REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A.C. Mrima, J.)

CONSTITUTIONAL PETITION NO. E260 OF 2021

1. AKUSALA BORNIFACE

2. COLLINS ODHIAMBO ODUNDO..PETITIONERS

-VERSUS-

1. THE LAW SOCIETY OF KENYA

2. NELSON ANDAYI HAVI

3. CAROLINE KAMENDE DAUDI

4. HERINE AKOTH KABITA

5. ESTHER ANG'AWA

6. BERNHARD NGETICH KIPKOECH

7. ALUSO AILEEN INGATI

8. GEORGE OMWANSA

9. BETH MICHOMA

10. FAITH ODHIAMBO

11. CAROLYNE MUTHIANI MUTHEU

12. DAMARIS NDINDA KINYILI

13. LINDA RIZIKI EMUKULE...RESPONDENTS

-AND-

LAW SOCIETY OF KENYA NAIROBI BRANCH ....INTERESTED PARTY

RULING NO. 2

Introduction:

1. The Petitioners herein, *Akusala Borniface* and *Collins Odhiambo Odundo* are Advocates of the High Court of Kenya and Members of the Law Society of Kenya, the 1st Respondent herein.

2. The Petitioners approached this Court under a certificate of urgency with the Notice of Motion application and a Petition alleging that the goings-on in the Law Society of Kenya have culminated in denying Advocates the right to practice and earn a living.

3. They enjoined the 2nd to 13th Respondents herein who are the current Council Members as Respondents and claimed various reliefs against each of them individually and collectively. The application and the Petition are pending.

4. The Law Society of Kenya was represented by two sets of Advocates. On one hand is Mr. Nelson Andayi Havi, the President of the Law Society of Kenya, together with Miss Caroline Kamende Daudi (the Vice-President), Miss Herine Akoth Kabita (a Council member) and Miss Esther Ang'awa (a Council member), and on the other hand, Mr. Onyango appeared on instructions of Messrs. Allamano & Associates Advocates.

5. Mr. Nelson Andayi Havi further filed a Notice of Preliminary Objection dated 7th July, 2021. He challenged the jurisdiction of this Court on the following grounds: -

> 1. The Petitioners have not invoked and or/exhausted the alternative dispute resolution mechanism available to them under Regulation 95 and 96 of the Law Society of Kenya (general) Regulations, 2020 in so far as their alleged dispute is one between the Members and the Law Society of Kenya, its Council/ and or Council members.
>
> 2. There is a misjoinder of the 2nd to 13th Respondents who ought not to be sued together with the Law Society of Kenya or at all, in view of the express provisions of section 29 of the Law Society of Kenya Act No. 21 of 2014.

6. On 8th July 2021, this Court enjoined the Law Society of Kenya Nairobi Branch as an Interested Party and also issued directions on the hearing of the Preliminary objection and the issue of the representation of the Law Society of Kenya.

7. The hearing took place on 26th July, 2021. All parties appeared, filed written submissions and also made oral highlights to their written submissions. This ruling is, therefore, on the Notice of Preliminary objection dated 7th July, 2021 and the representation of the Law Society of Kenya in this Constitutional Petition.

<u>The Parties' positions and submissions:</u>

8. The parties tendered comprehensive submissions on the three issues. They also variously referred to several decisions in support of their rival positions.

9. Due to the nature of the submissions tendered and the number of parties involved coupled with urgency in this matter, I will not reproduce the submissions *verbatim* in this ruling. However, I have carefully considered the submissions and the decisions referred to by each of the parties and I have not lost sight of any of the arguments put forth by the parties as I render this ruling.

10. I will now deal with the issues for determination.

<u>Issues for Determination:</u>

11. From the record, I discern the following issues for determination: -

> i. Whether the Preliminary Objection is sustainable in law.
>
> ii. Whether the Court is barred by the doctrine of exhaustion from entertaining the dispute.
>
> iii. Whether there is a misjoinder of the 2nd to 13th Respondents.
>
> iv. Representation of the 1st Respondent in the circumstances of this dispute.
>
> v. Disposition.

12. I will deal with the above issues in seriatim.

> **a. Whether the Preliminary Objection is sustainable in <u>law:</u>**

13. The validity of any preliminary objection is gauged against the requirement that it must raise pure points of law capable of disposing the dispute at once. It is, therefore, mandatory for a Court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence.

14. The foregoing nature of preliminary objections was discussed in ***Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors*** *Ltd,*

(1969) E.A. 696 page 700 when the Court observed as follows: -

> ...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.
>
> ...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 preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.

15. In *Civil Suit No. 85 of 1992*, ***Oraro vs. Mbaja*** *[2005] 1 KLR 141***, Ojwang J**, as he then was, cited with approval the position in *Mukisa Biscuit -vs- West End Distributors* (supra) and stated as follows on the operation of preliminary objection: -

> **….** I think the principle is abundantly clear. A "preliminary objection", correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.

16. In ***Omondi -vs- National Bank of Kenya Ltd & Others*** *{2001} KLR 579; [2001] 1 EA 177*, it was observed that a Court in determining a preliminary objection can look at the pleadings and other relevant documents but must abide by the principle that the objection must raise pure points of law. It was held thus: -

> **…**In determining (Preliminary Objections) the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters…What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion and therefore the contention that the suit is an abuse of the process of the Court for the reason that the defendant's costs in an earlier suit have not been paid is not a true point of preliminary objection because to stay or not to stay a suit for such reason is not done *ex debito justitiae (as of right) but as a matter of judicial discretion.*

17. The question whether jurisdiction is a point of law was set out clearly by the Supreme Court in *Petition No. 7 of 2013* ***Mary Wambui Munene v. Peter Gichuki Kingara and Six Others,*** *[2014] eKLR***,** when the Learned Judges stated that *'jurisdiction is a pure question of law'* and should be resolved on priority basis.

18. The Apex Court had earlier on in *Constitutional Application No. 2 of 2011,* ***In the Matter of Interim Independent Electoral Commission*** *(2011) eKLR* observed as follows in regard to jurisdiction and its source: -

> **…** Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid down in judicial precedent.

19. The Preliminary objection in this matter has two limbs. It is contended that, by dint of *Regulations 95* and *96* of *The Law Society of Kenya (General) Regulations, 2020*, this Court is barred from entertaining any jurisdiction over the matter. That is the first limb of the objection. The second limb of the objection is that there is a misjoinder of the 2nd to 13th Respondents who ought not be sued together with the Law Society of Kenya or at all in view of *Section 29* of the *Law Society of Kenya Act*, No. 21 of 2014. Suffice to note that both limbs of the objection are grounded on specific provisions of the law.

20. In the event the first limb of the objection is sustained then it means that this matter will come to an end in this Court. The first limb, therefore, is capable of extinguishing the entire proceedings. As regards the second limb, if it is successful, then there will be no further proceedings against the 2nd to 13th Respondents. In view of the manner in which the objection is tailored, it comes out that the objection rests purely on points of law and does not call for any evidence in its determination.

21. It is, therefore, this Court's finding that the Preliminary Objection passes the propriety test and the objection is for consideration.

b Whether the Court is barred by the doctrine of <u>exhaustion from entertaining the dispute:</u>

22. The parties have tendered their respective submissions on the applicability of the doctrine of exhaustion in this matter. Mr. Nelson Andayi Havi, Miss Caroline Kamende Daudi, Miss Herine Akoth Kabita and Miss Esther Ang'awa posit that this Court has no jurisdiction as the parties have not exhausted the alternative dispute resolution mechanism provided for under *Regulations 95* and *96* of *The Law Society of Kenya (General) Regulations, 2020* (I will hereinafter refer to The Law Society of Kenya (General) Regulations, 2020 as '***the Regulations'***).

23. The foregoing position is diametrically opposed by the rest of the parties. The proponents of the opposition contend that the matter falls within the exceptions to the doctrine of exhaustion and hence cannot be referred for arbitration.

24. There is, therefore, the need to look at the doctrine of exhaustion and its applicability in this matter. The starting point is a discussion on the nature and the intention of the doctrine.

25. The doctrine of exhaustion in Kenya traces its origin from *Article 159(2)(c*) of the Constitution which recognizes and entrenches the use of alternative mechanisms of dispute resolution in the following terms: -

> 159(2) In exercising judicial authority, the Courts and tribunals shall be guided by the following principles-
>
> > (a)…
> >
> > (b)…
>
> (c) alternative forms of dispute resolution including resolution, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause 3.

26. Clause 3 is on traditional dispute resolution mechanisms.

27. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in *Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019* ***William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)*** (2020) eKLR**.** The Court stated as follows:

> 52. The question of exhaustion of administrative remedies arises when 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. The exhaustion doctrine 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 the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the Constitution and was aptly elucidated by the High Court in **R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR,** where the Court opined thus:
>
> 42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in **Speaker of National Assembly v Karume [1992] KLR 21** in the following oft-repeated words:
>
> > Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.
>
> 43. While this case was decided before the Constitution of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.
>
> This is **Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR,** where the Court of Appeal stated that:
>
> 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 fora of last resort and not the first port of call the moment a storm brews…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 the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.

28. The Court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows: -

> 59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA) (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:
>
> > What emerges from our jurisprudence in these cases are at least two principles: 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. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.)
>
> 60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
>
> 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.**

29. The above decision was appealed against by the Respondents. The Court of Appeal in upholding the decision and in dismissing the appeal in Mombasa Civil Appeal No. 166 of 2018 ***Kenya Ports Authority v William Odhiambo Ramogi & 8 others [2019] eKLR*** held as follows: -

> The jurisdiction of the High Court is derived from Article 165 (3) and (6) of the Constitution. Accordingly, the High Court has unlimited original jurisdiction in criminal and civil matters, including determination of a question of enforcement of the bill of rights and interpretation of the Constitution encompassing determination of any matter relating to the Constitutional relationship between the different levels of government.
>
> At the High Court, we note that the learned Judges dealt with this matter under the question framed as follows: Is the court barred from considering the suit at present by virtue of Article 189 of the Constitution and sections 33 and 34 of Inter-Governmental Relations Act of 2012 (IGRA)? The parties have advanced similar arguments as before the learned Judges of the High Court. The High Court went further than just looking at the ruling by Ogola J. They also took into account the doctrine of exhaustion as enunciated in Republic vs. Independent Election and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya & 6 Others [2017] eKLR. They applied a dual pronged approach before concluding that the dispute was not an inter-governmental dispute under IGRA. First, they considered that the test for determining the matter as an inter-governmental dispute for purposes of application of IGRA was not simply to look at who the parties to the dispute were, but the nature of the claim in question and; secondly, they considered that the claimed Constitutional violations seeking to be enforced are not mere "bootstraps." We have keenly addressed our minds to the learned Judges' decision and are satisfied that they stayed within the expected contours and properly directed themselves. Once they determined that the dispute was not inter-governmental in nature, we do not think it is necessary to consider whether the petitioners had exhausted their legal avenue. Jurisdiction by the High Court under Article 165 (5) of the Constitution became automatic. And in our view, it could not be ousted or substituted.

30. Further, in Civil Appeal 158 of 2017, ***Fleur Investments Limited -vs- Commissioner of Domestic Taxes & another*** [2018] eKLR, the Learned Judges of the Court of Appeal relied on an earlier decision in *Speaker of National Assembly vs Njenga Karume (1990-1994) EA 546* to assume jurisdiction by bypassing the mechanism under Income Tax Tribunal. They observed as follows: -

> 23. For the reasons we have given earlier and others that will become apparent, there were definitely exceptional circumstances that existed in this case that were outside the ambit of the Income Tax Tribunal which called for intervention by way of judicial review. Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.

31. The High Court has variously reiterated the position that it is only the High Court and Courts of equal status which can interpret the Constitution. (See ***Royal Media Services Ltd. -vs- Attorney General & 6 Others*** (2015) eKLR among others).

32. Returning back to the case at hand, Regulations 95 and 96 provide as follows: -

> **95. Negotiation, conciliation & mediation.**
>
> (1) Parties to a dispute referred to in regulation 96(1) may attempt to reach settlement by—
>
> > (a) negotiation;
> >
> > (b) conciliation; or
> >
> > (c) mediation.
>
> (2) The procedure for negotiation, conciliation or mediation shall be simple and the process shall be guided by the international best practices or any law for the time being regulating negotiation, conciliation and mediation.
>
> (3) A decision or settlement by the use of any of the methods under paragraphs (a), (b) or (c) of sub-regulation (1) shall be concluded within 28 days from the date of lodging the dispute.
>
> (4) A decision or settlement by the use of any of the methods under paragraphs (a), (b) or (c) of sub-regulation (1) shall immediately

be filed with the secretary and shall, subject to the Act and these Regulations, be binding on the parties to the dispute.

96. Arbitration.

(1) Where a dispute arises—

(a) relating to the exercise of the mandate or the management of the affairs of the Society, a branch or a chapter; or

(b) relating to the rights of a member against any other member or the Council, branch executive or chapter committee, the aggrieved party shall—

(i) refer the dispute in writing to the secretary, where the dispute concerns the national office of the Society; or

(ii) refer the dispute in writing to the branch secretary of the relevant branch where the dispute involves an issue or a party at the branch level.

(2) A dispute may exist between or amongst one or more of the parties listed in sub regulation (1).

(3) Where a dispute has been lodged with a branch secretary and the dispute cannot be resolved within 30 days, the branch secretary shall, within 7 days, forward the dispute to the secretary and the procedure for hearing and disposal of the dispute provided under this regulation shall thereafter apply.

(4) The secretary or a branch secretary shall, within 14 days upon receiving notification of a dispute from an aggrieved party, or upon the secretary receiving notification of a dispute from a branch under sub regulation (3), refer the dispute to an arbitrator or arbitrators appointed by the parties to such dispute for determination.

(5) The number of arbitrators so appointed shall not, in relation to any one dispute, exceed three persons.

(6) Where a dispute is between—

(a) a member and another member; or

(b) a member and a branch executive or chapter committee, and the parties to the dispute cannot agree on an arbitrator within 14 days, the president shall appoint an arbitrator to hear and determine the dispute.

*(7) Wh*ere a dispute involves—

(a) the Council; or

(b) a member of the Council, and any other party, and the parties cannot agree on an arbitrator within 14 days of lodging of the dispute, the arbitrator shall be appointed by the Chairperson of the Chartered Institute of Arbitrators, Kenya Chapter.

(8) The arbitrator or arbitrators shall hear and determine a dispute in accordance with the law for the time being regulating arbitration, and the decision shall be final and binding on all parties to such dispute.

(9) The time provided under this regulation for lodging or taking other step in dispute resolution process is subject to regulation 45 where the dispute concerns elections.

33. Regulations 95 and 96 provide in certain terms the procedures to be followed in the event of disputes arising within the Law Society of Kenya (hereinafter referred to as either ***'the LSK', 'the Society'*** or '***the 1st Respondent***'). In this case, since the dispute involves the Council, Regulation 96(7) mandates that if the parties cannot agree on an arbitrator then the arbitrator shall be appointed by the Chairperson of the Chartered Institute of Arbitrators, Kenya Chapter.

34. That is the procedure. At this point in time I must clarify that the reference of any dispute contemplated under the Regulations to arbitration does not require a resolution of the Council. The Regulations are simply clear. Therefore, the existence of a dispute within the Council even to an extent that the Council cannot make any resolution cannot *ipso facto* be a reason why a dispute cannot be refereed to arbitration. The only time any dispute contemplated under the Regulations will not be capable of referral to arbitration is when the exceptions to the doctrine of exhaustion applies.

35. The most current and inevitable question now is whether in the circumstances of this case the exceptions to the doctrine of exhaustion apply.

36. I have carefully considered the Petition. It is brought under Articles 10, 20, 21, 22, 23, 24, 25, 27, 28, 29, 35, 36, 41, 43, 46, 47, 48, 49, 50, 159, 165, 232 and 258 of the Constitution. The Petition seeks to enforce the Petitioners' rights to legal representation and the right of Advocates to earn a living. The Petition is further premised on the Fair Administrative Actions Act, the Criminal Procedure Code, the Evidence Act among other statutes. Part D of the Petition particularizes the breaches complained of against the Respondents. Part E is on the remedies sought.

37. Among the remedies sought include a declaration that the 2nd to 13th Respondents have jointly and severally acted contrary to the Constitution and as such they are unfit to hold public office with the LSK and any other public office. There is also a request for an order for structural interdict to be supervised by the Court.

38. The issues raised in the Petition are of serious constitutional nature. They call for the interpretation of the Constitution, determination as to whether the Constitution is breached, whether rights and fundamental freedoms in the Bill of Rights have been violated, denied, infringed or threatened and whether the Respondents ought to hold any public office. Such issues transcend the purview of an arbitrator. There is no doubt the arbitrator(s) will have no jurisdiction over the issues raised in the Petition. The issues in the Petition are those contemplated under Article 165(3) of the Constitution to be within the exclusive jurisdiction of the High Court.

39. This Court is, hence, satisfied that the Petition primarily seeks to enforce fundamental rights and freedoms and it is not demonstrated that the claimed constitutional violations are mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court.

40. The Petition is, therefore, not barred by the doctrine of exhaustion.

c. Whether there is a misjoinder of the 2nd to 13th <u>Respondents:</u>

41. This is a constitutional Petition. *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (hereinafter referred to as '**the Mutunga Rules**') are *inter alia* aimed at facilitating access to justice for all persons as required under Article 48 of the Constitution and are to be applied with a view of advancing and realising the rights and fundamental freedoms enshrined in the Bill of Rights and the values and principles in the Constitution. The Mutunga Rules are also geared towards facilitating the just, expeditious, proportionate and affordable resolution of cases.

42. Rule 2 of the Mutunga Rules define a "*Respondent*" to mean: -

> a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom;

43. There is also the Civil Procedure Rules, 2010 which provide for parties to a suit. *Order 1 Rule 3* of the Civil Procedure Rules sets out the parties who may be enjoined in a suit as Defendants. The provision states as follows: -

> All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.

44. In ***Zephir Holdings Ltd vs. Mimosa Plantations Ltd, Jeremiah Matagaro and Ezekiel Misango Mutisya*** (2014) eKLR the Court dealt with the issue of parties to a suit and held that: -

> A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and **whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.** And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties. (emphasis added)

45. The joinder and misjoinder of parties is provided for in the Mutunga Rules as well as in the Civil Procedure Rules. *Rule 5* of the Mutunga Rules elaborately provide as follows: -

> **Addition, joinder, substitution and striking out of parties.**
>
> The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—
>
> > a. Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
> >
> > b. A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.
> >
> > c. Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.
> >
> > d. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—

i. order that the name of any party improperly joined, be struck out; and

ii. that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.

e. Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.

46. Order 1 rule 9 of the Civil Procedure Rules talks about misjoinder of parties in the following manner: -

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and obligations of the parties actually before it.

47. The objection seeks to oust personal liability of the 2nd to 13th Respondents based on *Section 29* of the *Law Society of Kenya Act* No. 21 of 2014 (hereinafter referred to as '***the LSK Act'***). The Section provides as follows: -

29. Liability of Council members officers and employees.

(1) No matter or thing done by a member of the Council or by any officer, member of staff, or agent of the Council shall, **if the matter or thing is done bona fide** for executing the functions, powers or duties of the Council or the objects of the Society under this Act or **for any neglect or default in the performance or exercise in good faith of any such duty or power render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.**

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Council, shall, if the court holds that such act was done bona fide, be paid out of the funds of the Society, if such expenses are not recovered by the person in such suit or prosecution.

(3) The provisions of subsection (1) shall not relieve the Society of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

48. The foregoing is evident that personal liability of a Council member, any officer, member of staff, or agent of the Council is exempted only in instances where one acts in good faith.

49. The Petition in this matter has its roots in the individual responsibility of each of the Council members. In essence, it is alleged that the collective or otherwise actions of the Council members have occasioned the alleged infringement of the rights and fundamental freedoms of the members of the Society. In other words, the Petitioners allege that the Council members have acted in bad faith and, as such, failed to act in the best interests of the Society thereby occasioning the alleged violations. To that end, the Petitioners seek a declaration that none of the Council members is fit to hold any public office.

50. The Petition, therefore, centres on the acts or otherwise of each individual Council member. It further seeks specific prayers against each of the Council members. It is each of the Council members who is personally called upon to answer to the Petition and not the Society.

51. In view of the manner in which the Petition is presented and the orders sought against each of the Council members, it is necessary that each of the Council members participates in the proceedings. I say so because the presence of each Council member is necessary or relevant for the determination of the real matter in dispute and also to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the Petition.

52. This Court, hence, finds that the personal participation of the 2nd to 13th Respondents in this matter is a necessity and their respective joinder does not amount to misjoinder. Each of the respective Council member qualifies and should so remain as a substantive Respondent in the Petition.

53. In the end, the issue is answered in the negative.

(c) Representation of the 1st Respondent in the circumstances of this dispute:

54. Section 3 of the LSK Act establishes the Society in the following terms: -

3. Establishment of Law Society of Kenya.

1. There is established a society to be known as the Law Society of Kenya.

2. The Society shall be body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of –

(a) suing and be sued;

(b) taking, purchasing or otherwise acquiring, holding, developing or disposing of movable and immovable property;

(c) borrowing or raising money;

(d) invest and deal with monies of the Society not immediately required in such manner as may from time to time be determined by the Society; and

(e) doing or performing all such other things or acts, which may, lawfully, be done by a body corporate.

3. The Society shall be the successor of the Law Society of Kenya established under the Law Society of Kenya Act (Cap. 18), and subject to this Act, all rights, duties, obligations, assets and liabilities of the Law Society of Kenya existing at the commencement of this Act shall be automatically and fully transferred to the Society and any reference to the Law Society of Kenya in any contract or document shall for all purposes be deemed to be a reference to the Society established under subsection (1).

55. As a body corporate, the LSK has four main organs which enables it to discharge the functions and objects in Section 4 of the LSK Act. Part IV of the LSK Act is on the governance of the Society. The organs are provided for under Section 15 as follows: -

15. Organs of the Council.

For the effective governance of the Society *there shall be the following organs of the Society*-

a. the general meeting;

b. the Council;

c. the secretariat; and

d. the branches.

56. In order to sustain the discussion herein with ease, I will briefly look at the above organs. The **General meeting** is provided for in Section 16 of the LSK Act as under: -

1) The general meeting shall be the **supreme authority of the Society** which shall approve all resolutions and important decisions of the Society.

(2) The general meeting shall consist of all the members of the Society.

(3) The secretary shall be the secretary to the general meeting.

(4) The expenses of the annual general meeting shall be defrayed from the general funds of the Society.

(5) The quorum of the general meeting shall be at least five percent of all the members of the Society.

(6) The president of the Council shall preside at the general meeting and in the absence of the president, the vice-president shall preside at the meeting.

(7) In the absence of both the president and the vice president, the Council shall nominate one among its members to preside.

57. The nature and composition of the **Council** is provided for in Section 17 as follows: -

(1) **The Council shall be the governing body of the society.**

(2) The Council of the Society shall consist of-

(a) the President;

(b) the Vice-President;

(c) three representatives of the general membership of the Society, one of whom shall be an advocate of at least twenty-five years' standing;

(d) four upcountry representatives, who shall be persons who do not ordinarily practises in Nairobi or at the coast and;

(e) three Nairobi representatives who shall be persons who ordinarily practises in Nairobi; and

(f) one Coast representative, who shall be a person who ordinarily practises at the coast.

(3) The members of the Council shall be elected by all the members of the Society in accordance with this Act.

58. The **branches** of the Society and their mandate are provided for in Section 24 as follows: -

Branches of the Society.

(1) There shall be the following eight branches of the Society consisting of the centres set out in the Schedule -

(a) Coast;

(b) Rift Valley;

(c) North Rift;

(d) West Kenya;

(e) South West Kenya;

(f) Mount Kenya;

(g) South Eastern; and

(h) Nairobi.

(2) The branches shall-

(a) deal with issues that regarding practise within their centres;

(b) address issues relating to the welfare of the members practising in their centres;

(c) inform the Council of any matters that affect members within the branches that require the Council's engagement with other stakeholders on behalf of the branch;

59. Section 27 of the LSK Act creates the **Secretariat** in the following manner: -

(1) There shall be a secretariat of the Society to be headed by the secretary.

(2) The secretariat shall be responsible for the day to day management of the affairs of the Society.

(3) The secretariat shall, from time to time receive such general or specific instructions from the Council through the secretary.

60. The secretary to the Council, who is also the Chief Executive Officer of the Society, appointed under Section 26 of the LSK Act is the head of the secretariat.

61. From the above governance structure coupled with the dictates of Section 26(3) of the LSK Act, it is the Council which makes resolutions on the administration and management of the Society. Such resolutions are effected by the secretariat through the secretary. Section 26(3) states as follows: -

The secretary shall be responsible to the Council for the day-to-day administration and management of the Secretariat and the affairs and functions of the Society **as the Council shall determine**.

62. It can, therefore, be equated that the secretariat is an agent of the Council just like the Council is an agent of the Society. All in all, the General meeting remain as the supreme authority of the Society.

63. The manner in which the Council operates is provided for in the Regulations. The decisions of the Council are usually arrived by way of resolutions in duly convened meetings. As such, it is critical that a discourse on how Council meetings are convened be undertaken.

Convening and making decisions in Council meetings:

64. There are two types of Council meetings which may be convened under the Regulations. They are the *Ordinary Council meetings* under Regulation 18 and the *Extra-Ordinary Council meetings* under Regulation 21. Due to the centrality of such meetings in this discussion, I will

reproduce the said Regulations verbatim: -

18. Council meetings & Venue.

(1) The Council may meet for the dispatch of business, adjourn, and, subject as expressly provided by the Act or these Regulations, otherwise regulate its meetings and proceedings as it thinks fit.

(2) The secretary is responsible, in consultation with the President, to call for a meeting of the Council by issuing to the members of the Council not less than 7 days' notice, and the notice shall include the agenda of the meeting.

(3) All meetings of the Council shall be held in Nairobi, unless the Council considers it appropriate for a good cause to hold a meeting outside Nairobi.

(4) The Council shall meet quarterly but may meet more frequently as may be necessary.

21. Extra-ordinary meetings:

(1) The President may convene an extra-ordinary meeting of the Council by issuing or causing to be issued a 24-hour notice to each of the members of the Council.

(2) The notice shall specify the date, the time, the venue and the agenda of the meeting.

(3) A notice for an extra-ordinary meeting may be delivered by electronic mail address provided by each of the Council members.

65. In the ordinary conduct of the business of the Council, meetings are usually convened by the secretary on consultation with the President. Notices of such meetings are issued by the secretary.

66. There are, however, instances where the President may convene extra-ordinary meetings. In such cases, it is either the President who issues such notices or the President may cause the notices to be issued by the secretary.

67. Once a meeting has been duly called, Regulation 20 recommends decisions to be arrived at unanimously failure to which majority votes prevail. It further provides that in instances where there is a tie, the President makes the casting vote. The regulation also holds each of the members of the Council to owe a fiduciary duty to the Society. For clarity the said regulation provides as follows: -

20. Decisions of the Council.

(1) A question or issue arising during a meeting of the Council upon which a decision is required to be made shall be decided by a majority of votes of Council members present and voting, except in the case of a special resolution.

(2) Where there is equality of votes, the President shall have a second or casting vote.

(3) Despite sub-regulation (1), the Council shall endeavour to resolve a question or issue by consensus but if it becomes necessary to put any question to a vote, it shall be decided by a vote of the members present and voting, by a show of hands.

(4) Members of the Council are collectively responsible for a decision or resolution made by the Council or by the majority of the Council members.

(5) A member of the Council owes fiduciary duty to the Society.

(6) The proceedings, resolution and decision of the Council shall not be invalid merely because a person who is not a member of the Council is in attendance.

68. The decisions which the Council may make include those on the representation of the Society in Court proceedings. I must add that the Council may even make a decision to be represented in Court by any of its members. As long as it is a resolution of the Council on the representation of the Society which is properly minuted as provided for under Regulation 37, then that decision carries the day unless the decision is either rescinded by another decision of the Council or by a resolution of the General meeting. Any representation of the Society outside a resolution of a properly convened Council meeting or General meeting cannot stand unless extreme and compelling circumstances dictate otherwise, which in any event, must be in the best interests of the Society.

69. Courts have previously dealt with the issue of representation of the Society. In Judicial Review Application E1100 of 2020 ***Republic v Committee on Senior Counsel & another ex parte Allen Waiyaki Gichuhi*** [2021] eKLR, the Court, upon analysing the provisions on the governance of the Council and the decision making process as laid out in the LSK Act struck out Notice of Appointment of Advocates for want of resolutions of the Council. The Court observed as follows:

64. As regards the representation of the Law Society of Kenya, which is the 2nd Respondent herein, it is evident that the conflict emanates from disagreement between the President of the Law Society of Kenya and some members of the Council of the Society,

as regards the Society's legal representation in this matter. As a result, various firms of advocates have filed Notices of Appointment and of Change of Advocates, starting with Nchogu Omwanza & Nyasimi Advocates that filed a Notice of Appointment dated 30th September 2020; Havi & Company Advocates that filed a Notice of Change of Advocates dated 26th November 2020; the firm of Murgor and Murgor Advocates that filed two Notices of Change of Advocates dated 3rd December 2020 and 8th February 2021; and a Notice of Change of Advocates dated 19th January 2021 filed by Ashioya Mogire and Nkatha Advocates.

65. All the aforestated firms of Advocates, except that of Murgor and Murgor Advocates, claim to have received instruction from the President of the Law Society of Kenya, which position is also reiterated by the said President. The firm of Murgor and Murgor Advocates on the other hand referred to a letter from some Council members of the Law Society of Kenya giving him instructions to act.

66. Order 9 Rule 1 of the Civil Procedure Rules required an advocate to be appointed by a party. In the case of the Law Society of Kenya, the process of appointment is regulated by the parent statute, being the Law Society of Kenya Act. The process of decision making in the Law Society of Kenya is provided in section as follows in sections 15 to 17 of the Act, and section 15 provides for governance of the Society by the following organs—

69. **It is notable in this respect that Allen Waiyaki Gichuhi and the firm of Murgor and Murgor Advocates rely on letters from some council members as the basis for their respective cases on legal representation of the Law Society of Kenya. The President of the Law Society of Kenya also claims that he can make the appointment of advocates on behalf of the Law Society of Kenya. Both of these claims and arguments have no legal basis in the Law Society of Kenya Act as shown by the foregoing provisions on decision making, which includes the appointment of advocates, by the Law Society of Kenya.**

70. It is also notable that the resolution of the Law Society of Kenya that is the basis of the appointment of the firm of Ashioya, Mogire and Nkatha Advocates is the subject of separate court proceedings. It was in this regard orally submitted by Mr. Murgor SC in Court during the hearing of the applications, and not contested by the other parties, that the said resolution has since been suspended by the High Court in the said proceedings. From the recent and current happenings in the Law Society of Kenya, it is evident that the law as regards decision making by the Society as regards appointment of its advocates needs to be better managed, and the law strictly enforced in this regard. I am therefore in agreement with the holding by Rika J. in Murigi Kamande v Nelson Andayi Havi & another; Mercy Kalondu Wambua (Interested Party) (2020) eKLR that the most suitable forum to resolve the issues in dispute is the General *Meeting.*

70. Rika J, in ***Murigi Kamande v Nelson Andayi Havi & another; Mercy Kalondu Wambua (Interested Party)*** [2020] eKLR made the following observations: -

13. It is clear therefore, that there is a fundamental conflict within the Council of the LSK. This conflict is not just about the appointment of a Law Firm, or Law Firms, to represent the LSK in this Petition, and related Petitions. It is about the governance of the LSK.

14. The Court will not be assisting the Parties, by endorsing Mr. Kurgat, or Mr. Muhoro, or other Learned Counsel, over the other, in representation of the LSK. By making a ruling for one against the other, the Court will have shown where its mind lies, with regard to the larger dispute. The Court will be fanning the flames engulfing the LSK. It will be prejudicial to the Parties, to say at this stage, that the decision made by the President and his faction in the Council, or that made by the CEO and Council Members in her faction, is the right decision. It should not be the role of the Court to fan the fires of factionalism. The Law Society of Kenya Act, has provisions, which in the view of the Court, empower the President and /or the Council, in appointment of Lawyers, and other professionals, to act for the LSK. Both the President and the Council can appoint a Lawyer to act for the LSK. The law however, presumes that the President and the Council stand on the same platform. Their voice is meant to be a collective voice. Their decisions are meant to be collective. They are all elected by the LSK Members.

15. The most suitable forum to resolve the preliminary and the main issues in dispute, is the General Meeting. Part 3, Section 15, of the LSK Act, deals with effective governance of the LSK. It creates 4 organs of governance: the General Meeting; the Council; the Secretariat; and the Branches. Section 16 of the Act, states that the General Meeting shall be the supreme authority of the Society.

16. The LSK Act presupposes that there is a single Council of the LSK. Throughout, the LSK Act refers to 'the Council.' There is one Council. Its decisions are made through majority vote. There is one President, who is a Member of the Council. There is one LSK. Section 3 of the Act establishes one LSK. What the disputants herein are doing, is to pluralize the LSK. The law does not contemplate a situation where the President and the Council act at cross-purposes. As it is, it is not possible to grant orders which can practicably be executed, for or against the LSK. It is not known who the LSK in the dispute is. How will the orders be enforced" One faction could compromise the Petition against the other, risking the resources of the membership at large. The LSK cannot enjoy client-advocate confidentiality with multiple, differently instructed Lawyers. It cannot have control over the litigation. No Court ought to approve this anomaly. The LSK needs to be placed in a position where it has a conventional advocate-client relationship. There is need for some coherence, which the Court is not able to hand to the Parties.

17. Should it happen that the President and the Council are involved in a dead heat, as they seem to be, the Society ought to ask for intervention of the supreme authority of the Society. The President, the Council and the Secretariat are subordinate to the General Meeting. The intervention of the Court as sought, does not result in, or promote, effective governance of the LSK. It would only fan, the fires of factionalism.

71. Further, in Machakos High Court Miscellaneous Application 3 of 2021 ***Republic v Parliamentary Service Commission & 2 others; Morris Kimuli & another (Interested Parties)*** [2021] eKLR the Court arrived at the following decision: -

> 55. Having considered the conflicting positions taken in this matter, in order to ensure that the ex parte applicant's application proceeds without being derailed by the disputes surrounding the management of the Law Society of Kenya and while not purporting to determine the said disputes, the order which commends itself to me and which I hereby make is that for the purposes of the conduct of these proceedings, and only for that purpose, the 2nd Respondent shall be represented by the Council of the Law Society of Kenya through its President, Mr. Nelson Havi or any other advocate appointed for the purpose by the Council through him.

72. To understand the rationale behind the above holding, there is need to look at the then existing circumstances. By the time the decision was rendered, the Selection Panel for the Commissioners of the Independent Electoral and Boundaries Commission was carrying out interviews for candidates for the positions of Commissioners of the Independent Electoral and Boundaries Commission. The process was time bound. There was no representation of the Society in the Selection Panel in view of the wrangles in the Council and some orders issued by Courts.

73. If the Court was to order that the representation of the Society be decided by the General meeting, as so held in the two cases referred to above, then taking into account the logistics in carrying out the meeting and the limited time within which the Selection Panel had, it was very likely that the Selection Panel would have wound up its duties way before the General meeting was successfully held. In that case, the Society would not have been represented at all in the Selection Panel and that would have been detrimental to the Society more so given the nature and objects of the Society. The order was, hence, made in view of the then prevailing exceptional circumstances and in the best interest of the Society. I must, however, add that; the circumstances that prompted the making of that specific order are not prevailing as at now.

74. Having said so, this Court now finds that any Notice of Appointment of Advocates filed in this matter without a resolution of a properly convened meeting of the Council must be struck out accordingly. The record, so far, has no evidence of any resolution of the Council on the representation of the Society.

75. This Court has also been asked to order the Secretariat, being one of the organs of the Society, to instead appoint Advocates for the Society. I find some discomfort in that proposition. I say so because on taking judicial notice of the unfolding events at the LSK, this Court notes that the secretariat is headed by the Secretary to the Council who is also the Chief Executive Officer of the Society and which secretary is also at the heart of the wangles in the Council. In fact, attempts have been made for her ouster and that is subject of some Court proceedings. Such a party cannot be designated the duty to appoint Advocates for the Society.

76. The upshot is that any representation of the Society outside a resolution of a properly convened Council meeting or General meeting cannot stand unless extreme and compelling circumstances dictate otherwise. Even in such limited instances, the representation must be in the best interests of the Society.

77. The prevailing situation of the Society calls for a more practical way on the aspect of representation. Having already ruled out the possibility of the secretariat appointing any Advocates for the Society, I will now consider three other possible scenarios in this matter. The first scenario is whether a Council meeting may be convened and resolutions passed. It is possible for the President to call for an extra-ordinary meeting in instances where the relationship between the President and the secretary is at its lowest. However, going by the factions in the Council and extreme acrimonious events witnessed of late which also involves the secretary and the President, it is almost impractical to imagine the convening of a Council meeting. Once a Council meeting is convened, chances of breach of peace or allegations thereof are highly likely to arise. I will, therefore, not take that route.

78. The second scenario is to convene a General meeting. Again, the acrimony between the President's faction on one hand and the other Council members and the secretary on the other hand is likely to forestall the logistical planning of the meeting. The Petitioners have also pleaded that the operations of the secretariat have long come to a halt. Since that factual situation is yet to be rebutted, I will take it that it is the prevailing situation at the secretariat. With such a case, one wonders how any communication to the members of the Society will be made. It is, hence, impractical to order the holding of a General meeting.

79. The last scenario is to involve the Society's branches. The Society has 8 branches spread out throughout the country. Each branch is presided by a Chairperson. In light of the non-functional secretariat, a Council which is unable to meet and deliberate on the affairs of the Society and in a case where the General meeting cannot be convened, it is only the branches that may have to step into the matter. In this case, and as the only available option as at now, the Chairpersons of the branches will appoint the Advocates to represent the Society.

80. As I come to the end of this issue, I am of the considered position that the issue as to whether there is no Council without the President or the Vice- President ought to be dealt with in the main Petition where all parties will be accorded opportunities to make presentations thereto. I will, hence, not express the Court's position on the issue at this point in time.

81. Lastly, this Court remain grateful to the parties and Counsel who conducted the proceedings in this matter with a lot of decorum and respect to one another. Further, this Court has greatly benefitted from the submissions made by each one of the parties and Counsel and if I have not specifically referred to an issue raised or decision referred to by any one, it is not out of disregard of the same, but on the fact that the issue is sufficiently taken into account and the decision duly considered.

Disposition:

82. Flowing from the foregoing conclusions, the following final orders do hereby issue: -

> **a. The Notice of Preliminary Objection dated 7th July, 2021 filed by Nelson Andayi Havi as the President of the Law Society of Kenya is hereby dismissed.**
>
> **b. This Court has jurisdiction to hear and determine the Petition herein.**

c. The 2nd to 13th Respondents are properly enjoined in these proceedings as Respondents.

d. The 2nd to 13th Respondents and the Interested Party shall file and serve their respective responses to the Notice of Motion dated 5th July, 2021 and the Petition within 14 days of today.

e. The Notices of Appointment of Advocates filed by Messrs. Allamano and Associates Advocates and Nelson Andayi Havi for the Law Society of Kenya be and are hereby struck out.

f. For purposes of the representation of the Law Society of Kenya in this Petition, the Chairpersons of the branches of the Law Society of Kenya shall, within 21 days of today, convene a meeting and appoint Advocates to represent the Law Society of Kenya. The Chairperson of Nairobi Branch of the Law Society of Kenya shall be the Convenor of the meeting.

g. Resulting from (f) above, all the braches of the Law Society of Kenya are hereby enjoined as Interested Parties in these proceedings. The parties shall, henceforth, appear as under: -

- **Nairobi Branch - 1st Interested Party**
- **Coast Branch - 2nd Interested Party**
- **Rift Valley Branch - 3rd Interested Party**
- **North Rift Branch - 4th Interested Party**
- **West Kenya Branch - 5th Interested Party**
- **South West Kenya Branch -6th Interested Party**
- **Mount Kenya Brach - 7th Interested Party**
- **South Eastern Branch - 8th Interested Party**

h. The Petitioners shall within 7 days of this ruling serve copies of the Notice of Motion dated 5th July, 2021, the Petition and this ruling upon the 2nd to 8th Interested Parties.

i. The 2nd to 8th Interested Parties shall be at liberty to file and serve their respective responses to the Notice of Motion dated 5th July, 2021 and the Petition within 14 days of service.

j. This matter is hereby fixed for a mention on 29th September, 2021 to confirm status and for further directions.

k. There shall be no orders as to costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF AUGUST, 2021

A. C. MRIMA

JUDGE

Ruling No. 2 virtually delivered in the presence of:

Mr. Akusala and **Mr. Odhiambo,** Counsel instructed by Messrs. MacLaw Advocates LLP for the Petitioners.

Mr. Onyango, Counsel instructed by Messrs. Allamano and Associates Advocates for the Law Society of Kenya.

Mr. Nelson Havi, Miss Caroline Kamende Daudi, Miss Herine Akoth Kabita and **Miss Esther Ang'awa,** Counsel instructed by Messrs. Havi and Company Advocates for the Law Society of Kenya.

Mr. Nelson Havi, Counsel instructed by Messrs. Havi and Company Advocates for the 2nd Respondent.

Miss Caroline Kamende Daudi, the 3rd Respondent in person.

Miss. Herine Akoth Kabita, the 4th Respondent in person.

Mr. Odera, Counsel for the 5th Respondent.

Mr. Mwalimu, Counsel for the 6th to 13th Respondents.

Mr. Eric Theuri, Counsel for the 1st Interested Party.

Elizabeth Wambui – Court Assistant.