



Kioni & 3 others v Office of the Registrar Of Political Parties & another; National Disciplinary Committee of the Jubilee Party & 3 others (Interested Parties) (Civil Appeal E635 of 2023) [2024] KEHC 1771 (KLR) (Civ) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E635 OF 2023
JN MULWA, J
FEBRUARY 22, 2024**

BETWEEN

**JEREMIAH KIONI 1ST APPELLANT
DAVID MURATHE 2ND APPELLANT
KAGWE GICHOHI 3RD APPELLANT
THE JUBILEE PARTY 4TH APPELLANT**

AND

**THE OFFICE OF THE REGISTRAR OF POLITICAL
PARTIES 1ST RESPONDENT
ANNE N NDERITU 2ND RESPONDENT**

AND

**THE NATIONAL DISCIPLINARY COMMITTEE OF THE JUBILEE
PARTY INTERESTED PARTY
JOSHUA KUTUNY INTERESTED PARTY
KANINI KEGA INTERESTED PARTY
EQUITY BANK (KENYA)LIMITED INTERESTED PARTY**



RULING

1. The Appellants before this Court filed a Notice of Motion Application dated 8/9/2023 brought under Articles 22, 23 and 165(6) of the *Constitution of Kenya* 2010 and Order 50 Rule 1 of the *Civil Procedure Rules* 2010. The Applicants seek orders that:
 1. Spent
 2. Pending the hearing and determination of the Appeal, the Court be pleased to issue a mandatory injunction compelling the 4th Interested Party herein to issue to the court and the parties, a certified copy of the 4th Appellant/Applicant's bank statements for the period January, 2023 to the date of the court's ruling on this application in respect of the following bank accounts; 01802xxxxxxx, 01802xxxxxxx, 01802xxxxxxx, 0180xxxxxxx, 01802xxxxxxx, 0180xxxxxxx
 3. Pending the hearing and determination of the Appeal, the 4th Interested party be compelled to provide the 4th Applicant/Appellant with the current signing mandate for the following bank accounts 01802xxxxxxx, 01802xxxxxxx, 01802xxxxxxx, 0180xxxxxxx, 01802xxxxxxx, 01802xxxxxxx
 4. Such other or further appropriate reliefs as the court may deem fit. the cost of and occasioned by the Application be provided for.
2. The Application is supported by the grounds on its face and Supporting Affidavit of the 1st Appellant Hon. Jeremiah Kioni sworn on 8/9/2024.
3. The Application is supported by the 1st, 2nd, 3rd and the 4th Interested Party, Equity Bank (Kenya) limited.
4. The 4th and 5th Respondents oppose the Application by a Replying Affidavit sworn on 16/10/2023 by the Hon. James Kanini Kega and a Preliminary Objection dated 6/02/2024 upon grounds that:
 1. This court lacks jurisdiction to hear and determine the Applicants Application dated 8/9/2023 because the jurisdiction of this court is delayed on the basis of the legal doctrine of exhaustion.
 2. That this court does not have jurisdiction on account of section 9, 20, 34, 40 (f) and 41 (2) of the *political Parties Act*, 2011
 3. The court lacks jurisdiction on account of sections 6,14, and 21 of *Access to Information Act*, 2016.
5. As a matter of principle a question on court's jurisdiction ought to be considered and determined as soon as it is raised, see *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd* 1989 KLR.
The 4th and 5th Respondents filed written submissions on the Preliminary Objection as well as on the Application. The Applicants/Appellants told the court that they would not file submissions, and invited the court to rely on the affidavits and annexures thereto.



The Preliminary Objection

6. The Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, had the following to say on circumstances when a Preliminary Objection may be raised.

“ A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued 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

The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

7. The 4th and 5th Respondents challenge this Court’s jurisdiction citing the Doctrine of Exhaustion. This ground is one that requires the Court to ascertain and probe evidence provided before it, to find out whether the Appellants have exhausted all available remedies before approaching the court. It is to be noted that what is before this court is an appeal arising from the decision of the PPDT delivered on 11/7/2023 in Appeal no. E003/2023. The dispute must have arisen from the decision of the Jubilee Party’s internal dispute mechanism as provided in its constitution. The court is therefore at a loss what other remedy the Applicants left out before coming to court. The 4th and 5th Respondents have failed to bring out the objection in what context the Doctrine of Exhaustion applies in this appeal. The court further finds that the ground is not a pure point of law it is not capable of disposing off the matter preliminarily without calling for evidence, probing it and ascertaining facts from elsewhere and therefore the same is not properly raised. See the case of *Quick Enterprises Ltd v Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999.
8. The 4th and 5th Respondents have also cited a raft of sections from the *Political Parties Act* and the *Access to Information Act* and argued that the court lacks jurisdiction to hear the application on grounds of those sections. This again cannot be said to be pure points of law as just as the first ground they do not raise pure points of law.
9. It is well-established that a Preliminary Objection must rest upon a point of law that is unequivocal and free from ambiguity, and must rest upon undisputed facts that the court can employ to resolve the entire dispute. For the foregoing, the court finds no substance in the Preliminary objection. It is dismissed.

The Application Dated 8/9/2023

10. The orders sought by the Appellants in the Appeal before the court are directed to Equity Bank (Kenya) Limited, described and/or stated as The 4th Interested Party.

I have carefully perused the entire Record of Appeal as well as the Parties before the PPDT Appeal no. E003/2023 and it's the judgment delivered on 11/7/2023. This alleged 4th interested party, Equity Bank Kenya Limited, was not a party in all the pleadings and proceedings that gave rise to the instant Appeal.

The question then arises; At what stage was this party enjoined to this Appeal, if at all it was so that the court may issue orders against it?



11. The word “interested party” can be traced to the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, Legal Notice No. 117 of 2013, which defines an interested party as a person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.
12. The Court in the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others* [2017] eKLR explained circumstances when an interested party ought to be enjoined in a proceeding as follows;

“A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant’s rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. It is apparent that a party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty”.

See also Supreme court of Kenya decision in *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* while citing its finding in the *Mumo Matemo case* where it held that an interested party is one who has a stake in the proceedings but was not a party from the beginning.

13. The 4th and 5th Respondents’ argument that the Appellants have erred in enjoining the 4th Interested Party is unfounded as the orders sought are to be issued against the Bank and therefore it has a constitutional right to be heard.

This court has not been moved by any of the parties in this Appeal for leave to enjoin the impugned in the appeal post judgment.

14. The court therefore finds that enjoining Equity Bank (Kenya) Limited to the Appeal post judgment without leave of court to be irregular and unprocedural.

For the foregoing, and without interrogating the merits or lack thereof, the Application dated 8/9/2023 is dismissed with no orders on costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY 2024.

J. N. MULWA

JUDGE

