



Kenya Motorsports Federation v Office of Sports Disputes Tribunal; Sports Registrar & 6 others (Interested Parties) (Judicial Review E038 of 2025) [2025] KEHC 3052 (KLR) (Judicial Review) (17 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E038 OF 2025
JM CHIGITI, J
MARCH 17, 2025**

BETWEEN

KENYA MOTORSPORTS FEDERATION APPLICANT

AND

OFFICE OF SPORTS DISPUTES TRIBUNAL RESPONDENT

AND

SPORTS REGISTRAR INTERESTED PARTY

254 MOTORSPORTS CLUB INTERESTED PARTY

CARL J TUNDO INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

ERIC G HENGI INTERESTED PARTY

SANGITA S GOHIL INTERESTED PARTY

WRC SAFARI RALLY PROJECT INTERESTED PARTY

JUDGMENT

1. Before this court for determination is the Originating Notice of Motion dated 17th February, 2025. The application is brought under Sections 4, 7, 9, 11 and 12 of the *Fair Administrative Action Act*, 2015 & Rules 16, 17 & 19 The High Court (Organization and Administration) Rules, 2016. It seeks the following orders: -

1. That service of this Application is dispensed with in the first instance.



2. That the Applicant be exempt from the provision of section 9(4) of the Fair Administrative Actions Act and proceed to hear and determine the Application for orders against the Respondent as sought herein.
 3. That pending the inter parte hearing and determination of the Application herein this Honorable court be pleased to set aside the interim orders issued on 12th February 2025 vide petition Number E003 of 2025 issued by the Respondent.
 4. That pending the hearing and determination of the Application herein this Honorable court be pleased to set aside the interim orders issued on 12th February 2025 vide petition Number E003 of 2025 issued by the Respondent.
 5. That pending the hearing and determination of the Application herein an order of Certiorari to remove into this Honorable Court and quash the decision of the Respondent Tribunal made on 12th February 2025 vide petition Number E003 of 2025
 6. That this Honourable Court be pleased to set aside the orders issued on 12th of February 2025 vide petition Number E003 of 2025.
 7. That an order of Prohibition prohibiting the 3rd Interested Party from exercising any functions of a National Organization for Motorsport, including issuing regulations, licenses, or processing competitor's documentation for any motorsport events in Kenya.
 8. That an Order of Prohibition prohibiting the 1st Interested Party and any other entity from unlawfully interfering with the Applicant's exclusive mandate as the governing body for motorsport in Kenya.
 9. That an Order of Mandamus compelling the Registrar of Sports to process and finalize the Applicant's registration under the *Sports Act*, 2013, within a reasonable timeframe.
 10. That a declaration be issued that the Respondent Tribunal acted ultra vires by issuing orders outside its jurisdiction, granting authority to an unregistered entity to act as a National Organization for Motorsport.
 11. That a declaration be issued that the Applicant remains the sole legally recognize-d body responsible for the governance, regulation, and organization of motorsport events in Kenya.
 12. That general and Exemplary Damages to compensate the Applicant for any financial loss, reputational damage, and operational disruption arising from the unlawful actions of the Respondent and Interested Parties.
 13. That the actions by the Respondent be declared illegal and arbitrary contrary to the provisions of section 4 of the Fair Administrative Actions Act.
 14. That Costs of this Application be awarded to the Applicant.
 15. That any other relief that this Honorable Court may deem just and fit to grant in the circumstances pending the hearing and determination of the application herein.
2. The application is supported by a Supporting Affidavit of one James Kahumbura sworn on 19th February, 2025. He is introduced as a Director at Kenya Motorsport Federation.
 3. It is the Applicant's case that they are a duly registered motorsport body and an affiliate member of the Federation Internationale de l'Automobile (hereinafter referred to as FIA), the international governing



body for motorsport and has been granted exclusive authority to exercise sporting power in relation to motorsport activities within Kenya.

4. It is contended that there can only be one ASN (National Sporting Authority) recognized by the FIA as stipulated under Article 1.4 of the International Sporting Code and they are the sole entity recognized as the national governing body responsible for the regulation and administration of national and international motorsport events in Kenya.
5. They argue that its mandate encompasses the organization, supervision, and regulation of all aspects of motorsport, including but not limited to safety, sporting, technical, and disciplinary matters in relation to national and international championships and series which duty it has consistently discharged since 2007.
6. It is the Applicant's case that it is the official organizer of the WRC Safari Rally Kenya, an internationally acclaimed motorsport event that forms part of the FIA World Rally Championship (WRC) calendar which competition attracts global participation.
7. According to the Applicant, a directive was issued in 2013 requiring all national sports organizations in Kenya to be formally registered under the *Sports Act*.
8. It proceeded to submit its application for registration to the Registrar of Sports however, to date the Registrar has failed to formally and officially register it under the *Sports Act*.
9. The Applicant posits that whilst its registration under the *Sports Act* remains pending, it continues to fulfill its mandate as the sole entity recognized by FIA as the governing body for motorsport in Kenya; overseeing all motorsport activities in strict adherence to FIA regulations and has been responsible for organizing the WRC Safari Rally Kenya from 2019 to 2024.
10. It is the Applicant's case that it is also actively organizing the WRC Safari Rally 2025, which is scheduled to take place from 20th March to 23rd March 2025 and in preparation for this event, it has undertaken all necessary regulatory and organizational measures, including securing requisite approvals, issuing licenses, registering competitors, coordinating event logistics, and enforcing compliance with all applicable FIA regulations.
11. The Applicant further argues that on 13th February 2025, it was served with an order issued by the Respondent, following an application filed by the 4th, 5th and 6th Interested Parties against the Sports Registrar and the Attorney General.
12. It is contended that interim reliefs were issued by the Respondent which were sought by the 4th 5th, and 6th Interested Parties in favor of the 3rd Interested Party, despite the 3rd Interested Party merely being an Interested Party in the proceedings and not the primary applicant for such reliefs.
13. According to the Applicant, they were enjoined to the proceedings as the 2nd Interested Party without being afforded a fair opportunity to be heard or to present its position before the orders were issued.
14. It is posited that the Respondent in the instant suit illegally and unlawfully ordered the 3rd Interested Party to Publish National Competition Rules and Supplementary Regulations specifically for 2025 World Rally Championship- Safari Rally Kenya thereby implying that the 3rd Interested Party was given the Sporting Authority reserved for the Applicant contrary to the provisions of Article 3.1.1 of the FIA Statute and Article 1.4 of the International Sporting Code.
15. It is argued further that as part of the requirement in organizing the WRC Safari Rally the Applicant as the organizer is required to pay Calendar fees of €411,000 (approximately Ksh 70,000,000) in



full by 20th of February 2025, this is subject to the provision of Clause 7 (4) of the Standard Event Organization Agreement amount which it has already been invoiced.

16. According to the Applicant, the unlawful and irregular orders granted in favor of the 3rd Interested Party have created confusion and uncertainty in the administration and execution of the rally, with the potential to cause irreparable harm to all stakeholders involved and jeopardizes Applicant's obligation to meet the aforementioned financial obligation.
17. This will result in the risk of the cancellation of the Safari Rally Kenya and its removal from the FIA calendar as per the provisions of Article 36 of the FIA Statute.
18. It is posited that from the Applicant's interpretation of the arbitrary orders, the Respondent specifically directed the 3rd Interested Party to issue and publish National Competition Rules and Supplementary Regulations for the 2025 WRC Safari Rally, pending the hearing and determination of the matter.
19. However, contrary to this directive, on 17th February 2025, the 3rd Interested Party proceeded to publish the Supplementary Regulations for the Kenya National Rally Championship 2025 Round 1, a completely distinct event from the 2025 WRC Safari Rally.
20. The 3rd Interested Party thus acted in direct contravention of the Respondent's orders.
21. Further, the 3rd Interested party has been registered as a club and not a Federation therefore it cannot be given duties to be undertaken by a Federation.
22. According to the Applicant, the 1st Interested Party will proceed to unlawfully interfere with its mandate, thereby undermining the orderly governance and execution of motorsport competitions in Kenya.
23. It is averred that the Respondent also serves as an appellate body within its jurisdiction in matters relating to sports however to the Applicant, an appeal or review of its decisions would be subject to its own oversight, thereby limiting the Applicant's ability to seek an impartial and independent review within the same forum.
24. It is on this premise that the Applicant invokes the provisions of Section 9(4) of the *Fair Administrative Action Act*, which empowers this Honorable Court to exempt an applicant from the requirement to exhaust internal remedies where such remedies are inadequate, ineffective, or otherwise unjust.
25. It is the Applicant's case that the Respondent's decision was illegal, unlawful, unjust, ultra vires, and marred with procedural impropriety and therefore warrants the urgent and immediate intervention of this Honorable Court to set aside those orders sets aside issued on 12th February 2025 in Petition Number E003 of 2025.

The 5th Interested Party's Preliminary Objection;

26. The 5th Interested Party filed Notice of Preliminary Objection dated 21st February, 2025 in response to the Applicant's Originating Notice of Motion dated 17th February, 2025 that sought for the following orders:
 1. This Honourable Court lacks the Jurisdiction to hear, entertain and determine the Applicant's Originating Notice of Motion by dint of;
 - a. Section 7 (1) (b) and (7(2) (a) and 9 (2) of the Fair Administration Action *Act No 15 of 2015*.



- b. The Applicant vide an order of the Sports Tribunal in Sports Dispute Tribunal Petition No E003 of 2025 was enjoined as a 2nd Interested Party with the right to respond and be heard.
 - c. As a result, the entire suit is improperly before this Honourable Court as the Applicant has failed to exhaust all statutory remedies available to it to be granted audience with this Honourable Court.
2. The prayers sought by the Claimant have since been implemented and the same has been overtaken by events.
 3. Kenya Motorsports Federation has no locus standi.
 4. The Applicant does not have legal capacity to sue or be sued in its own name and the proceedings herein against the purported Respondent and All the Interested Parties are bad in law and ought to be struck out.
 5. Mr. Edwin Watenya Sifuna, the advocate who commissioned the Supporting Affidavit to the Applicants Originating Notice of Motion was incompetent to administer an Oath on the Supporting Affidavit in support of the Applicants Originating Notice of Motion as set out under Section 9 of the Advocates Act read together with Section 2 of the Oath & Statutory Declarations Act.
 6. Mr. Brian Welamondi Murangasia of the firm Murangasia & Associates Advocates the Applicants' Advocate who drew and filed the pleadings on behalf of the Applicant, has never held a practicing certificate from the year 2022 (including a current practicing certificate) and consequently the pleadings drawn and filed by the firm of Murangasia & Associates Advocates are incompetent and ought to be struck out.
 7. The Applicants entire suit is in bad faith, incompetent, fatally defective and an abuse of the court process and the same should be struck out with costs.
27. The objection was canvassed by way of written submissions dated 3rd March, 2025.
 28. It is submitted that the issue of Preliminary Objection was addressed in Christopher Mutiambu Machimbo & 3 Others V County Surveyor, Trans-Nzoia & 4 others [2022] eKLR where the court reiterated the classic position as was defined in the case of Mukisa Biscuits Manufacturing Ltd. v West End Distributors Ltd. Civil Appeal No. 9 of 1969 (1969) EA 696.
 29. The 5th Interested Party further submitted that it is compulsory for an aggrieved party to exhaust the relevant available remedies before approaching a court for review and placed on various court decisions.
 30. It is their case that the Applicant has deliberately failed to disclose to this Court the following:
 - i. The Applicant has an application for registration as a National Sports Organization before the Sports Registrar.
 - ii. The Application is yet to be determined.
 - iii. There is a petition before the Sports Tribunal being Petition No E003 of 2025.
 - iv. The Sports Tribunal issued an interim order dated 12th February 2025 in which the Tribunal ordered that the Applicant be enjoined as the 2nd interested party therein.
 - v. The Applicant was aware of the matter in the Sports Tribunal.



- vi. The Applicant was served with the orders and pleadings.
 - vii. The Applicant failed to enter an appearance or address the issues raised and instead opted to come to this court seeking relief's and remedies which said reliefs and remedies are within the Jurisdiction of the Sports Tribunal.
31. It is also their submission that Edwin Watenya Sifuna the advocate that commissioned the Supporting Affidavit to the Claimants Originating Notice of Motion did not have a practicing certificate at the time of commissioning the same which is in contravention of Section 9 of the *Advocates Act* read together with Section 2 of the Oath & Statutory Declaration Act.
 32. It is further submitted that the Applicant lacks locus as it operates as a Company and not as a sports organization as required under Section 47 and 49 of the *Sports Act*.
 33. According to the 5th Interested Party, the Applicant is not registered or recognized under the *Sports Act* 2013. The Applicant cannot and has not operated as a Sports Organization and thus in not being in compliance with the *Sports Act* 2013 and more so being a Company, the Applicant has no right to appear before and be heard by this honourable Court.
 34. The 5th Interested Party in response to the Applicant's Originating Notice of Motion filed a Replying Affidavit sworn by one Eric B. Gengi dated 21st February, 2025 and written submissions 7th March, 2025.
 35. It is their case that the Petition No E003 of 2025 before the Sports Tribunal relates to the Registrar of Sports acts or omission in registering a National Sports Organization as set out under the *Sports Act*, 2013.
 36. The Sports Tribunal issued an interim order dated 12th February 2025 in which the Honourable Tribunal ordered the Applicant herein be enjoined as the 2nd interested party and fixed the matter for directions for the 17th February 2025.
 37. It is averred that the Applicant was duly served with the full pleadings and the said Order but instead of being enjoined to the said proceedings filed the instant application before this court.
 38. It is contended that the supporting affidavit commissioned before one Edwin Watenya Sifuna in support of the application before this court is fatally defective.
 39. It is also contended that there is a suit filed before the Chief Magistrates Court Nairobi Commercial Division being Civil Suit No E6260 of 2024 where the said James Kahumbura purporting to act with the authority of other Directors has questioned the position of one Mr. Maina Muturi as the Chairman of KMSFL purporting that it is Him (James Kahumbura) who is the Chairman of KMSFL.
 40. It is their case that on 10th February 2025 the Board of Directors issued a statement stating the following:
 - a. WRC Safari Rally project who are mandated to run the WRC Safari Rally as a world rally championship were also mandated to run the African rally championship (ARC) and the Kenyan National Rally Championship (KNRC) round in the WRC, thereby transferring all rights from KMSFL to the WRIC Safari Rally Project.
 - b. The organization and running of the 2025 WRC Safari Rally Kenya is the exclusive function of the WRC Safari Rally Kenya Project pursuant to 2025 Event Organization Agreement dated 15th January 2025 between the Federation Internationale Del 'Automobile (FIA), the WRC



Safari Rally Kenya Project (as the Organizer) and Kenya Motor Sports Federation (as the ASN) and not the Applicant as alleged.

- c. The WRC Safari Rally is funded by the National Treasury through the Ministry of Youth Affairs, Creative Economy & Sports and all the financial obligations are undertaken by my office and not by the Applicant as alleged.
 - d. The WRC Safari Rally Kenya Project was undertaken by the Government of Kenya through the Ministry of Youth Affairs, Creative Economy & Sports because the Applicant as a Private Company could not be entrusted to run such a unanimous Government Project of national importance funded through the 'National Treasury.
 - e. The Ministry of Youth Affairs, Creative Economy & Sports has been in charge of the organization and running of the WRC Safari Rally Kenya since the candidate event in the year 2020 and not the Applicant as alleged.
 - f. The last registered President of the ASN with the FIA is a Mr. Maina Muturi. That the faction led by the deponent Mr. Jim Kahumbura has severally attempted to interfere with the smooth organization of the WRC Safari Rally including an attempted cancellation of the 2025 WRC Safari Rally and I have reported the matter to my Cabinet Secretary.
41. According to the 5th interested party the Registrar of Sports, in her Affidavit dated 18th February 2025 before the Sports Tribunal in the petition clearly identified the infighting within the KMSFL where it was not easily ascertainable who was the Chairman and who were the authentic duly registered Directors of KMSFL.
 42. They further argue that that this suit is in the name of Kenya Motor Sports Federation (KMSF) whereas the Applicant has produced a certificate of incorporation of an entity referred to as Kenya Motor Sports Federation Limited (KMSFL) and thus it is unascertainable if this a suit filed by KMSF or KMSFL or James Kahumbura.
 43. The 5th Interested party argues that the Registrar of Sports has the jurisdiction and mandate as set out under the *Sports Act*, 2013 to provide the Applicant with adequate protection and relief including the right to appeal internally with the Registrar and externally with the Sports Tribunal and finally with the High Court (including the Court of Appeal).
 44. The Applicant's lack of standing in regulatory matters concerning motorsports in Kenya by dint of Section 50(3)(1) of the *Sports Act* which explicitly states that organizations that fail to transition within the prescribed period cease to be sports organizations.
 45. Further by dint of The FIA International Sporting Code Article 19.5.1, Article 1.4.1 of the FIA International Sporting Code and Article 2.1.5 of the FIA International Sporting Code and the failure of the Applicant to comply with The *Sports Act*, 2013 it has lost its legal recognition as a national sports federation, FIA cannot impose the Applicant as the governing body over motorsport in Kenya.
 46. In the absence of a duly registered motorsport federation, it is up to the relevant Kenyan authorities, including the Sports Registrar, to determine interim governance structures.
 47. It is further submitted that the Rights to organize manage and run the Safari Rally is vested with the 7th Interested Party as evidenced in the Kenya Gazette Legal Notice No. 1769 of 16th February 2024.
 48. The Applicant canvassed its Originating Notice of Motion by way of written submissions dated 8th March, 2025 and also filed a further replying affidavit dated 3rd March, 2025 sworn by James



Kahumbura, a supplementary Affidavit dated 8th March 2025 sworn by James Kahumbura and Submissions dated 3rd March 2025 in response to the Preliminary Objection.

49. The Applicant avers that the firm Murangasia & Associates Advocates, representing it, is currently operating under Mercy Waliaula, who holds a current practicing and she filed the application before this court on its behalf.
50. Mr. Edwin Sifuna is a duly appointed Commissioner for Oaths and he had a valid practicing certificate for the year 2024. He applied for renewal for 2025, which was still being processed by the Law Society of Kenya (LSK) at the time of commissioning.
51. It is deponed that the matter before the Registrar is the sporting arm of the Kenya Motorsport Federation Limited, an entity that has not yet been formally registered and not Kenya Motorsport Federation which is before this court. The Registrar of Sports should therefore be compelled to register KMSF, given that it is the body affiliated with FIA and has hosted the WRC Safari Rally Kenya uninterrupted since 2019.
52. Further, the Respondent's decision to grant authority to the 3rd Interested Party, despite the ongoing and completed process between the Applicant and the 7th Interested Party, was clearly irrational and made in complete disregard of the established procedures.
53. It is submitted that pursuant to Article 165(3) of the *Constitution* of Kenya, 2010, this court has unlimited jurisdiction in civil matters and supervisory jurisdiction over subordinate courts and tribunals.
54. It is the Applicant's case that while Section 9(2) of the *Fair Administrative Action Act* requires the exhaustion of alternative remedies, it is the Applicant's contention that exceptional circumstances exist, justifying direct recourse to this Honourable Court as was held in *Republic v National Environmental Management Authority Ex parte Sound Equipment Ltd* [2011] eKLR.
55. The issue of a preliminary objection was well set out in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696 as follows:

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.” This was followed up by the Judgment of Sir Charles Newbold in the same case: “The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. 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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”
56. The Applicant also places reliance in *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR, where the Court of Appeal stated that abuse of court process must be clear, obvious, and evident.
57. The Applicant contends that by dint of Section 2(1) of Commissioner for Oaths in Kenya the absence of an annual practicing certificate does not, invalidate an advocate's authority as a Commissioner for Oaths. This position is supported by the procedures outlined by the Judiciary, which emphasize



that the appointment as a Commissioner for Oaths is a separate process from the annual renewal of practicing certificates.

58. Reliance is placed in *Republic v. Registrar of Societies & 4 Others* [2019] eKLR, where the Court emphasized that minor irregularities in documents should not be grounds for rejecting an application unless they significantly impair the judicial process or prejudice the other party and *Sitabai Wambui Njiru v. Millicent Njiru* [2017] eKLR, where the Court held that the unauthorized filing or annexing of documents by a party not authorized to do so constitutes a violation of procedural fairness. The Court further stated that documents obtained without consent or authority are inadmissible unless the party seeking to rely on them can demonstrate that their inclusion does not prejudice the opposing party.
59. The Applicant contends that the orders issued by the Tribunal on 12th February 2025 are illegal, unlawful, and nullity ab initio, as they were issued in flagrant violation of established legal and regulatory frameworks, including the Fédération Internationale de l'Automobile (FIA) International Sporting Code.
60. Further the Applicant argues that the Tribunal proceeded to grant reliefs that were not sought and therefore and thus they qualify for reliefs under Judicial Review as was held in *Municipal Council of Mombasa Vs Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002)* eKLR and *Pastoli Vs Kabale District Local Government Canal & Others* (2008) 2EA 300 at pages 300-304.
61. It is submitted that the Tribunal acted ultra vires contrary to the principle established in the case of *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd* [1989] eKLR, where the Court held that jurisdiction is a fundamental prerequisite, and any proceedings conducted without it are null and void.
62. It is the Applicant's case that 4th, 5th, and 6th Interested Parties are in violation of Section 58 of the *Sports Act* in initiating proceedings before the Sports Disputes Tribunal as they instituted their claim through a Memorandum of Claim instead of an appeal. The Section provides:

Section 58 of the *Sports Act* provides as follows the Tribunal shall determine;

- a. Appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue, including:
 - i. Appeals against disciplinary decisions;
 - ii. Appeals against non-selection for a Kenyan team or squad.
- b. Other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
- c. Appeals from decisions of the Registrar under this Act

The 4th, 5th and 6th Interested Party moved before the Tribunal under a Memorandum of Claim instead of an appeal as provided in the above provisions since in the claim, they were seeking for orders against the Registrar and/or compel the registrar to register the Applicants as the national organisation.

The 3rd Interested Party's Case;

63. The 3rd Interested Party filed Grounds of Opposition dated 21st February, 2025 in response to the Applicant's Originating Notice. It contended that:



1. The Application is misconceived, frivolous, vexatious, incompetent, improperly before this Honourable court and an outright abuse of the Court process as the Applicant, through its officials, filed Petition Number E003 of 2025 at The Sports Disputes Tribunal, the Respondent herein.
 2. The Applicant, in addition to being represented by its officials in Petition Number E003 of 2025, was enjoined as a 2nd Interested Party in the proceedings vide the interim orders issued on 12th February, 2025.
 3. The Applicant, despite being enjoined in the proceedings in Petition Number E003 of 2025 and service of the pleadings (and the interim orders dated 12th February 2025) properly effected; the Applicant has failed, ignored and/or refused to appear before the Sports Dispute Tribunal to present its case.
 4. The Applicant in in an exercise best described as "forum shopping", has breached the doctrines of exhaustion and outrightly disregarded of the rules of fair justice.
 5. The Applicant has failed to fully disclose the import and breadth of the Interim Orders dated 12th February 2025, which orders have been spent.
 6. The Applicant has failed to demonstrate how injustice and procedural unfairness would or has otherwise resulted; or how their constitutional rights have and may continue to be violated by the performance of the Interim Orders dated 12th February 2025.
 7. The Applicant has raised issues that fall within the mandate of the Sports Disputes Tribunal, in the first instance, which issues have been raised in the proceedings in Petition Number E003 of 2025; and are yet to be determined. The Applicant should, instead enter appearance in Petition Number E003 of 2025 before the Sports Disputes Tribunal.
 8. The Application herein is intended to curtail and undermine the Jurisdiction of the Sports Disputes Tribunal as well as the mandatory statutory provisions under the [Sports Act](#), 2013.
64. The 3rd Interested Party filed written submissions dated 3rd March, 2025 wherein it is submitted that the Applicant is registered as a private company and not a motorsport organization and the 4th, 5th and 6th Interested Parties being members and representatives of the Applicant. The 3rd Interested Party is a registered as a private motorsport club with the sports registrar.
 65. The Sports Tribunal in Petition No. E003 of 2025 was lodged by the 4th, 5th and 6th Interested Parties and the Applicant through the Interim Orders issued on the 12th February 2025 by the Sports Tribunal in Petition No. E003 of 2025 was enjoined in the petition and the instant suit before this honorable court having been filed on the 18th of February, 2025.
 66. It is further submitted that, Article 47 (3) of the [Constitution](#) of Kenya, 2010 promotes the doctrine of exhaustion by empowering tribunals to resolve disputes within their purview.
 67. Article 159(2) (d) further provides that courts and tribunals should resolve disputes by applying the rules of substantive justice.
 68. Section 58 of the [Sports Act](#), 2013 clothes the Tribunal with the jurisdiction to handle the issues raised in the instant suit.
 69. The 3rd Interested party submits that the Applicant has not proven any special/exceptional circumstances to warrant the instant suit pending the hearing and determination of the proceedings before the Sports Tribunal.



70. It places reliance in the case of Geoffrey Muthinja & another V Samuel Mugura Henry & 1756 others (2015) KECA 304 KLR where the court made a finding that dispute resolution mechanisms should be exhausted before the court's jurisdiction is invoked and courts should be the for a of last resort and accords with the promotion of alternative dispute resolution mechanism.
71. The 3rd Interested party contends that the order being relied on no longer subsists and can no longer be proceeded with as it has been overtaken by events and further that Applicant, is not legally equipped to entitle it to be heard and/or considered for any orders as it is a private company and not a national organization it purports to be.

The 1st Interested Party's Case;

72. The 1st Interested Party in response to the Applicant's Originating Notice of Motion filed a Replying Affidavit sworn by Rose M. N. Wasike dated 28th February, 2025.
73. It is deponed that the Office of the Sports Registrar is established under Section 45 of the [Sports Act](#) No. 25 of 2013 with the mandate of regulating sports organizations, professional sports bodies and persons in the country through registration, licensing, arbitration, observation of sports organizations' elections, inspection of sports organizations to ensure compliance to the Kenya Constitution 2010, the [Sports Act](#) and any other relevant law and to keep and maintaining a register of registered and or licensed sports organizations. professional sports bodies and persons respectively.
74. Section 47 of the [Sports Act](#) oblige/requires all sports organizations to register under the [Sports Act](#) with the Sport Registrar after meeting the conditions set out in the Act before operating as a sports organization in the country.
75. Section 50(1) of the [Sports Act](#) also obliged/required all sports organizations previously registered under the [Societies Act](#) Cap 108 by the Registrar of Societies to transit as sports organizations within one year after commencement of the [Sports Act](#) by applying for registration to the Sports Registrar: the period which lapsed on 1,1 August 2014 before Kenya Motor Sports Federation which was registered as a company under the [Companies Act](#) Cap 486 transited.
76. According to them section 50(3)(1) provides that a sports organization that fails to transit within the one-year prescribed period ceases to be a sports organization.
77. This automatically means that the Applicant in this case still operates as a company for failure to transit under this section and therefore automatically ceased to be and or operate as a sports organization/ federation as result of which it lacks the locus standi before this court as it is operating as a Company and not a sports organization.
78. The 1st interested party contends that World Rally Championship is a Government project being managed by a Gazetted team led by a Chief Executive Officer in the name of Charles Gacheru whilst club 254 is registered by the Sports Registrar as a Private Motor Sport Club and not as a National Sports Organization and it cannot therefore purport to take up the running/management and operation of all Motorsports in Kenya and neither can it be affiliated to the International Federation for Motor Sport.
79. It is its case that the 3rd interested party having being registered on 4th December, 2024 as private motor sport club vide Certificate Registration No. 1162 has no experience on how safari rally is managed/ run or carries out its activities; hence not the right organization to issue guidelines for the upcoming safari rally event slated to take place in Naivasha from 20th to 23rd March, 2025.



80. The 1st interested party avers that FIA on 5th November 2024 emailed the Cabinet Secretary for sports seeking clarity on the Presidency of the Kenyan Motorsport Federation and the Cabinet Secretary in his letter dated 7th November 2024 affirmed and urged FIA to continue using and engaging Mr. Maina Muturi as the current KMSF President and is still recognized by the international federation (FIA) even in their website until one of the three applicants pending before the Sports Registrar is registered as the National Federation for Motor Sports in Kenya.
81. It is further averred that the office of the Sports Registrar is in receipt of three applications all seeking to register Motorsport Federation in accordance with the law. The first two applications, the applicants are seeking to register legally under the *Sports Act* as a national sports organization.
82. The Sports Registrar convened an arbitration meeting with the two of the applicants on 16th September 2024 with a view of merging the two applicants into one national organization as required under section 47 of the *Sports Act*, however due to their disagreement, the Registrar requested both applicants to each submit their justification as to why they think they are right applicants and or organization/ federation to be registered.
83. The matter is yet to be determined and a follow up meeting is scheduled after the Rally which is scheduled to take place on 22nd March, 2025.
84. One of the three applications pending registration before the Sports Registrar's Office, once registered will be the right and legally recognized national sports organization to seek affiliation with the International Federation for Motor Sport.
85. Section 47 (2) bars the Sports Registrar from registering more than one National Sports Organization in any one sports discipline.
86. Based on the foregoing the 1st interested party urges this court the following:
 - i. Dismiss the instant suit for lack of merit and premature filing and or appeal on a case that is still pending determination at the Sports Disputes Tribunal or
 - ii. Matter to be dismissed since Kenya Motor Sports Federation is company therefore has no locus - standi to file a case as a national sports organization or
 - iii. The POT with the help of the WRC CEO Mr. Charles Gacheru and Mr. Maina Muturi who is part of KMSF but currently recognized by the FIA and the Government be allowed to continue to run/manage WRC, the Motorsport and the upcoming safari rally championship pending registration of one of the three applicants pending before the Sports Registrar as committed by the Government through the Cabinet Secretary's letter to the FIA and the POT gazettelement so as not to interfere with upcoming WRC which the Government of Kenya has already committed the tax-payers funds or
 - iv. The guidelines issued to POT by the FIA be used for the purpose of the upcoming world safari rally championships and the Order issued on 6th February 2025 directing 254 Motor Sports Club to issue fresh guidelines withdrawn as this will hamper the championship.

The 7th Interested Party's Case;

87. The 7th Interested Party relies on the Replying Affidavit sworn by Charles Gacheru dated 24th February, 2025. He is introduced as the CEO of the WRC Safari Rally Kenya Project that was established vide Gazette Notice 1769 of 16th February 2024 under the Ministry of Youth Affairs, Creative Economy & Sports with a Steering Committee and a Secretariat which is headed by Charles Gacheru.



88. It is the 7th interested party's case that the organization and running of the 2025 WRC Safari Rally Kenya is the exclusive function of the WRC Safari Rally Kenya Project pursuant to 2025 Event Organization Agreement dated 15th January 2025 between the Federation Internationale De l'Automobile (FIA), the WRC Safari Rally Kenya Project (as the Organizer) and Kenya Motor Sports Federation (as the ASN) and not the Applicant as alleged in its application before this honourable court.
89. It is contended that the WRC Safari Rally Kenya Project and the championship has been organized, run and managed by the Government of Kenya through the Ministry of Youth Affairs, Creative Economy & Sports as a special purpose vehicle since 2018 owing to its strategic importance, being the only World Rally Championship held in Africa in FIA World Calendar, hence its consideration as a magnanimous Project of national importance funded through the National Treasury, for which the Applicant being a Private Company has not been entrusted with.
90. The 7th interested party further deponed that the Applicant is embroiled in internal wrangles which ought not be extended or visited upon WRC Safari Rally Project and the running of the 2025 WRC Safari Rally in Kenya.
91. According to it, the last registered President of the National Sporting Authority (ASN) for Kenya with the FIA including in FIA's website is one Mr. Maina Muturi.
92. It is argued that the Order dated 12th February 2025 by the Sports Disputes Tribunal in SDT 003 of 2025 does not infringe on running of the 2025 WRC Safari Rally or disenfranchise Kenyan competitors from competing in the 2025 WRC Safari Rally and neither did the orders interfere with or usurp any of the powers alleged by the Applicants.
93. It is averred that Applicant in the instant suit is yet to submit any National Competition Regulations (NCRs) for national championships for the year 2025 to the 7th interested party.
94. The 7th interested party urges this honourable court not to allow the interference with the year-long organization of the international rally championships as all systems are in place and ready for the international rally that is scheduled for the 20th to 23rd March 2025.
95. The Respondents, 1st, 2nd and 7th Interested parties filed written submissions dated 28th February 2025.
96. It is submitted that the Applicant lacks locus standi to institute this Judicial Review Proceedings as they failed to transition during the period that required sports organization to register afresh under the *Sports Act*.
97. They place reliance in the case of Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased) [2016] KEHC 4186 (KLR) where the Learned Judge A.C Mrima stated that;

“Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth- noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties”



98. It is contended that application does not meet the threshold of Judicial Review Proceedings as the applicant has failed to establish how the Respondents, the 1st, 2nd, and 7th interested parties' actions are tainted with illegality, irrationality and procedural impropriety.
99. It is their case that the Respondent acted in their capacity and within the law as it exercised its judicial role and directed the matter before it being Tribunal Petition Case Number E003 of 2025, be heard on 11th March 2025 to its full hearing and determination.
100. Reliance is also placed in *Williamson vs Football Kenya Federation* which is also quoted in the case of *Jacob Keli Mutungi & 3 others vs Ambrose Rachier & 3 others* [2019] eKLR, the Tribunal expressed itself as follows:

“The obligation upon the Tribunal is to ensure there is a mechanism for legal redress, The Tribunal acts as the avenue subject to the provisions of the *Sports Act* where Legal redress can be sought.”

101. It is argued that the Application is intended to curtail the 1st, 2nd, and 7th interested parties' statutory obligation and duties of ensuring the correctly registered sports entity (the 7th Interested Party) organizes and manages the oncoming motor sport rally.
102. It is also their case that the Applicant has not exhausted all the remedies available to them under any written law. 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 where a 5-Judge Bench 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 v 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.”

103. In *Republic v Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji* [2014] eKLR where the court held that:

“Judicial review applications do not deal with the merits of the case but only with the process. In other words, judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a



matter and will leave the parties to resort to the normal forums where such matters ought to be resolved”

104. The Respondent, 1st, 2nd and 7th interested parties thus pray that the entire Judicial Review Case be dismissed for lack of merit.

105. The Respondent, 2nd interested party and 4th interested party did not file responses.

Analysis and determination;

106. The following issues commend themselves for determination:

1. Whether this court has jurisdiction.
2. Whether the Exparte Applicant was accorded a chance to be heard.
3. Whether a private entity can represent Kenya in the organization of the Safari Rally.
4. Whether the Applicant has locus standi
5. Whether the issue of an advocate drawing pleadings and preparing documents without possessing a current practicing certificate makes the documents fatally defective
6. Whether illegally acquired documents can be used in court.

Whether this court has jurisdiction.

107. In determining this issue, this court shall address its mind to the 5th Interested Party’s Notice of Preliminary Objection dated 21st February, 2025 which is predicated on the numerous grounds inter alia that;

1. This Honourable Court lacks the Jurisdiction to hear, entertain and determine the Applicant’s Originating Notice of Motion by dint of;
 - a. Section 7 (1) (b) and (7(2) (a) and 9 (2) of the Fair Administration Action [Act No 15 of 2015](#).
 - b. The Applicant vide an order of the Sports Tribunal in Sports Dispute Tribunal Petition No E003 of 2025 was enjoined as a 2nd Interested Party with the right to respond and be heard.
 - c. As a result, the entire suit is improperly before this Honorable Court as the Applicant has failed to exhaust all statutory remedies available to it to be granted audience with this Honourable Court.

108. In the cases of Natin Properties Ltd vs. Jaggit Singh & Anr. and in El-Busaidy vs Commissioner of Lands & 2 others [2002] 1KLR 508 the court held that a preliminary objection should not raise substantive issues from the pleadings which must be determined by court upon perusal of evidence and the same must be raised only on a point of law.

109. In the case of El-Busaidy v. Commissioner of Lands & 2 others [2002] 1KLR 508 where the court stated that:

“The preliminary objection herein was raised by the Defendants. Can it be said that they do accept the facts as pleaded by the Plaintiff to be true; in which case they could then apply the provisions of section 136(1) to it to make the Plaintiff’s pleadings a non-starter But



the Defendants defend this suit because they do not accept the Plaintiff's facts as pleaded. Clearly therefore, the Defendant's preliminary point is not based on a commonly accepted set of facts and the set of facts herein would not therefore be the basis of a preliminary point of objection and a point of law as understood and accepted in our jurisdiction."

110. In *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd* [1969] EA 696 the court while addressing same held as follows;

"A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point 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 usually 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."

111. The above position was re-affirmed in the Supreme Courts case of *Mary Wambui Munene v. Peter Gichuki Kingara and Six Others*, Sup. Ct. Petition No. 7 of 2013; [2014] eKLR, where the court held:

"...that the question of jurisdiction is a "pure question of law," and should be resolved on a priority basis."

112. Section 9 (3) The *Fair Administrative Action Act* 2015 states that:

"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 subsection (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."

113. In *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others* [2014] eKLR it was held thus: -

"We shall now turn to the Constitutional-Avoidance Doctrine. The doctrine is at times referred to as the Constitutional-Avoidance Rule.

[106]. The doctrine interrogates whether there are other ways of resolving a dispute outside a constitutional petition. The Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others* Pet. 14A, 14B & 14C of 2014 of [2014] eKLR held:-[256].The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis."



114. In the Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425 the court had this to state;

“In our view there is considerable merit.....that where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

115. Section 58 of The Sports Act stipulates that;

The Tribunal shall determine—

- a. appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including –
- b.
 - (c)(i) appeals against disciplinary decisions;
 - (ii) appeals against not being selected for a Kenyan team or squad;
sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
 - (iii) appeals from decisions of the Registrar under this Act.

116. The 1st interested party urges this court to dismiss the instant suit for lack of merit and premature filing and or appeal on a case that is still pending determination at the Sports Disputes Tribunal.

117. On its part the 3rd interested party argues the Applicant has raised issues that fall within the mandate of the Sports Disputes Tribunal, in the first instance, which issues have been raised in the proceedings in Petition Number E003 of 2025; and are yet to be determined. The Applicant should, instead enter appearance in Petition Number E003 of 2025 before the Sports Disputes Tribunal.

118. It is not in dispute that the Applicant was enjoined as a 2nd Interested Party in the proceedings vide the interim orders issued on 12th February, 2025.

119. It is also not in dispute that the Applicant was also served with the pleadings and the impugned interim orders.

120. It is further not in dispute that the Applicant did not lodge an application before the sports tribunal for the setting aside or the review of the said orders.

121. It is the Applicant’s case that while Section 9(2) of the Fair Administrative Action Act requires the exhaustion of alternative remedies, it is the Applicant’s contention that exceptional circumstances exist, justifying direct recourse to this Honourable Court.

Exception to the doctrine of exhaustion:

122. Mohamed Ali Baadi & Others v The Attorney General & 11 others; it was held that while our jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute the exhaustion doctrine is only applicable where the



alternative forum is accessible, affordable, timely and effective. Thus, in the case of Dawda K. Jawara vs Gambia, it was held 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.”

123. Republic vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Exparte the National Super Alliance (NASA). This doctrine is now of esteemed juridical lineage in Kenya. The Court held that:

“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 polycentricism of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies.”

124. As the Court of Appeal acknowledged in the Shikara Limited Case, 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.

125. The time expended in moving this court should have been channeled towards the prosecution of the application to review the ruling of the Sports Tribunal. In electing to file the instant suit the Applicant failed to exhaust the available legislative redress mechanisms or dispute resolution options before the Sports Tribunal under The Sports Act. The proceedings at the tribunal were still alive at the time the Applicant filed this suit and the applicant has to contend with the choices that it made.

126. This court is in full agreement with the 7th interested party that the door for seeking review of the orders issued by the Tribunal was open to the Applicant at the Tribunal.

127. All the courts have powers to review their rulings. While exercising its review jurisdiction courts and Tribunals like the Respondent must exercise their review jurisdiction judiciously.

128. The fact that the Sports Act is silent and does not expressly mention reviews cannot form the basis of an argument that the Tribunal cannot review its orders in the spirit of offering redress to the Applicant.

129. In the case of Fredrick Otieno Outa v. Jared Odoyo Okello & 3 Others the Supreme Court delineated the following as exceptional circumstances which would warrant the exercise of its limited jurisdiction for review:

“(92) ... However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where: (i) the Judgment, Ruling, or Order, is obtained, by fraud or deceit; (ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent; (iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto; (iv) the Judgment



or Ruling, was rendered, on the basis of a repealed law, or as a result of a deliberately concealed statutory provision.”

130. This court is satisfied that the *Sports Act* has the requisite mechanisms for lodging an application for the setting aside or review of its decisions like the impugned order. Given that the applicant had a redress mechanism at its disposal within the Act, this court finds fault in the fact that the applicant moved to the High Court to seek judicial review orders that form the substratum of the instant suit instead.
131. It is this court’s finding that the Applicant is not exempted from the Application of the doctrine of exhaustion. The Applicant has not demonstrated that the Sports Tribunal is inaccessible or that the Tribunal will be incapable of dealing with the concerns that are raised by the Applicant. The Applicant does not show that it attempted to lodge a review with The Respondent and that it was denied access during the pendency of the proceedings before the Tribunal. The Applicant has not demonstrated that the Respondent lacks the capacity or the requisite jurisdiction to offer redress.
132. It is this court’s finding that the 5th Interested Party Notice of Preliminary Objection dated 21st February, 2025 succeeds on the ground that this Honourable Court lacks the Jurisdiction to hear, entertain and determine the Applicant's Originating Notice of Motion by dint of Section 7 (1) (b) and (7(2) (a) and 9 (2) of the Fair Administration Action *Act No 15 of 2015*.
133. Having arrived at this determination this court is unable to address the other grounds of the Preliminary objection as well as the substantive issues raised in the suit for want of jurisdiction and I so hold.

The issue of costs:

134. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters, thus stipulates (Section 27(1)):

“Subject to such conditions and limitations’ as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order” [emphases supplied].

135. Halsbury’s Laws of England, 4th ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].



136. In *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, *Judicial Hints on Civil Procedure*, 2nd ed. (Nairobi: Law Africa, 2011), p. 94:

“Costs are [awarded at] [13] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise: *Chamilabs v. Lalji Bhimji and Shamji Jinabhai Patel*, High Court of Kenya, Civil Case No. 1062 of 1973.”

137. So, the basic rule on attribution of costs is, costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party, rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba’s words [*Judicial Hints on Civil Procedure*, at p.94]:

“[T]he objects of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure...Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.”

(15) It is clear that there is no prescribed definition of any set of “good reasons” that will justify a Court’s departure, in awarding costs, from the general rule, costs-follow-the-event.

In the classic common law style, the Courts have proceeded on a case-by-case basis, to identify “good reasons” for such a departure.

138. This court’s finding that the Respondents and the Interested Parties are entitled to costs.

Disposition:

139. This court lacks the jurisdiction to hear and determine this suit. In the circumstances the court must down its tools and I so hold.

Order:

1. The 5th Interested Party filed Notice of Preliminary Objection dated 21st February, 2025 is upheld on the basis of grounds 1 A and C.
2. The suit is struck out with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY MARCH 2025.

.....

J. CHIGITI (SC)

JUDGE

