Republic v FKF Electoral Board & 2 others; Sports Registrar & 2 others (Interested Parties); Mokua (Exparte Applicant) (Judicial Review E005 of 2024) [2024] KEHC 15759 (KLR) (29 November 2024) (Judgment)

Neutral citation: [2024] KEHC 15759 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

JUDICIAL REVIEW E005 OF 2024

GL NZIOKA, J

NOVEMBER 29, 2024

IN THE MATTER OF THE INELIGIBILITY OF DORIS PETRA AND NICK MWENDWA TO AGAIN VIE FOR THE FOOTBALL KENYA FEDERATION PRESIDENCY ON A JOINT TICKET AS PRESIDENT AND VICE PRESIDENT RESPECTIVELY FOR WHAT AMOUNTS TO A THIRD TERM AGAINST THE LETTER AND OR SPIRIT OF THE SPORTS ACT NO. 25 OF 2013 AND HAVING SERVED THE MAXIM LIMIT OF TWO TERMS ON SUCH JOINT TICKET PURSUANT TO ARTICLE 37(B) OF THE FKF CONSTITUTION 2017

AND

IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 38, 47, 81, 159 & 258 OF THE CONSTITUTION OF KENYA 2010

AND

SECTION 31(B) OF THE INTERPRETATION AND GENERAL PROVISIONS ACT CAP 2

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015 LAWS OF KENYA

AND

IN THE MATTER OF SECTION 46(5) AS READ WITH CLAUSE C(I) OF THE SECOND SCHEDULE OF THE SPORTS ACT NO. 25 OF 2013 & THE SPORTS REGISTRAR REGULATIONS

AND

IN THE MATTER OF ARTICLE 43(3) OF THE FOOTBALL KENYA FEDERATION CONSTITUTION 2017 & THE ELECTORAL CODE 2019/2020 (REVISED)

AND

IN THE MATTER OF THE DECISION BY THE FOOTBALL KENYA FEDERATION ELECTORAL BOARD TO PUBLISH THE PRELIMINARY LIST OF PRESIDENTIAL CANDIDATES DATED 21ST OCTOBER 2024

AND

IN THE MATTER OF THE JUDGMENT OF THE COURT IN NAIVASHA IN CONSTITUTIONAL PETITION NO. E001 OF 2024 FRANCIS OLIELLE & 2 OTHERS VS PARLIAMENT & 4 OTHERS

BETWEEN

REPUBLIC ..... APPLICANT

AND

FKF ELECTORAL BOARD ..... 1ST RESPONDENT

DORIS PETRA ..... 2ND RESPONDENT

NICK MWENDWA ..... 3RD RESPONDENT

AND

SPORTS REGISTRAR ..... INTERESTED PARTY

FOOTBALL KENYA FEDERATION ..... INTERESTED PARTY

CABINET SECRETARY YOUTH AFFAIRS, CREATIVE ECONOMY AND SPORTS ..... INTERESTED PARTY

AND

LUTHERS MOKUA ..... EXPARTE APPLICANT

JUDGMENT

1. By a notice of motion application dated 6th November 2024, brought under the provisions of sections 1A, 1B, and 3A of *Civil Procedure Act*, (Cap 21) Laws of Kenya, Order 24 Rule (3) and Order 53 Rules 1, 2, 3 & 4 the Civil Procedure Rules (2010), and section 8 and 9 of the *Law Reform Act* (Cap 26) Laws of Kenya, the ex-parte applicant, is seeking for the following orders that:

    a. An order of Certiorari to remove to the High Court for the purposes of quashing the decision by the 1st Respondent of publishing the names of the 2nd and 3rd Respondents as running on a joint ticket for the Football Kenya Federation Presidency as President and Vice President, that is to say, Doris Petra and Nick Mwendwa on a joint ticket, in the Preliminary List of Candidates dated the 21st October, 2024.

    b. An order of Prohibition against the 1st Respondent herein from accepting and publishing the names of the 2nd and 3rd Respondents as running on a joint ticket for the Football Kenya Federation Presidency as President and Vice President, that is to say, Doris Petra and Nick Mwendwa on a joint ticket in the Final List of Eligible Candidates.

    c. A Declaration that the 3rd Respondent herein, Nick Mwendwa, is ineligible to vie for the Football Kenya Federation Presidency as Vice President on 7th December, 2024 and on any other date.

d. An order of Prohibition against the 1st Respondent from accepting the candidature of and from allowing the 2nd and 3rd Respondents from vying for the Football Kenya Federation Presidency as President and Vice President, that is to say, Doris Petra and Nick Mwendwa, on a joint ticket.

e. A declaration that Article 43(3) of the FKF Constitution 2017 is inconsistent with the provisions of Section 46(5) of the *Sports Act* No. 25 of 2013 and is, therefore, null and void.

f. Cost of this application be provided for.

g. Any other order that this Honourable court may deem fit and proper to grant in the circumstances.

2. The application is based on the ground thereto and the supporting affidavit of the ex-parte applicant (herein "the applicant"), described as the current chairman of the Nyamira branch of the 2nd Interested party.

3. He averred that, the Registrar of Sports by a letter dated 1st February 2024, addressed the Chief Executive Officer of the 2nd Interested party notified the Officer that its officials would complete their term in office in July 2024 and would not be eligible to vie for a third term.

4. Further, the Registrar reminded the 2nd Interested party to adhere to the strict provisions of the *Sports Act* No. 25 of 2013 (herein "the Act") and Regulation 20 of the Sports Registrar Regulations 2016.

5. The applicant avers that section 46 (5) the Act and Paragraph 5 of the Second Schedule limits the terms of officials of National Sports Organizations to two (2) terms of four (4) years each.

6. That in order to avoid a vacuum in the leadership, the 2nd Interested party held a Special General Meeting on 24th August 2024, where the delegates passed the Electoral Code and adopted proposed names of members of the Electoral Board to run the election process.

7. Further, the Electoral Board provided the electoral calendar and set the 14th October 2024, as the date for candidates interested in the presidency and deputy presidency to submit their nomination documents to the 1st respondent for purposes of verification of their eligibility.

8. Further the Registrar of Sports once again in a letter dated 11th October 2024 addressed to the Secretary of the 2nd Interested party, informed the 2nd Interested party that as it planned its election, it should adhere with *the Constitution* of Kenya, the Act, Regulations and any relevant authorities.

9. That, the Registrar of Sports further instructed the Secretary of the 2nd Interested party to investigate officials refusing to adhere to the requirements to serve only two (2) terms and were insisting on vying for the same and/or different positions.

10. However, on 14th October 2024 the 2nd and 3rd respondent, who are the incumbent presidency, submitted to the 1st respondent their nomination papers on a joint ticket for the position of president and vice president respectively in total disregard regards to the provisions of the Act and the judgment of the court delivered on 11th October 2024 in Constitutional Petition E001 of 2024 Francis Olielle & 2 Others vs Parliament and 4 Others dismissing a petition that sought a declaration that the afore provisions of the *Sports Act* infringed officials constitutional rights.

11. Further the 2nd and 3rd respondents have already served two terms in the position of deputy president and president respectively, having been first elected on 10th February 2016 and re-elected on 17th October 2020 and are therefore ineligible to vie again.

12. The applicant averred that on 16th October and 25th October 2024 his Advocate wrote two letters to the 1st respondent seeking re-assurances that there would be strict compliance with the directions of the 1st Interested party, however there was no response.

13. That, on 2nd November 2024, the 1st respondent published the names of the 2nd and 3rd respondent in its final list of eligible candidates to vie in the elections on 7th December 2024 which action is illegal for failing to comply with the law thus necessitating the filing of the present application which has been brought without delay.

14. He further deposed, that if the 2nd and 3rd respondent are allowed to vie and win, it will create a situation where the 3rd respondent might ascend to be the de facto president, if for any reason the 2nd respondent is unable to serve her term to completion.

15. That, this will create a position where the 3rd respondent will be a three (3) term president which is untenable, unlawful, absurd and against the interest and spirit of the law, public interest and good football governance.

16. He argued that the actions of the 1st respondent are ultra vires, unlawful and illegal and it behoves the court to intervene and prevent the unlawful actions. That as such, it is in the interest of justice that the application be allowed as prayed.

17. However, the application was opposed by the 1st respondent vide a replying affidavit dated, 4th November 2024, sworn by its secretary Marceline Sande Ligunya.

18. She averred that, the 1st respondent is an Independent Board established under Articles 27(1) and 39(1)(p) of the 2nd Interested party's constitution whose duty is to inter alia; conduct elections of the 2nd Interested party in line with its constitution and Electoral *Code 2019/2020*.

19. That, it is bound by the provisions of the said constitution which was ratified by the 2nd Interested party, the Electoral Code and laws of Kenya.

20. Further, the criteria for eligibility of aspirants vying the position of the president is set out in Article 43 of the the 2nd Interested Party's constitution and section 4(2)(A) of the its Electoral Code. Yet the 1st respondent evaluated the candidature of the 2nd and 3rd respondents against the criteria set in *the constitution*, declared both eligible and published on the 2nd Interested party's website their names in the preliminary list of candidates.

21. Furthermore, the 1st respondent is not aware of any provision barring an official who has served two (2) terms in an elective position from vying for a different elective position. That Article 37 of the 2nd Interested party's constitution provides all members of the National Executive Council are eligible to serve a maximum of two (2) terms in a position and are thereafter free to seek election in a different position which is considered as a new term.

22. The application was also opposed by the 2nd respondent vide a replying affidavit sworn on 7th November 2024 by the 2nd respondent.

23. She averred that the application is made with malice as it was filed due to ideological difference between her and the applicant. That, the applicant being a member of the 2nd Interested party, was elected under the current constitution which was in force during the 2020 election a period when the applicant supported her and the 3rd respondent.

24. That, in accordance with the National Assembly Standing Order 216(1) and (5), the issue of the eligibility of the 3rd respondent to vie in the upcoming elections was brought up before the National Assembly Departmental Committee on Sports and Culture on 5th November 2024.

25. That on the said date, the 3rd Interested party and the 1st respondent were grilled by the Committee and the Committee declared the 3rd respondent free to vie as the deputy president as posted on Parliament's Facebook page.

26. Further, it was indicated that the matter was put to rest when the Committee's Legal officer clarified that the 3rd respondent was allowed to run as deputy president under Article 37 of the 2nd Interested party's constitution.

27. Furthermore, the 3rd Interested party and the Ministry of Youth Affairs, Creative Economy and Sports respectively posted on their Facebook page that, observers from sports organizations and the Ministry would ensure the 2nd Interested party's election are credible and any disputes thereon would be addressed by the Sports Disputes Tribunal.

28. The 2nd respondent further deposed that, the application lacks merit and is fatally defective, offends the doctrine of exhaustion. That, section 46(3)(b)(vi) of the Act, requires any sports organization seeking to obtain registration to demonstrate national and international affiliation and dispute resolution mechanisms.

29. Further, Article 64(1)(c) of the 2nd Interested party's constitution establishes an Appeals Committee whose mandate under Article 67(1) and (2) is to hear appeals against all decision determined by all committees.

30. That, the Appeals Committee was established by the 2nd Interested party's General Assembly and is fully functional in tandem with Article 64(4) of its constitution of Kenya.

31. The 2nd respondent relied on the case of Migori Youth FC vs Football Kenya Federation (Tribunal Case E041 of 2023) [2023] KESDT 670 (KLR) (28 November 2023) where the court held that the Petitioner should have first taken the matter in issue to the Appeal Committee before going to the Tribunal.

32. The 2nd respondent urged the court to strike out the application with costs.

33. Similarly, the 3rd respondent vide an affidavit sworn on 2nd November 2024, opposed the application wherein it is averred that the court is not the first port of call for determining the grievances by the applicant.

34. That, Article 67 of the 2nd Interested party's constitution outlines the mandate of the Appeals Committee while Article 69 (6) thereof states that the 1st respondent shall determine electoral disputes and any appeals thereof to be determined by the Appeals Committee.

35. Further, section 55 of the Act establishes the Sports Disputes Tribunal while section 58 thereof provides its jurisdiction to determine inter alia; sports related disputes that all parties agree to refer to the Tribunal and the Tribunal agree to hear.

36. That in addition, the 2nd Interested party recognizes the Sports Dispute Tribunal as the National Independent Arbitration Tribunal as recommended by Article 67(3) of its constitution.

37. Further the applicant ought to have first lodged his complaint with the 1st respondent's and if aggrieved with the decision rendered lodge an appeal with 2nd Interested party Appeals Committee in line with

section 7(1) of the Electoral Code and if still dissatisfied with the decision of the Appeals Committee lodge a further appeal to the Sports Dispute Tribunal.

38. He further averred that, the Judicial Review Court cannot make a declaration that Article 43(3) of the 2nd Interested party's constitution 2017, is inconsistent with the provision of section 46(5) of the *Sports Act* in that such a declaration can only be made by a Constitutional Court or the High Court through a petition or plaint.

39. Furthermore, the 2nd Interested party's constitution was passed by the resolution of the 2nd Interested party during the Annual General Meeting of 18th July 2017 and therefore seeking an order of Certiorari is ill advised as it offends section 9(3) of the *Law Reform Act* and Order 53(2) of the Civil Procedure Rules 2010 which provides that, leave for an order of certiorari shall not be granted unless such application for leave is made with six (6) months of the impugned decision being made.

40. The 3rd respondent further argued that, the applicant lacks locus standi to institute the present matter as a member of the 2nd Interested party as he is not a candidate for any of the position in the upcoming elections. Furthermore, the applicant has not demonstrated any prejudice or harm he will suffer if the application is not granted.

41. The 3rd respondent argued that there is no provision under the Act which bars him from seeking elections as the vice president of the 2nd Interested party and can only be barred if seeks for re-election for president position having already served two (2) terms. Furthermore, under Article 37 of the 2nd Interested party's constitution, he is free to seek for election in any other position of the National Executive Committee.

42. In response to the argument that if elected as the vice president on the joint ticket with the 2nd respondent, he would ascend to the presidency for a third (3) term if the 2nd respondent for one reason or another fail to complete her term as president, the 3rd respondent argued that Article 42(9) of the 2nd Interested party's constitution provides that if the position of the president was to become vacant, the vice president will only take over as president until the next general assembly when a replacement is elected for the remainder of the term.

43. That, the general meeting of the 2nd Interested party is held annually as per Article 30 of its constitution while special general meeting is held at any time as prescribed under Article 31 of *the constitution* and therefore it will not be possible for him to ascend to the presidency for the remainder of the any term.

44. He further averred that, the president and the vice president being on the same ticket does not mean they hold the same office and/or perform same roles. That the decision to have a joint ticket for the position is meant to cure an absurd situation that previously arose where the president and vice-president were elected from different pre-election camps having different ideologies, visions and manifestos which led to numerous disputes culminating with the resignation of the then vice-president.

45. In the same vein, the 1st, 3rd and 4th Interested parties opposed the application by filing grounds of opposition dated 12th November 2024, in which they state that: -

    a. That the role of the 1st Interested party in the conduct of elections of a sports organization is purely oversight to ensure that the law has been complied with.

    b. That the Applicants have not demonstrated that the decision by the 1st Respondent is tainted with illegality, irrationality and procedural impunity.

c. That the *Sports Act* of Kenya at No. 25 of 2013 in the second schedule provides that when it comes to elections of any sports organization, that the persons elected as officials thereof shall consequently hold office as follows— (i) the chairperson shall hold office for a term not exceeding four years, but is eligible for re-election for one more term; (ii) any other official shall hold office for a term not exceeding four years, but is eligible for re-election for one more term.;

d. That the *Sports Act* does not bar a person who has previously held a certain position from vying for d different position.

e. That the FKF Constitution allows for a member who has previously vied for a certain position to vie for a different position.

f. That the Applicant has not satisfied the grounds for the grant of the orders sought.

46. The 2nd Interested party opposed the application vide a preliminary objection dated 7th November 2024 on the grounds that: -

a. Article 69(6) of the FKF Constitution 2017 as read together with section 7 of the Electoral Code of Football Kenya Federation 2019/2020 (Revised), designate the 1st Respondent herein as the first body responsible for adjudicating ALL electoral disputes of Football Kenya Federation and all its decisions are appealable to the FKF Appeals Committee as provided for in Articles 67 (2) and 69 (6) of the FKF Constitution (2017) hence this suit is an abuse of the court process and offending the doctrine of exhaustion of internal remedies.

b. The FKF Constitution (2017) was ratified by the General Assembly of Football Kenya Federation on November 19, 2017 hence a Judicial Review application contesting any provision of thereof is incompetent by dint of Order 53 Rule 2 of the Civil Procedure Rules and read together with Section 9(3) of the *Law Reform Act*.

47. The application was disposed of by filing of submissions, which are considered herein.

48. In that regard, the applicant filed submissions dated, 6th November 2024 and stated that the court has jurisdiction to hear and determine the matter.

49. Further, the doctrine of exhaustion is not applicable in the present case as it falls within the exception of the rules cited under section 9(4) of the Fair Administrative Actions Act which states that, the High Court may in exceptional circumstances and on application by the applicant exempt such person from exhausting any remedy in the interest of justice.

50. He relied on the case of; Republic vs National Environment Management Authority Ex parte Sound Equipment Ltd, (2011) eKLR where the court stated that, in determining whether an exception should be made and judicial review granted the court should examine the suitability of the statutory appeal in the context of the particular case and determine the real issue to be determined and whether the statutory appeal procedure was suitable to determine.

51. Further in the case of; Fleur Investments Limited v Commissioner of_ Domestic Taxes & another [2018] eKLR the Court of Appeal stated that whereas the courts are enjoined to defer to specialized tribunals and alternative dispute resolution statutory bodies, they can intervene where there is clear abuse of discretion, arbitrariness, malice, capriciousness and disrespect of the rules of natural justice even where the litigant has not exhausted the specialized process.

52. The applicant further submitted that there were exceptional circumstances in this case being that; he had very narrow window to find a final resolution to his grievances taking into account the compressed

time provided in the FKF election timelines. That, if he were to follow the internal dispute resolution mechanisms all the way to the Sports Dispute Tribunal, there is a real likelihood that the FKF Election process and election of the presidency would have been concluded. That in the alternative, if the orders were obtained after the elections, it would result in loss of time and money incurred in conducting the elections.

53. Further, had he followed any of the internal dispute resolution mechanisms it would result in loss of time as he would not get a favourable outcome considering the 3rd respondent is the incumbent president. Furthermore, the Appeal Committee does not exist as it was never appointed and/or ratified during the Special General Meeting where the Electoral Board was selected and appointed.

54. That in the case of; Mohammed Ali Baadi and others vs Attorney General & 11 others (2018) eKLR, the court stated the exhaustion remedy was only applicable where the alternative forum is accessible, affordable, timely and effective.

55. That further in the case of; Dawda K. lawara vs Gambia the court stated that: -

> " A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality] ...the Governments assertion of non-exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case."

56. The applicant rebutted the argument that he was indolent in bringing the current application and submitted that, he moved the court on the 29th October 2024 after publication of the preliminary list of eligible candidates on 21st October 2024. That, he could not move the court before candidates submitted their nomination papers and the preliminary list of candidates published as it would have been premature and speculative.

57. As regard the merit of the application, the applicant relied on the case of; Republic vs, Kenya National Examination Council Ex-parte Gathenii and 9 Others [1997] eKLR and Pastoli v Kabale District Local Government Council & Others (2008) 2 EA 300 where the Court of Appeal stated that for an applicant to succeed in an application for judicial review it must be proved that the decision complained of is tainted with illegality, irrationality and procedural impropriety.

58. Further the Supreme Court of Kenya in Edwin HD. Dande & Others vs, Inspector General of Police & Others, SC. Pet No. 6 (E007) of 2022 consolidated with Pet. No. 4 (E005) & E010 of 2022 stated that judicial review is no longer strictly an administrative law remedy but also a constitutional fundamental right.

59. That further, in Jared Odhiambo Opiyo *& 5 others vs Migori County Assembly and 6 others Civil Appeal no. E174 of 2023*, the Court of Appeal noted that by dint of Articles 23 and 47 of *the Constitution* of Kenya, the judicial review has been expanded beyond prerogative writs.

60. Furthermore, in the case of; Municipal Council of Mombasa vs. Umoja Consultants Ltd [2002] eKLR the Court of Appeal stated that, judicial review is concerned with the decision making process which includes issues such as; the jurisdiction of the decision makers, whether the persons affected by the decision were heard before it was made, whether in arriving at the decision irrelevant matters were taken into account.

61. The applicant further cited section 31 of the *Interpretation and General Provisions Act* (Cap 2) Laws of Kenya, which deals with general provisions with respect to subsidiary legislation and provides that no subsidiary legislation shall be inconsistent with the provisions of an Act.

62. He argued that, pursuant to the aforesaid, the 2nd Interested party's constitution, being a subsidiary legislation, is inconsistent with the Act and cannot override provisions of an Act of Parliament. Therefore, the 1st respondent was procedurally wrong in accepting the names of the 2nd and 3rd respondent jointly as president and vice president respectively.

63. However, the 1st respondent vide submissions dated 7th November 2024 argued that court lacks jurisdiction to determine the matter as the internal dispute resolution of the 2nd Interested party has not been exhausted and reiterated the various bodies referred to that have the mandate to deal with such disputes.

64. That, Black's Law Dictionary 10th Edition which defines the doctrine of exhaustion states as follows: -

> "---exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute. a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary".

65. That further in the case of; William Odhiambo Ramogi & 3 others v Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR the court stated that the doctrine of exhaustion arises where a litigant aggrieved by an agency's action seeks redress from the court without first pursuing remedies from the agency itself.

66. That the purpose of the doctrine of exhaustion is to postpone judicial pronouncement until such aggrieved party first seeks to protect his interest through the mechanisms in place outside the courts.

67. Further, the Supreme Court of Kenya stated in Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR, stated that the principle of avoidance means that a court will not determine a constitutional issue where such issue may be properly decided on another basis.

68. Furthermore, the Supreme Court of Kenya Justus Kariuki Mate & another v. Martin Nyaga Wambora & another (2017) eKLR stated that courts should exercise restraint in issuing orders where *the Constitution* of Kenya allocates specific mandates and functions to designated agencies to circumvent conflict and crisis in the discharge of government responsibility.

69. The 1st respondent further relied on the Court of Appeal's decision in; Pevans East Africa Limited & another v. Chairman, Betting Control and Licensing Board and 7 Others (2013) eKLR where it stated that, courts must decline to intervene where *the Constitution* of Kenya, has placed specific functions in an institution or organs of State to give sufficient leeway to discharge their mandate and courts should only accept to intervene where those bodies are demonstrably shown to have acted in contravention of *the Constitution* of Kenya, the law or that their decisions are so perverse, so manifestly irrational that they cannot be allowed to stand under the principles and values of our Constitution.

70. That in the decision in Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR the court held that, the respondent should have invoked the appellate procedure under the *County Governments Act* No. 17 of 2012 before filing judicial review proceedings in the first instance.

71. Further the 1st respondent submitted that, it is in public interest that the elections of the 2nd Interested party be held as scheduled taking into consideration that the public funds have already been expended and will be lost if the application is allowed as it would require promulgation of a fresh criteria and restart of the entire process.

72. Furthermore, the failure to conduct the election will expose Kenya to sanctions by FIFA and exclusion from planned International events including the African Cup of Nations that the country is hosting in 2027.

73. The 1st respondent relied on the case of; Republic -Vs- Independent Electoral and Boundaries Commission -Vs- NASA and Others [2017] eKLR where the court cited the case of; East Africa Cables Limited -Vs- The Public Procurement Complaints Commission and stated that allowing the application seeking to stay execution and further proceedings of the procurement process before it would cause more harm to a large group of people and the court would therefore chose the alternative that produce greater happiness for the greater number of people.

74. The Halsbury's Laws of England, 4th Edition Vol Il page 805 was also relied on where it is stated that: -

> " Sound legal principles would dictate that where to grant the orders of judicial review even if merited is likely to affect the general elections in such a magnitude that is likely to substantially and materially and adversely affect the electoral process, the court would be reluctant to accede to the applicant's prayers."

75. Lastly, the 1st respondent submitted that the jurisdiction of judicial review is to evaluate the validity of decision and not laws and therefore the applicant ought to have filed a constitutional petition.

76. Further, the applicant is not challenging the validity of the final list published on 2nd November 2024 but the preliminary list published on 21st October 2024, which has been overtaken by events and therefore there is no basis of invalidating the candidature of the persons in the final list.

77. Finally, had the Legislature intended to completely bar the candidature by person who has held office for two (2) terms, then nothing would have been easier than stating so.

78. That in the case of; Kizito Mark Ngwaya vs Minister of State for Internal Security and Another [2011] eKLR the court held that legislation is presumed constitutional unless the contrary is proved which onus lies with the party challenging it constitutionality.

79. The 2nd respondent on her part relied on submissions dated 7th November 2024 and argued that the court lacks jurisdiction to hear and determine the application under the doctrine of exhaustion as the applicant has not exhausted the of the 2nd Interested party internal dispute resolution mechanisms and reiterated the submissions thereon as submitted by the 1st respondent.

80. The 2nd respondent relied on the case of, Migori Youth FC v Football Kenya Federation (Tribunal Case E041 of 2023) [2023] KESDT 670 (KLR) (28 November 2023) (Ruling) where it was held that, parties ought to first exhaust dispute resolution mechanisms within the federations before moving the Tribunal.

81. That section 58 of the *Sports Act* gives the Sports Dispute Tribunal the mandate to inter alia hear appeals against the decisions of national sports organizations and other sports related disputes, and the cases of; Muhoroni Young v Amour (Sued as the chairman of the FKF Caretaker Leagues and Competitions Committeee & 2 others; Muhoroni Youth (Interested Party)v(Appeal E003 of 2022) [2022] KESDT 794 (KLR) (Civ) (8 November 2022) (Decision) where it was stated that, where there is

no clear pathway to dispute resolution or where a party has made effort to seek redress through internal dispute resolution process without success the tribunal will assume jurisdiction.

82. That in the case of, Njoki & another v *Kenya National Sports Council & 3 others; Ngugi & 3 others (Interested Parties) (Appeal E006 of 2023*) [2023] KESDT 423 (KLR) (Civ) (15 August 2023) (Decision) the Sports Dispute Tribunal stated that the candidates therein were ineligible to vie for re-election for the same positions but could seek other positions within the council.

83. That, it is illusionary, unfounded and farfetched for her candidature to be curtailed based on unfounded fear that, if the office of the president falls vacant, the 3rd respondent will assume office as *the constitution* of the 2nd Interested party states that vice president will assume the office temporarily until the subsequent General Assembly, when a replacement is elected for the remaining term.

84. The 3rd respondent on his part relied on submissions dated 7th November 2024 and argued that the court lacks jurisdiction to hear and determine the application under the non-justiciability concept more specifically the doctrine of exhaustion of internal remedies, and/or ripeness doctrine which has a basis under Article 159 of *the Constitution* of Kenya.

85. That pursuant to the doctrine of exhaustion of internal remedies, the courts will decline to deal with a matter because there exists another remedy provided for in law which the aggrieved party is yet to utilize. He cited the case of; Constitutional Petition no. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 (2020) eKLR where a five-judge bench of the High Court discussing the doctrine stated that the doctrine arose where a litigant, aggrieved by an agency's action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself.

86. The 3rd respondent further relied on the decisions in the cases of; Speaker of National Assembly vs Karume (1992) KLR, Geoffrey Muthiqa Kabiru & 2 Others vs Samuel Munqa Henry and 6 others (2015) eKLR, Peter Ochara Anam & 3 Others v. Constituencies Development Fund Board & 4 Others, Kisii High Court Petition No. 3 of 2010 and section 9 (2) of the *Fair Administrative Action Act* 2015, to argue that where dispute resolution mechanism exists outside courts they should be exhausted first with courts being the last resort.

87. Further section 9(3) states that where courts are not satisfied that the remedies in section 9(2) have been exhausted, the court shall direct such litigant to first exhaust such remedies.

88. That, Regulation 3 (b) of the Sports Registrar's Regulations (*Legal Notice 158 of 2016*), Article 67 of the 2nd Interested party's constitution and section 7 (1) of the Electoral Code of 2nd Interested party establishes the bodies with the mandate to deal with disputes internally.

89. The 3rd respondent submitted that, from the foregoing the applicant was required to first lodge a complaint with the 1st respondent, and if aggrieved by any of its decisions of the 1st respondent appeal to the Appeals Committee, if need be, lodge a further appeal to the Sports Dispute Tribunal before filing the present application in court.

90. On the ripeness doctrine, the 3rd respondent submitted that it bars a court from determining a dispute whose issues are yet to crystalize to warrant the courts intervention. He relied on the case of Kiriro wa Ngugi & 19 others vs Attorney General & 2 others (2012) eKLR where the court quoted the Black's Law Dictionary 10th Edition which defines ripeness as: -

> " The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made"

91. He also cited the case of Waniiru Gikonyo & 2 Others v National Assembly of Kenya & 4 Others [2016] eKLR where the High Court stated that the principle of ripeness prevents a court from considering hypothetical or academic issue or when it is too early or is simply out of apprehension.

92. The 3rd respondent argued that, the argument that he will automatically ascend to presidency, if the 2nd respondent does not serve her full term, is premature, speculative and an academic exercise as the 2nd and 3rd respondents have not won the elections yet.

93. That there is procedure on what happens when the president is not able to act as provided for under Article 42 (9) of the 2nd Interested party's constitution as well articulated by the 2nd respondent,

94. He relied on the case of; Njoki & another v *Kenya National Sports Council & 3 others; Ngugi & 3 others (Interested Parties) (Appeal E006 of 2023*) (20231 KESDT 423 (KLR) (Civ) (15 August 2023) (Decision) where it was held that aspirants were ineligible to vie for re-election in the same positions they hold but could seek other seats within the council.

95. The 3rd respondent further argued that the prohibition orders sought have been overtaken by events as the 1st respondent published the final list of candidates on 2nd November 2024. He relied on the case of; Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenii Nioroge, N S, J W, R N, G W, A W. C W, B W, S N & J B (Civil Appeal 266 of 1996) [1997] KECA 58 (KLR) (Civ) (21 March 1997) (Judgment) where the Court of Appeal stated that an order of prohibition can only prevent the making of a decision and is powerless where a decision has already been made.

96. Further, the prayer of prohibition order was never sought for during the hearing of the chamber summons application seeking for leave. That the applicant could only seek for that order if he sought for leave pursuant to the provisions of Order 53, Rule 4 (2) of the Civil Procedure Rules 2010. Thus having failed to seek for leave that the prayer is brought in bad faith and should not be allowed.

97. Furthermore, a declaration order can only be sought through a petition and/or plaint filed in a Constitutional Court or High Court respectively and not these proceedings. Further, the order cannot be granted having been brought more than six (6) months after the 2nd Interested party's constitution was passed in an Annual General Meeting on 18th November 2017 as per section 9 (3) of the *Law Reform Act* and Order 53 (2) of the Civil Procedure Rules, 2010.

98. The 1st, 3rd and 4th interested on its part vide in submissions dated 13th November 2024 argued that, for the present application to succeed the applicant is required to prove that the decision the 1st respondent to publish the names of 2nd & 3rd respondents is tainted with illegality, irrationality and procedural impropriety.

99. That, in the case of; Pastoli Vs Kabale District and Others (2008) 2 E.A. 300 the court stated that: -

> " In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or the act complained of is tainted with illegality, irrationality and procedural impropriety.....illegality is when the decision making authority commits an error of law in the process of taking or making the act the subject of the complaint. Acting without jurisdiction or Ultra vires or contrary to the provisions of law or ifs principles are instances of illegality... .... irrationality is when there js such gross unreasonableness in the decision taken or act done, that no reasonable authority would have made such a decision is usually in defiance of logic and acceptable moral standards Procedural Impropriety is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non -observance of the Rules of Natural Justice or to

act with procedural fairness towards one to be affected by the decision. It may also Involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises Jurisdiction to make a decision."

100. That, the 2nd and 3rd respondents are vying for the position of president and vice president respectively which are different positions from their previous office and are therefore not barred by law from vying for the new and/or different positions.

101. The 2nd Interested party on its part, joined issue with the 1st, 2nd and 3rd respondents and argued that, the applicant has fallen foul of the doctrine of exhaustion as he did not exhaust the internal dispute resolution mechanisms of the 2nd Interested party.

102. The 2nd Interested party similarly joined issues with the respondents on the hierarchy of its internal mechanism for dispute resolution, which the applicant failed to comply with.

103. The 2nd Interested party relied on the cases of; Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR and Republic v Commissioner General. Kenya Revenue Authority, Ex-parte Sanofi Aventis Kenya Limited [2019] eKLR.

104. The 2nd Interested party submitted that its elections timetable prepared and published by the 1st respondent made provision for the hearing of disputes in respect of the preliminary lists of all candidates published on October 21, 2024 and scheduled them for 24th to 26th October 2024 and 30th October to 1st November 2024 before the Appeals Committee.

105. That, the applicant being the current chairman of the FKF Nyamira Branch was well aware of the appeals avenues established within the FKF Statutes including the election timetable but opted to bypass them and file chamber summons application on 29th October 2024.

106. Furthermore, the applicant has failed to demonstrate any exceptional circumstances in existence to justify approach the court first before exhausting the internal mechanisms available to him.

107. That, in the case of; Mui Coal Basin Local Community. [2015] eKLR the Court of Appeal stated that, *the Constitution* created a matrix dispute resolution system where the courts are to respect the principle of the fuss fits the forum and a constitutional preference for other mechanisms for dispute resolution and not a legal-centric judiciary with a need to legally deal with every problem despite of the availability of better suited mechanisms.

108. The 2nd Interested party further cited section 9 (2) and (3) of the *Fair Administrative Action Act* 2015 that prevents a court from reviewing an administrative action or decision unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

109. That, in Nairobi HCJR No 5 of 2022 Republic vs Sports Disputes Tribunal and 3 Others (Ex-Pane Football Kenya Federation & 51 Others) the High Court upheld the doctrine of exhaustion in favour of the 2nd Interested party's internal dispute resolution mechanism.

110. Finally, the 2nd Interested party submitted that, the FKF constitution having been ratified by the General Assembly of Football Kenya Federation on November 19, 2017, the judicial review application contesting any of its provisions fell foul of Order 53 Rule 2 of the Civil Procedure Rules and read together with Section 9(3) of the *Law Reform Act* and was therefore incompetent.

111. The parties rested their respective case and after considering the notice of motion application dated; 6th November 2024, in the light of the the materials placed before the court in support and/or opposition

thereto, the submissions and/or the arguments in favour or against it, I find that several issues have arisen for determination as follows: -

a. Whether there is a competent notice of motion application before the court;

b. Whether the prayers in the subject notice of motion application can be granted as prayed;

c. Whether the applicant has met the threshold of the doctrine of exhaustion;

d. Whether the court should grant the prayers in the notice of motion application; and

e. Who should bear the costs of the application.

112. As regards the first issue, two issues have arisen namely:

a. Whether the reliefs or orders for which leave was sought in the chamber summons application dated 29th October 2024 and are the same as those in the notice of motion application dated 6th November 2024;

b. Whether the declaratory reliefs sought for in the motion based on the provisions of section 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules 2010, can be granted.

113. In dealing with issue (a) above, a comparison of the reliefs in the chamber summons application dated 29th October 2024, and the notice of motion application dated; 6th November 2024 reveals that, three (3) reliefs being; an order of certiorari, prohibition and a declaratory order were sought for in the summons application.

114. On the other part, the motion application has a total of five (5) prayers; prayer (1), seeking for an order for certiorari, while prayers (2) and (4) seek for prohibition orders and prayers (3) and (5) are for declaratory orders.

115. In that regard, prayer (3) and (4) in the notice of motion are new prayers for which no leave was sought nor granted. The question that arises in this; what is the legal position regarding the additional prayers.

116. In answer to that question, it suffices to note that the law is settled that pursuant to Order 53 Rule 1(2) of the Civil Procedure Rules that, relief(s) sought for in the summons must be the same and/or identical to the relief(s) sought for in the notice of motion application.

117. The above provisions in particular Order 53 Rule 2 provides that, an application for leave shall be accompanied by a statement stating inter alia, the reliefs sought, the grounds relied on and a verifying affidavit of the facts, which documents are served upon the respondent(s) for response.

118. Furthermore, section 9(1)(c) of the *Law Reform Act* (Cap 26) Laws of Kenya provide and Order 53 Rule 4 (1) of Civil Procedure Rules provide that, once leave is granted, no new ground(s) or relief(s) can be relied on at the hearing. That such additional relief(s) can only be allowed under Order 53 Rule 4(2) of Civil Procedure Rule 2010, which empowers the High Court at the hearing of the motion to allow the amendment of statement and/or filing of further affidavit on condition the amendment deal with new matters arising from affidavits filed by any other party to the application.

119. In deed the ex parte applicant did concede that there was need to apply for leave to amend the motion and concedes that no leave was applied for nor granted to introduce the two (2) new reliefs.

120. Consequently it is the finding of this court that prayers (3) and (4) of the notice of motion application dated 6th November 2024 cannot form the basis of the judicial review application herein as they were introduced after leave to file the motion and without leave, consequently they are struck out.

121. In the same vein, Order 53 of the Civil Procedure Rules does not envisage filing of the affidavit in support of the motion and even if it did, the supporting affidavit in support of the motion dated 6th November, 2024 sworn by the ex parte applicant was sworn and filed without the leave of the court, and therefore it cannot be relied on and is expunged from the record, which renders the motion "naked".

122. However, notwithstanding the afore finding of the court on additional reliefs and/or supporting affidavit, the ex parte applicant is seeking for declaratory orders under prayers (3) and 5. The question is can these prayers be granted as prayed.

123. In answer to the afore question, I note that the motion is based on section 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rule. A reading of these provisions reveal that only three reliefs of; certiorari, prohibition and mandamus can be granted. Consequently, declaratory orders are not cannot be granted.

124. To buttress that position, I associate with the holding in the case the cases of; Republic -vs- Njeru Githare Minister of Finance & 2 others Ex parte Jackson Gichuki & Another (2013) eKLR and Khobesh Agencies Ltd & 32 Others -vs- Minister of Foreign Affairs and International Relations & 4 others (2013) eKLR where the courts held that judicial review process is special and under provisions of section 8 and 9 of the *Law Reform Act*, it does not extent to other civil and criminal matters.

125. Be that as it may, the court is live to the fact that, after the promulgation of *the Constitution* of Kenya 2010, the judicial review process attained constitutional support by dint of Article 47 of *the Constitution* of Kenya, which accords an applicant an opportunity to move the court under Article 23 of *the Constitution* of Kenya for remedies for constitutional violations.

126. Thus, there are two judicial review processes, under the provisions of section 8 and 9 of *Law Reform Act* as read together with Order 53 of Civil Procedure Rule, and under Article 47 and 23 of *the Constitution* of Kenya, 2010. These position was well discussed in the Supreme Court of Kenya in the case of; Communication Commission of Kenya -vs- Royal Media Services Ltd (2014) eKLR and Dande & 3 others -vs- IG, National Police Service and 5 others (2023) eKLR

127. However, as already stated at the expense of repeating what has already stated, the ex parte applicant in the instant matter did not base the motion on any of *the constitution* provisions; in particular Article 23 and 47 of *the Constitution* of Kenya and/or section 9(4) of the Fair Administrative Act. Therefore, for all intent and purpose the court herein can only limit its jurisdiction within the ambit of section 8 and 9 of *Law Reform Act* and Order 53 of Civil Procedure Rule.

128. Pursuant to the afore, it is the considered finding of this court that the two (2) prayers herein seeking for declaratory orders are untenable and struck out accordingly.

129. Notwithstanding the afore finding, the reliefs sought under prayers (3) (4) and (5) having been struck out, the remaining prayers of the motion are prayers (1) and (2).

130. In that regard, I shall consider the prayer for certiorari and note that in Halsbury's Laws of England 4th Edn Vol (1) paragraph *12* page 270 the author states that:

> " The remedies of quashing orders (formerly known as orders of Certiorari) prohibiting orders formerly known as orders of prohibition (mandatory orders formerly known as orders of mandamus) ...are all discretionary. The court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious

conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief."

131. Further it suffices to note that the nature and scope of the order of certiorari was discussed in the case of Captain Geoffrey Murugi -vs Attorney General Miscellaneous Application No. 293 of 1993 as follows: -

> " Certiorari deals with decisions already made – so that when issued an order brings up into this court a decision of an inferior court, tribunal or of a public authority to be quashed. Such an order (certiorari) can only be issued where the court considers that the decision under attack was reached without or in excess of jurisdiction or in breach of the rules of natural justice; or contrary to law." (emphasis added)

132. In the instant matter, the applicant seeks that this court do quash the decision to allow the 2nd and 3rd respondents vie for the positions of president and deputy president respectively.

133. However, I note that what the applicant wants is quashing of the decision of the 1st respondent but where is the evidence in form of; minutes or proceedings, deliberations and/or resolutions that support the impugned decision.

134. It is noteworthy that the only evidence provided is a copy of the preliminary list of presidential candidates marked "LM7".

135. Thus, in the absence of any proceedings of the 1st respondent or evidence as to demonstrate how the impugned decision was arrived at, the court cannot be able to tell whether in the course of making the impugned decision, due process of law was followed or there was any procedural defect and/or breach of rules of natural justice.

136. Even, then, in my considered opinion what the applicant should have applied for taking it account the fact that the list published has names other persons, the ex parte applicant should have sought that the names of the 2nd and 3rd respondent be expunged from that list. In that regard, it is the finding of this court that prayer (1) of the motion cannot be granted.

137. The last prayer sought for a prohibition order. It is settled law that the court has the discretion to grant orders of prohibition (see Joram Mwendo Guantai -vs- The Chief Magistrate Nairobi, Nairobi Civil Appeal No. 228 of 2003 (2007) 2 EA 170 by the Court of Appeal. Also Kuria & 3 others -vs- Attorney General 2002 2 KLR (HC).

138. Further, an order of prohibition deals with the future events. That position was well articulated in the case of; Kenya National Examination Council -vs- Republic Ex parte Geoffrey Gathenji Njoroge & 9 others 1997 KLR as follows:

> " That is why it is said prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision."

139. In the instant case, the ex parte applicant is seeking for an order to prohibit the 1st respondent from accepting and publishing the names of the 2nd and 3rd respondent in the final list of eligible candidates

to vie for presidency of the 2nd Interested party. The material before the court reveals that the final list of eligible candidates was published on 2nd November 2024, thus the court cannot prohibit that which has already happened.

140. Pursuant to the finding above the prayer for an order of prohibition cannot be granted.

141. In summation to the afore, it follows that the notice of motion application before the court is not competent and prayers therein cannot be granted.

142. However, assuming there is a valid and competent notice of motion application before the court, can this court grant the orders sought?

143. As rightful submitted by the parties, the disputes resolution mechanism relating to to 2nd Interested party's elections is well set down. Articles 27(1,) and 69(6) of the 2nd Interested party's constitution establishes the 1st respondent as the 1st port of call for dispute resolution. Article 64 of *the constitution* establishes the Appeals Committee, while section 55 of the Act establishes the Sports Dispute Tribunal.

144. In the instant matter it is conceded that, the applicant has not exhausted these dispute resolution mechanism. The applicant avers that the reasons for non-compliance is the strict timelines within which he could invoke the internal dispute resolution mechanism.

145. Further that the 1st respondent would be biased as the 3rd respondent would influence the decision, and finally that the Appeals Committee is not in existence. Furthermore that two letters written to the 1st respondent were ignored.

146. I have considered the afore reasons and note that under section 9(4) of Fair Administration Act; the High Court can only allow an applicant to be exempted from complying with the doctrine of exhaustion if it grants the applicant leave. In this case there is no evidence that the applicant sought for leave to be exempted from complyng with the said doctrine.

147. In the case of, Speaker of National Assembly -vs- Karume 1992 I KLR 21 the Court of Appeal held: -

> " 15. In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."

(see also case of, Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR)

148. On exceptions to the doctrine of exhaustion, a three-judge bench of the High Court in the case of; R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR considered the jurisprudence in our courts and outlined two principles. The first is where there are issues that verge on constitutional interpretation or an important constitution value is at stake. The court stated as follows: -

> " ...while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine

whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High 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."

149. The second principle for exception arises where there are limitations to a party to access dispute resolution forums, The High Court further stated that: -

> " 50. The second principle suggested by case law for limiting the applicability of the doctrine of exhaustion in appropriate cases is that a statutory provision providing an alternative forum for dispute resolution must be carefully read so as not to oust the jurisdiction of the Court to consider valid grievances from parties who may not have audience before the forum created, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit. This situation arises where, as here, the right to approach the statutory forum created (in this case the Review Board) is limited to certain parties who are aggrieved in a particular manner defined by the statutory scheme and where the particular party seeking to bring the suit does not fit into any of the categories defined by the Statute."

150. In the instant matter the ex parte applicant produced two (2) letters marked "LM 8" and "LM 9" addressed to the 1st respondent. The 1st letter was to notify the 1st respondent of the need to adhere to the law in conducting elections of the 2nd Interested party and more so the term limits and the swapping of position. This letter does not raise any issue for dispute resolution.

151. The 2nd letter notes that, a response had not been received on the first letter and that the 3rd respondent had been listed to vie, yet he had exhausted his term and his vying would lead to mischief as there is a likelihood of him serving a third term if the 2nd respondent does not complete her term. The applicant then states that, if there was no compliance they would move to the High Court for Judicial Review.

152. The question that arises is; do these two (2) letters amount to a complaint before the 1st respondent. In my considered opinion, as much as there is no laid down procedure for instituting the complaint, the content of the letters do not speak to a specific complaint and/or raise an issue for dispute resolution.

153. Pursuant to the afore finding, it is the finding of this court that the applicant has has not adhered to the doctrine of exhaustion as the reasons advanced do not fall under the exceptions stipulated and/or settled under the law.

154. Consequently, the application herein is pre-mature and/or the court jurisdiction is not properly invoked. Therefore, the notice of motion herein cannot even be considered on merit.

155. Upshot of the afore is that the entire application is struck out and/or dismissed with costs to the respondents and Interested parties.

DATED, DELIVERED AND SIGNED THIS 29TH DAY OF NOVEMBER 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Kariuki H/B for Mr. Mburu for the Ex-parte applicant

Ms. Swaka H/B for Mr. Njenga for the 1st Respondent

Mr. Munyendo for the 2nd Respondent

Mr. Ochieng for the 3rd Respondent

Ms. Wanjeri H/B for Ms. Shirika for the 1st, 3rd and 4th Interested parties

Mr. Olala H/B for Mr. Omwembu for the 2nd Interested party