



REPUBLIC OF KENYA



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**Mereka v Samora M. Sikalieh -Chairman, Karen Langata District Association
(KLDA) (Constitutional Petition 299 of 2022) [2023] KEHC 19953 (KLR)
(Constitutional and Human Rights) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION 299 OF 2022**

M THANDE, J

JUNE 30, 2023

BETWEEN

DAVID MUKII MEREKA PETITIONER

AND

**SAMORA M. SIKALIEH -CHAIRMAN, KAREN LANGATA DISTRICT
ASSOCIATION (KLDA) RESPONDENT**

RULING

1. The subject of this Ruling is a Preliminary Objection (PO) dated 4.7.22, filed by the Respondent in opposition to the Petitioner's application dated 1.7.22. The objections are that:
 1. That the Honourable Court lacks the requisite jurisdiction to entertain, hear, determine and/or grant the orders sought in this Amended Application and the Petition as filed.
 2. The Amended Application and the Amended Petition as filed herein are incompetent and fatally defective for want of compliance with the mandatory provisions of Section 3 and 9(2) of the *Fair Administrative Action Act* No. 4 of 2015.
 3. That Amended Petition as filed incompetent and fatally defective for failure to exhaust available internal remedies.
 4. The Amended Application together with the Amended Petition as filed herein are frivolous, vexatious and utter abuse of the court process and a waste of precious judicial time.



2. The background of this matter is that the Respondent is the Chairman of the Karen Langata District Association (KLDA) of which the Petitioner was hitherto, the Secretary. Vide a letter dated 9.6.22, the Respondent instructed the Petitioner to resign as Secretary of KLDA, accusing him of inter alia deviating from the mandate of KLDA, acting without authority of the Committee and going against its decisions. This is what provoked the filing of the Petition herein dated 20.6.22 and amended on 1.7.22, against the Respondent. In the Petition, the Petitioner claims that the Respondent violated his rights to fair administrative action. In response, the Respondent filed the instant PO.
3. Parties filed their respective submissions which I have carefully considered. The only issue for determination is whether this Court has jurisdiction to entertain this Petition, in view of the provisions of Sections 3 and 9(2) of the *Fair Administrative Action Act* (FAAA).
4. It is the Respondent's case that the subject matter of the Petition does not merit hearing by this Court as the same wholly comprises of internal running and management of a private members' association, which will be interfered with, if the Court allows what he terms as the Petitioner's premature and imaginary claim of violation of rights. The Respondent submitted that the Petitioner was in the letter dated 9.6.22 asked to respond to the allegations in the special general meeting. He had the option to resign or wait for the opportunity to respond to the allegations in the special general meeting but opted to go to court instead. Citing Section 9(2) of the *FAAA*, the Respondent argued that the Court is forbidden to assume jurisdiction in cases where a party has failed to exhaust internal remedies as in the case herein. The Petition thus disregards the doctrine of exhaustion.
5. In his rejoinder, the Petitioner submitted that while a party is required to exhaust internal remedies there exists no internal dispute resolution mechanism in KLDA. Further that the issues raised involve questions on fundamental rights which warrant exception to the doctrine of exhaustion. By dint of Article 165(3) as read with Articles 22 and 23 of the Constitution, this Court has jurisdiction to entertain matters concerning denial, violation or infringement of fundamental rights and grant appropriate relief. The Petitioner further argued that the doctrine of exhaustion does not apply herein as there exists no clear and established internal dispute resolution mechanisms in the constitution of KLDA. He contends that he did attempt to settle the dispute by calling a meeting with the Management Committee on 25.5.22 and another on 9.6.22 which were unsuccessful. He further asserted that the letter of 9.6.22 was not an invitation to respond to the allegations against him as claimed by the Respondent but a dismissal letter. Accordingly, the decision to dismiss the Petitioner as secretary of KLDA was arrived at without giving him an opportunity to be heard, in clear violation of Articles 47 and 50 of the Constitution.
6. The Respondent's PO is anchored on the doctrine of exhaustion. The doctrine of exhaustion is encapsulated in the FAAA which was enacted to give effect to the right to fair administrative action guaranteed under Article 47 of the Constitution which provides:
 1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—



- a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - b. promote efficient administration.
7. Section 2 of the Act defines administrative action to include inter alia any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates. Under Section 3, the Act provides that it applies to all state and non-state agencies, including any person exercising administrative authority. It also applies to entities and persons performing a judicial or quasi-judicial function under the Constitution or any written law. Persons and entities whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates are also subject to the provisions of the [FAAA](#).
8. In the present case, the Petitioner claims that the Respondent's action of dismissing him as Secretary to K LDA affected his legal rights or interests. Accordingly, the action by the Respondent constitutes an administrative action within the meaning of Section 2 of the [FAAA](#). The Respondent is also subject to the provisions of the Act. Indeed, the Respondent has himself cited noncompliance with the Act by the Petitioner, as the basis for his PO.
9. Section 9 of the [FAAA](#) sets out the procedure for judicial review of an administrative action as follows:
 1. Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.
 2. The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
 3. The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
 4. Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
 5. A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.
10. Section 9(2) of the [FAAA](#) is explicit that courts shall not review an administrative action or decision unless all the mechanisms for appeal or review and all remedies available under any other written law are first exhausted. This is the doctrine of exhaustion.
11. The doctrine of exhaustion accords with Article 159(2)(c) of the Constitution which recognizes and entrenches the use of alternative mechanisms for dispute resolution in the following terms:
 - (2) In exercising judicial authority, the Courts and tribunals shall be guided by the following principles-



- (c) alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.

12. The doctrine of exhaustion encourages disputants to seek other means of resolving their conflicts rather than, or before coming to Court. The jurisdiction of the Court should only be invoked when all other means of dispute resolution fail or are exhausted. This was the holding in the case of *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR wherein the Court of Appeal stated:

It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.

13. The question before the Court is what internal dispute resolution mechanisms are in place within KLDA and whether the Petitioner disregarded the same.

14. It is the Respondent's contention that the Petitioner was in the letter dated 9.6.22 asked respond to the allegations in the special general meeting. He had the option to resign or wait for the opportunity to respond to the allegations in the special general meeting but opted to go to court instead. The Petitioner's assertion is that the letter was not an invitation to respond to the allegations against him as claimed by the Respondent, but a dismissal letter.

15. The Court has carefully read the letter dated 9.6.23 addressed by the Respondent to the Petitioner. The letter is reproduced in part hereunder:

With the above reasons, we find it suitable to for you to desist from representing KLDA in anyway until ratification during a Special General Meeting. Take note, that we have followed the KLDA constitution that states the following:

9.

- (b) Any officer or member whose actions, in the opinion of the Association, are considered to be inimical to its best interests may be required to resign by a two-thirds majority of members present and meeting. The member concerned shall be informed by the Secretary not less than seven days prior to the meeting.

10.

- (b) Special General Meeting of the Association may be called for any special purposes by the Committee or by ten members of the Association or written requisition to the Chairperson accompanied by a resolution on the subject to be placed on the agenda.

The committee has decided to instruct you to desist from acting on behalf of the KLDA committee and KLDA association.



We do further request you to step down from your position as KLDA's Honourable Secretary voluntarily so as not to subject you to a vote at a Special General Meeting.

16. As can be seen, after setting out the accusations against the Petitioner, the Respondent in the letter required him to step down as Secretary of KLDA. There is nothing in the letter to suggest that the Petitioner was asked to respond to the allegations against him.
17. It is the Petitioner's contention that no mechanisms exist in the constitution of KLDA. Notably, although the Respondent contends that the Petitioner ought to have exhausted the mechanisms, he has not pointed out to the Court what those mechanisms are. If they did exist, the Respondent would surely have so demonstrated. It follows therefore that the only conclusion that this Court can draw is that there exist no internal dispute resolution mechanisms in the KLDA constitution, which the Petitioner would have invoked to redress his grievances.
18. This Court has the authority to uphold and enforce the Bill of Rights and to hear any aggrieved party for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights, who has no other forum to ventilate his grievances. Article 23(1) of the Constitution provides:

The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
19. In the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, this Court stated:
 61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, 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 must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.
 62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.
20. The Court has considered that there exist no internal dispute resolution mechanisms under the KLDA constitution. This can only mean that the Petitioner, being aggrieved by the decision of the Respondent and now seeks to enforce his fundamental rights and freedoms, is bereft of a forum for ventilating his grievances. The jurisdiction of this Court must therefore not be ousted as it is this Court that is charged with the power to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.



21. In view of the foregoing, the finding of this Court is that it has jurisdiction to entertain the Petition herein. Accordingly, the Preliminary Objection dated 4.7.22 is without merit and the same is hereby dismissed. Costs in the cause.

DATED AND DELIVERED IN NAIROBI THIS 30TH DAY OF JUNE 2023

M. THANDE

JUDGE

In the presence of: -

.....**for the Petitioner**

.....**for the Respondent**

.....**Court Assistant**

