007 OF 2024**

BETWEEN

SOLOMON CHEPNGENY 1ST PETITIONER

EVERTON WAFULA KHAEMBA 2ND PETITIONER

AND

THE POLITICAL PARTIES DISPUTES TRIBUNAL 1ST RESPONDENT

PAMELA GAKII GITOBU 2ND RESPONDENT

THE REGISTRAR OF POLITICAL PARTIES 3RD RESPONDENT

**THE NATIONAL EXECUTIVE COMMITTEE, THE DEVOLUTION
EMPOWERMENT PARTY 4TH RESPONDENT**

AND



THE DEVOLUTION EMPOWERMENT PARTY INTERESTED PARTY
MILTON MUGAMBI IMANYARA, THE SECRETARY-GENERAL THE
DEVOLUTION EMPOWERMENT PARTY INTERESTED PARTY

RULING

1. On 30th October, 2024, this court delivered its judgment whereof it stated it had jurisdiction to hear and determine the Constitutional Petition. This court also allowed the Petition on its merits.
2. Being aggrieved they preferred an appeal to the Court of Appeal.
3. The 4th Respondent went ahead to amend the *Constitution* of the 1st Interested Party and deposited it with the office of the Registrar of political parties, the 3rd Respondent herein. It would appear the political Parties Disputes Tribunal proceeded to issue orders which in effect stayed the orders of this court that had interalia mandated a Special National Delegates Convention.
4. Being aggrieved the petitioners filed summons dated 16th December, 2024, the subject matter of this ruling, whereof they sought for the following orders:
 - i. This application be certified urgent and be heard ex-parte in the first instance
 - ii. Pending hearing and determination of this application, this Honourable court be pleased to issue an order of stay of proceedings and a stay of execution of orders issued therein in PPDTC/E008/2024, Joseph Mwenda Ithili and others vs Milton Mugambi Imanyara & Another or any other proceedings however commenced before PPDTC concerning the conduct of Special NDC held on 23rd November 2024 pursuant to the order of this court issued on 30th October 2024 herein.
 - iii. Pending hearing and determination of this application, this Honourable court be pleased to issue an order of stay of proceedings in PPDTC/E003/2024, Solomon Chepng'eny and Everton Wafula versus The Secretary-General Devolution Empowerment Party and the Devolution empowerment Party.
Inter partes
 - iv. A declaration that the purported amendments to the 1st Interested Party's Constitution filed with the Office of the 3rd Respondent herein are illegal, null and void.
 - v. An order be and is hereby issued directing the 3rd Respondent to expunge the impugned amendments and revert back to the status quo prior to the impugned amendments.
 - vi. A declaration that the 1st Interested Party's officials who were removed from office vide the court order dated 30th October 2024 had no power and/or authority to amend the 1st Interested Party's Constitution or transact any business on behalf of the 1st Interested Party while on suspension pursuant to the orders of this Honourable Court issued on 30th July 2024.
 - vii. A permanent conservatory order be and is hereby issued quashing proceedings in PPDTC/E008/2024 Joseph Mwenda Ithili and Others vs Milton Mugambi Imanyara & Another forthwith.
 - viii. An order be and is hereby issued compelling the Registrar of Political Parties, the 3rd Respondent herein to forthwith register an gazette all interim officials elected in the Special



National Delegates Convention held on 23rd November 2024 pursuant to the order of this court issued on 30th October 2024, within one week of this order.

- ix. A declaration that the Honourable Political Parties Tribunal has no jurisdiction to interfere with the implementation of the orders of this Honourable court issued herein on 30th October 2024.
 - x. This Honorable court makes orders as to costs as it deems fit
5. The Petitioners filed the Replying Affidavit sworn by Solomon Chepng'eny in support of the summons.
 6. The 1st Interested Party filed the Replying Affidavit sworn by Mutwiri Abuana, its Executive Director to oppose the summons.
 7. When the summons came up for interpartes hearing, Messers Mwereru and Mbaya learned advocates for the 4th Respondent and 1st Interested Party raised a Preliminary point of law against the application.
 8. First, it is argued that this court lacks jurisdiction to entertain the instant application because the Court of Appeal has already issued an order staying the execution of this court's judgment delivered on 20th October, 2024 pending appeal.
 9. The learned advocates pointed out that the Petitioners/Applicants should have filed a fresh suit instead of filing an application based on the suit which has already been heard and determined.
 10. Mr. Mbaya, learned advocate further pointed out that this court lacks residual power to entertain any application as far as it relates to the execution of its judgement which is already stayed.
 11. Dr. Joshua Kembero learned advocate for the Petitioners is of the submission that the instant application is properly before this court and that, the court has jurisdiction to entertain it. He argued that the stay orders issued by the Court of Appeal did not in any way affect the current application. Miss Kaburu, learned advocate for the 2nd Interested Party is of the submission that the instant application is properly before this court.
 12. Dr. Kembero further pointed out that the instant application is basically seeking for clarification and declaratory orders. He also argued that this court's judgment was disregarded by the Political Parties Disputes Tribunal.
 13. I have considered the arguments put forward in support and against the Preliminary Objection. There is no dispute that on 20th December, 2024, the Court of Appeal issued an order staying the execution of this court's judgment delivered on 30th October, 2024. I have already set out the sort of orders the Petitioners/Applicants are seeking vide the Summons dated 16th December, 2024.
 14. A careful consideration of the application will reveal that the Applicants are basically seeking for orders relating to the execution or implementation of the judgment delivered on 30th October, 2024. On one hand the Applicants are stating that the Political Parties Disputes Tribunal interfered with the implementation of this court's orders issued on 30th October, 2024.
 15. It is also argued that the 1st Interested Party's officials having been removed from office vide the judgment of 30th October, 2024, they had no power or authority to transact business or to amend the 1st Interested Party's Constitution.



16. It is clear in my mind that at the time of filing the summons dated 16th December, 2024, the Court of Appeal had not issued the orders staying the execution of this court's judgment delivered on 30th October, 2024.
17. It is also clear in my mind that the instant summons revolves around the issue touching on the execution and or the implementation of the judgment delivered on 30th October, 2024 which the Court of Appeal has already issued an order staying its execution.
18. In my humble view, the instant application has been overtaken by the subsequent events. With respect, I am persuaded by the argument put forward in support of the Preliminary Objection.
19. I am convinced that in view of the orders issued by the Court of Appeal, staying execution of this court's judgment, that this court lacks jurisdiction to entertain the instant summons.
20. In the end, the Preliminary Objection is upheld. Consequently, the Summons dated 16th December, 2024 is ordered struck out.
21. In the circumstances of this matter, a fair order on costs is to order that each party bears their own costs of the application.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 23RD DAY OF JANUARY, 2025.

J.K. SERGON

JUDGE

In the presence of:

Court Assistant - Rutoh

Mbaya for the 1st Interested Party and 4th Respondent

Miss Kaburu for 2nd Interested Party

Kembero for the Applicants

