Fortune Sacco Society Limited v Principal Magistrates Court, Wanguru & another (Miscellaneous Application E002 of 2025) [2025] KEHC 4914 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4914 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERUGOYA

MISCELLANEOUS APPLICATION E002 OF 2025

EM MURIITHI, J

APRIL 24, 2025

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION (JUDICIAL REVIEW)

AND

IN THE MATTER OF: THE ARTICLES 22(1), 23(3) (F), 47 & 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF: THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA SECTIONS 8 AND 9

BETWEEN

FORTUNE SACCO SOCIETY LIMITED ..... APPLICANT

AND

THE PRINCIPAL MAGISTRATES COURT, WANGURU ..... 1ST RESPONDENT

AGNES WAENI ..... 2ND RESPONDENT

RULING

1. By a Chamber Summons dated 20/2/2025, the ex parte applicant sought leave to file judicial review proceedings for Certiorari and Prohibition as follows:

    1. That this application be certified urgent and heard ex parte.

    2. That leave do issue for the Applicant to apply for:

a. An Order Of Certiorari to remove into this Honourable Court and quash the Ruling of the 1st Respondent on the 18th February 2025 dismissing the Applicant's Application with Costs and the entire proceedings in Wang'uru MCCC/E136/2023 for want of Jurisdiction.

b. An Order Of Prohibition directed towards the 1st Respondent prohibiting the 1st Respondent from renewing and/or re-issuing any further Orders.

c. That the grant of leave in the prayers herein above Do Operate As A Stay of the decision(s) and subsequent proceedings, judgment and/or order' of the 1st Respondent in Wang'uru MCCC/E136/2023, pending hearing and determination of these proceedings.

d. That the costs of this application be provided for.

2. The application was based on grounds set out in the application and on the Statement of Facts as follows:

" Grounds Upon Which The Reliefs Are Sought

a) The Applicant filed a Preliminary Objection on 17/03/2023 with the basis of the said objection being that the Lower Court lacked the requisite Jurisdiction to determine the dispute between a Sacco and its member as enshrined in Section 76 of the *Co-operative Societies Act*.

b) The 2nd Respondent in paragraph 3 of their tiled Plaint, admitted being a member of the Applicant however the 1st Respondent on its on motion failed to determine the question of jurisdiction and proceeded to dismiss the Applicant's Preliminary Objection for the reasons that the Applicants Advocates were not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant.

c) Based on the Admission or Membership by the 2nd Respondent in her pleadings, the 1st Respondent clearly lacked Jurisdiction to entertain any proceedings in Wang'uru MCCC/E136/2023 and therefore any decisions arising therefrom are a nullity.

d) On 27/02/2024, the 1st Respondent issued a ruling on the Preliminary Objection filed by the Applicant dismissing it on account that the Applicants' Advocates were not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant.

e) The 2nd Respondent moved the Court secretly without the knowledge of the Applicant.

t) On 18th March, 2024, the 1st Respondent at the request of the 2nd Respondent entered interlocutory judgement against the Applicant and further set a date for formal proof hearing without the knowledge of the Applicant.

g) The Applicant was not served with any notices and therefore the exparte Judgement entered against the Applicant on 18th June, 2024 was irregular.

h) Now that the Applicants Advocates were found not to have the locus standi, service of Court processes could no longer be effected through the Applicant's Advocates but instead the Applicant itself.

i) The Applicant was denied a fair hearing and further suffered an irregular Judgement against it.

j) The 2nd Respondent proceeded to procure a decree and warrants of Attachment issued to Philip Kamuya T/A Crater View Auctioneers.

k) The Applicant learnt of the progress of this matter when it was proclaimed against on 15/8/2024 and which prompted the Applicant to have the file perused with a view of confirming the status of the Matter.

I) The Applicant filed an application dated 21st August 2024 to set aside the irregular exparte Judgment entered against the Applicant on 18/07/2024.

m) The Applicant's Counsel in t heir Application to set aside the exparte Judgment explained to the fault to the 1st Respondent the fault not being on their part since they had sent the Memorandum of Appearance to the Court via email for assessment however despite numerous follow-ups, the Registry staff failed to assess the Memorandum of Appearance.

n) As at the time of filing the said Memorandum of Appearance, the lower Court had not migrated to the E-filing system as search, filing of documents was either done physically or via the official email address.

o) Despite the Applicant providing sufficient proof of the filing process of the Memorandum of Appearance, the 1st Respondent still faulted the Applicant's Counsels.

p) The 1st Respondent dismissed the Applicant's Application to set aside the irregular Judgement with costs for the reasons that the Applicant had not filed a defense whereas the draft defense was present in the Court Records.

q) With the Applicant's Application to et aside the irregular judgement being dismissed with costs, and there being no stay orders, the Applicant is apprehensive that the Applicant shall resort to execute the irregular exparte Judgement delivered on 18/06/2024.

r) The Applicant has a valid decree, warrants of attachment and has also proclaimed the Applicant's assets. The Applicant now faces imminent threat of execution of an irregular Judgement.

s) If this Honourable Court does not intervene urgently, the 2nd Respondent shall have the benefit of enjoying the proceeds of an irregular Judgement and which act is against the tenets of Natural Justice."

3. The ex parte applicant filed a verifying affidavit sworn by Amos Kimotho the Chief Executive Officer of the Applicant as follows:

"2. I have read and understood the contents of the motion and statement of facts filed herewith and do hereby verify that the contents thereof are correct.

3. Now shown to me and marked AK-l is a bundle of annexures running from pages 1 to 16 which I will make reference to in this Affidavit.

4. The Applicant filed a Preliminary Objection on 17/03/2023 with the basis of the id objection being that the Lower Court lacked the requisite Jurisdiction to determine a dispute between a Sacco and its member as enshrined in Section 76 of the *Co-operative Societies Act*. (Copy of the said Preliminary Objection appear at page 15-16 of AK-1)

5. The 2nd Respondent in paragraph 3 of their filed Plaint, admitted being a member of the Applicant however the 1st Respondent on its on motion failed to determine the question of jurisdiction and proceeded to dismiss the Applicant's Preliminary Objection for the reasons that the Applicants' Advocates were not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant. (Copy of the said Plaint appear at page 12-14 of AK-1)

6. Based on the Admission of Membership by the 2nd Respondent in her pleadings, the 1st Respondent clearly lacked Jurisdiction to entertain any proceedings in Wang'uru MCCC/E 136/2023 and therefore any decisions arising there from are a nullity.

7. On 27/02/2024, the 1st Respondent issued a ruling on the Preliminary Objection filed by the Applicant dismissing it on account that the Applicants Advocates w re not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant.

8. The 2nd Respondent moved the Court secretly without the knowledge of the Applicant.

9. On 18th March, 2024, the 1st Respondent at the request of the 2nd Respondent entered interlocutory judgement against the Applicant and further set a date for formal proof hearing without the knowledge of the Applicant.

10. The Applicant was not served with any notices and therefore the exparte Judgement entered against the Applicant on 18th June, 2024 was irregular.

11. Now that the Applicants Advocates were found not to have the locus standi, service of Court processes could no longer be effected through the Applicant's Advocates but instead the Applicant itself.

12. The Applicant was denied a fair hearing and further suffered an irregular Judgement against it.

13. The 2nd Respondent proceeded to procure a decree and warrants of Attachment issued to Philip Kamuya T/ A Crater View Auctioneers. (Copy of the said Warrants of Attachment appear at page 2-4 of AK-1)

14. The Applicant learnt of the progress of this matter when it was proclaimed against on 15/08/2024 and which prompted the Applicant to have the file perused with a view of confirming the status of the Matter. (Copy of the said Proclamation of Attachment appear at page 1 of AK-1)

15. The Applicant filed an application dated 21st August 2024 to set aside the irregular exparte Judgement entered against the Applicant on 18/07/2024.

16. The Applicant's Counsel in their Application to set aside the exparte Judgement explained to the 1st Respondent the fault not being on their part since they had sent the Memorandum of Appearance to the Court via email for assessment however despite numerous follow-ups, the Registry staff failed to assess the Memorandum of Appearance.

17. As at the time of filing the said Memorandum of Appearance, the lower Court had not migrated to the E-filling system as search, filing of documents was either done physically or via the official email address.

18. Despite the Applicant providing sufficient proof of the filing process of the Memorandum of Appearance, the 1st Respondent still faulted the Applicant's Counsels.

19. The 1st Respondent dismissed the Applicant's Application to set aside the irregular Judgement with costs for the reasons that the Applicant had not filed a defense whereas the draft defense was present in the Court Records. (Copy of the said ruling appear at page 5-11 of AK-1)

20. With the Applicant's Application to set aside the irregular judgement being dismissed with costs, and there being no stay orders, the Applicant is s apprehensive that the Applicant shall resort to execute the irregular exparte Judgement delivered on 18/06/2024.

21. The Applicant has a valid decree, warrants of attachment and has also proclaimed the Applicant's assets. The Applicant now faces imminent threat of execution of an irregular Judgment. (Copy of the said Warrants of Attachment and Proclamation of Attachment appear at page 1-4 of AK-1.

22. If this Honourable Court does not intervene urgently, the 2nd Respondent shall have the benefit of enjoying the proceeds of an irregular Judgement and which act is against the tenets of Natural Justice.

23. I make and swear this Affidavit ill support of and verification of the Application herein."

4. Upon presentation of the application under certificate of urgency, the Court on 21/2/2025 made directions under Order 53 Rule 1 (4) of the Civil Procedure Rules as follows:

> "This Matter coming up on 21/2/2025 for directions on the Chamber Summons dated 20/2/2025 before Honourable justice Edward M. Muriithi.
>
> Upon Reading the application in Chambers in the absence of the Counsel for the Plaintiff/ Applicant and the Counsel for the Defendant/Respondent;
>
> It is hereby Ordered:
>
> 1. That the application for leave to file judicial review proceedings against, and stay of, a ruling of the trial court is certified urgent in view of the relief sought.

2. That the application for leave directed against a ruling of the court in exercise of its now impugned judicial authority warrants an inter partes hearing on the both questions of leave and leave operating as stay in terms of Order 53 Rule 1 (4) of the Civil Procedure Rules.

3. That the application shall be served for hearing/directions on 6/3/2025.

4. That in the meantime, an order for status quo to be maintained is granted for fourteen (14) days only."

5. The Respondent filed a detailed Replying Affidavit sworn on 3/3/2025, principally raising the issue of non-exhaustion of available remedies as follows:

"2) That I have been taken by my advocate on record through the applicant's chamber summons application and its verifying affidavit dated 20th February 2025 and wish to reply to the said application as indicated here below.

3) That in response to paragraph 4, 5 and 6 of the applicant's affidavit I wish to confirm that I filed my pleadings of my case at the lower court together with a notice of motion application which were all dated 21st September 2023, my said pleadings were later served upon the applicant on 25th September 2023 and the court process server filed an affidavit of service in court on 26th September 2023.

(attached is a copy of an affidavit of service in respect of the service of the pleadings which is hereby marked as Exhibit No. "AW-01)

4) That I am informed by my advocate on record that when the matter came up in court on 28/9/2023 the applicant's advocate Mr. Kamau appeared in court and requested the court to grant them leave to file a replying affidavit to my application and the court granted the request and directed the matter to be mentioned on 17/10/2023 to confirm compliance however, when the matter came up in court on 17/10/2023 the advocate for the defendant admitted that they were served with my pleadings but had not filed any documents and they therefore requested to be granted 7days to file a Preliminary Objection of which the court granted them 7days.

5) That I am informed by my advocate on record of which information I believe to be true that, when the matter came up for mention on 24/10/2023 Mr. Kamau Advocate for the applicant confirmed that he filed a notice of Preliminary Objection on 23/10/2023, my advocate thereafter requested the court to allow me to file my submissions in opposition to the Preliminary Objection, the court records bear witness that, Mr. Kamau Advocate informed the court on 24/10/2023 that their client was not going to file any submissions to support their preliminary objection. the court directed that I file my submissions within 7days and fixed a mention date to confirm compliance and take a ruling date on 21st November 2023.

6) That I am further informed by my advocate on record that when 'the matter came up for mention on 21st November/2023 the advocate Kamau for the applicant failed to attend court on that particular day and the court went ahead and fixed a ruling date for 27th February 2024.

7) That the applicant cannot raise the issues at paragraph 5 and 6 of its affidavit that I admitted at paragraph 3 of my plaint that I was a member of the applicant's Sacco Society, because I am informed by my advocate on record that, the applicant should have raised that issue either in its defence, its submissions or in its preliminary objection and therefore, the applicant cannot raise it at this stage through a judicial review because the said ground appears to be a ground of appeal which was supposed to have been filed at the High Court under Order 42 of the Civil Procedure Rules within 30 days after the delivery of the Judgment at the lower court.

8) That the court delivered a ruling of the Preliminary Objection where it dismissed the Preliminary Objection 27/2/2024 in the absence of the applicant's advocate even though he was served with the ruling Notice and an affidavit of service was filed at the lower court. (attached is a copy of an affidavit of service in respect of the ruling notice which is hereby marked as Exhibit No."AW-02")

9) That after the court delivered a ruling, I perused the court file and noted that the defendant had never entered appearance and had also not filed any defence, I therefore requested my advocate to write a letter to the court requesting for interlocutory judgment which was later entered on 18th March, 2024 (attached is a copy of my advocates letter requesting for judgment which is hereby marked as Exhibit NO.IAW-03")

10) That after the court entered judgment on 18/3/2024 I requested my advocate to write to court requesting to be given a date for formal proof hearing. I am informed by my advocate on record that the court fixed 30th April 2024 as the date for formal proof hearing, the applicant was served with the hearing notice but did not attend the court even though there was a proof of an affidavit of service showing that it was served with the notice and therefore I deny paragraph 8 and 9 of the applicants affidavit that I moved the court secretly without the knowledge of the applicant (attached is a copy of the hearing notice and the affidavit of service which I have marked as Exhibit No."AW-04").

11) That in response to paragraph 10 of the applicant’s affidavit, I am informed by my advocate on record that before the judgment of my case was delivered on 2nd July 2024 the Court Administrator served all the advocates with the Judgments and Ruling Notices on 28th June 2024 through their respective emails, the Email message from the lower court registry shows that, the advocate for the applicant was also served through their official email address no. info@kibuemugiirambagra@gmail.com and therefore it is very bad for the applicant to lie under oath that it was not served with any notices (a copy of the court's email message and judgment/ruling notice is hereby attached and marked as Exhibit No."AW-05").

12) That after the judgment was delivered, I paid for a decree of the judgment which was later issued by the court on 18th July 2024 (a copy of the decree is hereby attached and marked as ExhibitNo,"AW-06")

13) That I am informed by my advocate on record that before the warrants of attachments were issued, the process server served the applicant with a Notice

before execution of a decree of the judgement (a copy of the said notice and an affidavit of service are hereby attached and marked as Exhibit No. “AW-07")

14) That in response to paragraph 9 of the applicant's affidavit dated 20th February 2025, I wish to refute the allegation that, the interlocutory judgment was entered on 18th March, 2024 without the knowledge of the defendant, I am informed by my advocate on record that, the applicant was very much aware of the consequences of failing to enter appearance and failing to file defence within the stipulated period set by the statute and therefore, the applicant should blame itself because it's advocate chose to ignore whatever was going on in court even after being served with a notice of a ruling which was delivered on 27th February 2024 and therefore, my advocate wrote a letter requesting for an interlocutory judgment vide his letter dated 27 February 2024 (a copy of my advocates letter requesting for judgement is hereby attached and marked as Exhibit No." AW-08")

15) That in response to paragraph 11 and 12 of the applicant's replying affidavit dated 20th February 2025, I wish to state that it was the duty of the applicant to check what was going on in court, I am further informed by my advocate on record that, the applicant should blame itself for the misfortunes because when it learned that its advocate was found to have no locus, it should have appointed a different firm of advocates but it opted to engage the same firm of advocate who filed an application 21st August 2024 when they knew that they were not properly before the court and therefore the issue that the applicant was denied fair hearing and suffered irregular judgement is a total lie whose aim to mislead this Honourable court.

16) That in response to paragraph 16,17, 18 and 19 of the applicant's affidavit dated 20th February, 2025, I am informed by my advocate on record that the issues that the applicant has raised are supposed to have been raised in an appeal at the High Court and the applicant has not informed this court why it did not appeal against the ruling of the lower court delivered on 18th February 2025 instead of filing a judicial review which does not deal with appeal matters, I am further informed by my advocate on record that judicial review matters are guided by Section 9 of the *Fair Administrative Action Act* of 2015 and therefore Section 9(2) of the *Fair Administrative Action Act*, 2015 requires the applicant to exhaust first the mechanisms provided for under the Civil Procedure Rules, 2010 before coming to this court.

17) That in response to paragraph 20 of the applicant's affidavit dated 20th February, 2025, I wish to state that the judgment that I got was not irregular and the lower court confirmed the same in its ruling and therefore I am advised by my advocate on record that it was upon the applicant to challenge that judgment at the High Court through a Civil Appeal but not through a judicial review.

18) That in response to paragraph 22 of the applicant’s application dated 20th February 2025 I have filed preliminary objection questioning the Jurisdiction of this court in entertaining the applicant's application which I am advised by my advocate on record that, the application is wrongly before this court because the applicant did not exhaust the Civil Appeals mechanisms set out

under Order 42 of the Civil Procedure Rules and I am further informed by my advocate that the applicant's application offends Section 9(4) of the *Fair Administrative Action Act*, 2015 in that, the applicant did not file an advance application seeking first to be exempted from the obligation to exhaust the Civil Appeals remedy provided for under Order 42 of the Civil Procedure Rules before filing the present application in court and for that reason I am humbly requesting this court to strike out the application."

6. The jurisdiction to grant leave to file for judicial review proceedings is set out in Order 53 Rules 1 of the Civil procedure Rules, as relevant, as follows:

> " [Order 53, rule 1.] Applications for mandamus, prohibition and certiorari to be made only with leave.
>
> 1. (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
>
> (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
>
> (3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.
>
> (4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:
>
> Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days."

Preliminary objection.

7. At the hearing inter partes, the Respondent raised a Preliminary Objection dated 3/3/2025 on failure to exhaust available mechanism of redress, as follows:

> " Notice Of Preliminary Objection
>
> Take Notice that, the Second Respondent herein shall at the hearing of the Applicant's Chamber Summons Application dated 20th February 2025 raise a preliminary objection on points of law and shall pray for the same to be struck out with costs on the ground:
>
> 1. That this Honourable Court lacks Jurisdiction under Section 9(2) of the *Fair Administrative Action Act*, 2015 to entertain the applicant's Chamber Summons application dated 20th February 2025 after the applicant failed to exhaust first the civil appeals mechanisms provided for under Order 42, 43 and 45 of the Civil Procedure Rules, 2010.

2. That the Applicant's application offends Section 9(4) of the *Fair Administrative Action Act*, 2015 in that, the applicant did not me an advance application seeking first to be exempted from the obligation to exhaust the Civil Appeals remedy provided for under Order 42 of the Civil Procedure Rules before filing the present application in court.

3. That the Applicant having failed to file its appeal at the High Court under Order 42 of the Civil Procedure Rules against the ruling and judgement of the court delivered on 27/2/2024 and 2/7/2024 and a ruling delivered on 18/2/2025 it is attempting to use the present application to appeal this matter in the form of a Judicial Review which is contrary to the Civil Procedure Rules and is therefore an abuse of the Court process.

4. That the Chamber Summons Application dated 20th February 2025 is frivolous, vexatious, incompetent and improperly before this court and should therefore be dismissed with costs to the Second respondent."

Submissions.

8. In oral submissions before the Court, Mr. Kamau and Ms. Wangari, respective Counsel for the parties urged their respective client's cases as follows:

" Ms. Wangari:

Before the Court is an application dated 20/2/2025. We have taken a Preliminary Objection dated 3/3/2025. Section 9(2) of Fair Administration Act. Exhaustion of the mechanism under the Civil Procedure Rules for appeal. We rely on the Speaker of the National Assembly v. Karume (1992) eKLR; Maya v. County Land Registrar of Kajiado, JR 314 of 2016. The Courts held that where written law provides procedures the same should be followed.

The decision of the lower court should have been challenged on appeal.

The application offends section 9(4) of he Fair Administration Act as there is no application for exemption from the requirement to exhaust the remedies. No application for exemption has been filed before this court. The application dated 20/2/2025 should be dismissed with costs.

Mr. Kamau:

The application of 20/2/2025 is anchored on infringement of Article 50 right to fair hearing.

Article 22 of Constitution provides that every person is entitled to file for remedy in case of violation. The Application seeks to comply with Article 22. Judicial review is a remedy under *the Constitution* of Kenay Article 23 (3) (f).

Even at the lower Court by the application for setting aside the default judgment we did try to exhaust the available remedy.

Ms. Wangari in reply:

The Application before the Court did not exhaust the remedies."

Exhaustion of available remedies.

9. Section 9 of the Fair Administration Action Act provides as follows:

> " 9. Procedure for judicial review
>
> (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.
>
> (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
>
> (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under 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.
>
> (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal."

10. Administrative action is defined by the *Fair Administrative Action Act*, section 2, as follows:

> " "administrative action" includes–
>
> a. the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
>
> b. any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;"

11. With respect, even if the High Court considered that the applicant had not exhausted the available remedies, the result would not be a dismissal of the application but a direction that the applicant first exhausts the available remedies as stipulated in section 9(3) of the Act:

> " (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1)."

12. This accords with the decision of the Court of Appeal in Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR that:

> " We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the

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

We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely."

Exhaustion of remedies – Exceptions.

13. Indeed, Section 9(4) of the Fair Administration Action Act allows the Court to exempt an applicant from the requirement of exhausting the available remedies where the Court finds "exceptional circumstances" justifying "such exemption in the interest of justice". and the applicant applies for exemption. In this case, the applicant has not sought the exemption. Indeed, Counsel in submissions suggested he had complied with the requirement for exhaustion of remedies by the application before the trial court for the setting aside of the ex parte judgment.

14. Courts have recognized the existence of exceptions to the principle of exhaustion of remedies. The Court in William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR) has put the issue 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."

15. See also Wahome v *Public Health Officers & Technicians Council & another (Constitutional Petition E418 of 2021*) [2023] KEHC 2680 (KLR) (Constitutional and Human Rights) (31 March 2023) (Ruling) for the application of these principles of exhaustion of remedies.

16. The case before the Court is, however, not a text-book case of exhaustion of remedies in common appreciation of the term as "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*...." See William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (supra).

17. In this matter, it is simply a question of choice of applicable remedies between an appeal from the decision of the trial court and an application for judicial review orders. Both are applicable: it is a question of which is more appropriate in the circumstances of the case.

The impugned decision.

18. The decision subject of this application is the ruling of the trial court dated 18/2/2025 refusing to set aside its judgment is set out in full as follows:

Republic Of Kenya

In Magistrate's Court At Wang'uru

Civil Case O. E136 Of 2023

Agnes Waeni Plaintiff/respondent

v

Fortune Sacco Society Limited Defendant/applicant

Ruling Of The Court

By notice of motion application dated 21':8!20~4 the defendant sought orders inter alia that the court be pleased to set aside and or vacate its exparte judgement of 18/6/2024 and all consequential orders

emanating therefrom and that the defendant be allowed to file defens e, statements and any other document in support.

The defendant's application is supported by an affidavit sworn by Amos Kimotho Njeru and dated 21st August 2024 and the grounds in support of the application are that, the court registry staff frustrated its effort of filing both its Memorandum of Appearance and its Preliminary Objection. The defendant is also alleging that the interlocutory judgment was entered on 18th March 2024 without its knowledge, the defendant further alleges that it was not served with hearing and mention notices and it is therefore requesting the court to set aside the interlocutory judgment which was entered by the court.

The Plaintiff/Respondent filed a replying affidavit dated 9th September 2024 where it provided evidence of all the hearing and mention notices that were served upon the defendant, and requested the court to dismiss the defendant's application on the ground that it lacks merit.

When matter came up for inter parte hearing parties took directions that the application be disposed by way of written submissions.

The background of the case is that the plaintiff was denied by the defendant an opportunity of accessing and withdrawing funds from her Premium Savings Bank Account number 0000141735521131 domiciled at the defendant's bank situated within Mwea Town.

The Plaintiff filed the present suit together with a Notice of Motion Application dated 21/9/2023. From the record Summons to enter appearance, Plaint and the Application were served upon the defendant on 2319/2023 and an affidavit of service was filed in court on 25/09/2023.

The Defendant's Advocate did not file any Notice of Appointment of advocate, he also did not enter appearance and did not file defence within the stipulated period of 15 days which lapsed on 9/10/2023.

Mr. Kamau Advocate appeared in court on 28/912023 and informed the court that he was holding brief for the firm of Kibue Mugiira & Mbagara Advocates and requested to be given some days to put their house in order and file a replying affidavit however, when the matter came up for mention on 17/10/203 the advocate admitted that they had not filed any documents and requested to be granted leave to file preliminary objection which they filed on 23/10/2023.

The preliminary objection was later dismissed by the court on 27th February 2024 for being incompetent and on the ground that the firm of Mugiira and Mbagara Advocates had not filed a Notice of Appointment of Advocates and further they had not filed any Memorandum of appearance on behalf of the defendant as directed by the court and for that reason they were strangers to the suit.

The defendant's advocate did not appeal to the High Court against the decision of the court which was delivered on 27th February 2024.

When the defendant failed to enter appearance and file defence within the stipulated time, the court entered interlocutory judgment on 18/3/2024 and later a formal proof hearing was held on 30th April 2024 and a final judgment was delivered on 2/7/2024.

A decree of the judgment was issued on 1817/2024 and thereafter, Auctioneers proceeded and executed the decree which prompted the defendant to file the present application which is currently before this court.

Issues for determination

1. Whether the applicant's motion dated 21/8/2024 should be declared incompetent having been filed by the firm of Kibue Mugiira & Mbagara

Advocates who were declared as strangers to the proceedings in the suit on 27th February 2024?

2. Whether the applicant has made out a case for the granting of the orders sought in this application.

3. Whether the Notice of motion Application filed by the defendant and dated 21/08/2024 has any merit?

On the first issue the court made a ruling on 27th February 2024 where it declared the firm of Kibue Mugiira & Mbagara Advocates strangers to this suit after they failed to file their notice of appointment of advocates as required under Order 9 rule 7 of the Civil Procedure Rules, and defendant's preliminary objection was subsequently declared incompetent and struck out with cost to the plaintiff.

The firm of Kibue Mugiira & Mbagara Advocates did not appeal against the decision of this court neither did they file any application seeking for the review of the ruling of the court delivered on 27th February 2024.

The defendant while fully aware that the firm of Kibue Mugiira & Mbagara Advocates were declared strangers to the proceedings in this suit went ahead and instructed the same firm of advocates to file the current application which was also not accompanied with a notice of appointment of advocate.

The firm of Kibue Mugiira & Mbagara Advocates is a reputable firm of lawyers who have been in practice for a very long period of time I suppose and they ought to know that filing of Notice of Appointment of Advocates is mandatory requirement under the Civil Procedure Rules and therefore, since the current application dated 21st August 2024 was filed without being accompanied with a notice of appointment or leave of the court given that final judgement had already been entered the application is a non-starter and there fore struck out for being incompetent.

The High Court in the case of Joshua Nyamache T. Omasire v Charles Kinanga Maena [2008] e KLR presided by Justice D. Musinga (as he then was) had this to say -

> " Mr. Oguttu for tile defendant respondent to Mr. Bosire's submissions by stating that the application was a non-starter as it had been filed by a stranger who had no capacity to do so. He pointed out that the plaintiff's
>
> advocates were F.N. Orora & Company Advocates and thus Nyairo Orora & Company Advocates were strangers who could not file an application on
>
> behalf of the plaintiff ...
>
> In this application, it is apparent that the application dated 3rd March 2008 by Nyairo Orora & Co, Advocates is improperly before court as it was filed by a stranger. 1 strike it out with costs to the defendant."
>
> The Judge went further to state at Paragraph 10 of his ruling that,
>
> " the only way all advocate can prove he/she is an authorized agent of a party is by filing a Notice of Appointment. Having failed to file that Notice the firm of Iseme Kamau & Maema had no legal basis to file the Notice of Motion application under consideration. "
>
> On the 2nd and 3rd issues for determination the ex parte judgement can only be set aside if the same was obtained either through deceit or fraud or when it is established that the summons to enter appearance were never served upon the defendant.
>
> However, in this case the defendant had not given any reasons why it is asking the court to set aside the exparte judgment.
>
> The exparte judgment can only be set aside if the court establishes that there was faulty with the service of the court process server by indicating that the service of the summons to enter

appearance was improper but in this case, the applicant has not faulted the service of the summons to enter appearance and therefore, it is our humble submission that, the applicant has not provided any evidence to prove that the service of the summons to enter appearance was faulty and as such it is our contention that in the absence of any evidence from the applicant to show that the serve was faulty.

In the Court of Appeal case of Kingsway Tyres and Automat Ltd v. Rafiki Enterprises Ltd NRB CA Civil Appeal No. 220 of 1995 (J996) eKLR the court observed the following:

To our minds, the onus was on the respondent to fault the service. Having failed to do so, and in the absence of evidence on record to lead us to hold that the service was improper, it is our view and so hold that ex parte judgement was a regular judgment. It would only, if at all, be properly, vacated on grounds other than non-service of summons. There are ample authorities to the effect that, notwithstanding regularity of it, a court may set aside an ex parte judgement if a defendant shows he has a reasonable defence on the merits. The respondent did not annex to its application in the lower court a draft defence.

The applicant has failed to attach a Draft Defense in order to enable the court to ascertain if it raises triable issues. Several courts have taken a position that, failure to annex a draft defence to an application to set aside a default judgment is fatal to such an application. In the case of Harun Rashid Khator suing as the representative of Rashid Khator (deceased) v. Sudi Hamisi & 11 others [2014] eKLR the court held that:-

"Failure to annex a draft defence on an application to set aside a regular ex-parte judgment is fatal to such an application"

Without a draft defence there would be no basis upon which the court can hold that there are triable issues that would warrant granting orders to set aside default judgment.

The defendant's application is therefore not merited and should therefore be dismissed it with costs to the respondent/plaintiff.

Read dated and signed in open court at Wang'uru this 18th day of February 2025.

Before me: Hon Martha Opanga”

The Scope of Appeal.

19. The province of the remedy of appeal has been demarcated as one for merit review of the decision on appealed from on both law and fact, in several cases including William Karani v Wamalwa Kijana where the Court of Appeal distinguished the scope of appeal from review as follows:

> “ The broad division then is between the appeal procedure as the general method of curing errors, with its scope to deal with errors of evidential fact or law, or mixed fact and law, and the review procedure, to cure a narrower compass of defects, which cannot be allowed to stand in justice, simply because there is no appeal. From the nature of section 80 and order XLIV both procedures cannot be adopted at once.”

20. See also National Bank Of Kenya Limited v Ndungu Njau [1997] eKLR the Court of Appeal emphasizing the place of appeal as against review that “If [the Court] had reached a wrong conclusion of law, it could be a good ground for appeal but not for review.”

21. To be sure, an appeal lies as of right from a decision of the trial court under Order 43 of the Civil Procedure Rules from decisions made in applications for setting aside of judgment in default of appearance and attendance under Order 10 and 11 of the Civil Procedure Rules as follows:

> " 1. An appeal shall lie as of right from the following Orders and rules under the provisions of section 75(1)(h) of the Act—
>
> (g) Order 10, rule 11 (setting aside judgment in default of appearance);
>
> (h) Order 12, rule 7 (setting aside judgment or dismissal for non-attendance);".

In accordance with the authorities the court has to consider whether there exists in this case any exceptional circumstances, which in the interest of justice affect the application of the principle of exhaustion of remedies.

Circumstances of this case

22. The challenge in this case is that the applicant was not heard and that the court had no jurisdiction in the matter, as state at the outset of the Statement of Facts as follows:

> " a) The Applicant filed a Preliminary Objection on 17/03/2023 with the basis of the said objection being that the Lower Court lacked the requisite Jurisdiction to determine the dispute between a Sacco and its member as enshrined in Section 76 of the *Co-operative Societies Act*.
>
> b) The 2nd Respondent in paragraph 3 of their tiled Plaint, admitted being a member of the Applicant however the 1st Respondent on its on motion failed to determine the question of jurisdiction and proceeded to dismiss the Applicant's Preliminary Objection for the reasons that the Applicants Advocates were not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant.
>
> c) Based on the Admission or Membership by the 2nd Respondent in her pleadings, the 1st Respondent clearly lacked Jurisdiction to entertain any proceedings in Wang'uru MCCC/E136/2023 and therefore any decisions arising therefrom are a nullity.
>
> d) On 27/02/2024, the 1st Respondent issued a ruling on the Preliminary Objection filed by the Applicant dismissing it on account that the Applicants' Advocates were not properly on record and that there was no evidence proving that the 2nd Respondent is a member of the Applicant.
>
> e) The 2nd Respondent moved the Court secretly without the knowledge of the Applicant.
>
> t) On 18th March, 2024, the 1st Respondent at the request of the 2nd Respondent entered interlocutory judgement against the Applicant and further set a date for formal proof hearing without the knowledge of the Applicant.

g) The Applicant was not served with any notices and therefore the exparte Judgement entered against the Applicant on 18th June, 2024 was irregular.

h) Now that the Applicants Advocates were found not to have the locus standi, service of Court processes could no longer be effected through the Applicant's Advocates but instead the Applicant itself.

i) The Applicant was denied a fair hearing and further suffered an irregular Judgement against it."

23. While a Challenge on jurisdiction of the court or tribunal may be taken at any stage of proceedings, including at the hearing of an appeal (see for example Governor, County Government of Kakamega & 4 others v Omweno & 12 others (Civil Appeal E176, E177 & E179 of 2024 (Consolidated)) [2025] KECA 190 (KLR) (7 February 2025) (Judgment)), the accepted method for a challenge on jurisdiction of an inferior court or tribunal is by an order of Certiorari, usually coupled with Prohibition. In the leading decision of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR), the Court of Appeal delineated the respective efficacy and scopes of the judicial review orders as follows:

> " To conclude this aspect of the matter, an order of mandamus compels the performance of a public duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same. If the complaint is that the duty has been wrongly performed, i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done. Only an order of Certiorarican quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons."

24. This Court considers that there exists exceptional circumstances which in the interest of justice would require that the dispute between the parties be considered and determined through the procedure of judicial review being the method accepted in common law and Statute law for the challenge on the jurisdiction of inferior courts or tribunals, and being one of the remedies under Article 23 (3) (f) of *the Constitution* for the redress of violations of right to fair hearing asserted here by the applicant.

25. Although, the applicant did not seek exemption, perhaps considering his application not to be subject of the Fair Administration Action Act, the Court will grant the exemption on the principle of need to ensure that alleged violation of the constitutional right to fair hearing is addressed and that the High Court is able to exercise its supervisory role pursuant to Article 165 (6) and (7) of *the Constitution* "to ensure the fair administration of justice."

26. The Court is also mindful of its obligation under overriding objective principle of section 1B of the *Civil Procedure Act*, which gives the duty as follows:

> " 1B. Duty of Court
>
> For the purpose of furthering the overriding objective specified in Section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
>
> (a) the just determination of the proceedings;
>
> (b) the efficient disposal of the business of the Court;

(c) the efficient use of the available judicial and administrative resources;

(d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and(e)the use of suitable technology.[*Act No. 6 of 2009*, Sch.]"

27. It would be an injustice if the Court permitted the determination by an incompetent tribunal, as charged here, to make a decision which is executed against the applicant, and in violation of its constitutional right to fair hearing under Article 50 of the Constitutional. The Court must, if an arguable case is established, permit the full examination of the question of jurisdiction and violation of right to hearing be heard and determined by the High Court as Constitutional Court under Article 165 (3) (d) and as a supervisory court under Article 165 (6) and (7) of *the Constitution*.

28. In accordance with the case-law authority of William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties), this Court considers that the dispute in this matter falls in first category of the exceptions to the exhaustion of remedies doctrine in that there will be need to examine whether a constitutional value of right to fair hearing and determination by a competent forum under Article 50 (1) of *the Constitution* has been violated or is threatened with violation.

Principles for the grant of leave – the Meixner standard.

29. The test for the grant of leave under Order 53 of the Civil Procedure Rules requires that the applicant for leave to file judicial review proceedings must demonstrate an arguable case for the grant of the relief sought. See Uwe Meixner & another v Attorney General [2005] KECA 292 (KLR) where the Court of Appeal held as follows:

> " The test to be applied in deciding whether or not to grant leave is whether the applicant has an arguable case. In Njuguna v Ministry of Agriculture [2001] 1 E.A. 184, this Court said at page 186 paragraph g:
>
> "... leave should be granted, if on the material available the court considers without going into the matter in depth that there is an arguable case for granting leave".
>
> The learned Judge used the phrase, a "prima facie case" as the test. But considering the matters that were considered, we are satisfied that the learned Judge applied the correct test, the words used notwithstanding."

An arguable case.

30. The test is one of arguable case not prima facie case. An arguable case is not one that must succeed. See Dennis Mogambi Mang'are v Attorney General & 3 Others [2012] eKLR.

31. By virtue of section 76 of the Cooperative *Societies Act*, the applicant has an arguable case in that the Respondent had by her pleading in Paragraph 3 of the Plaint dated 21/9/2024 stated as follows:

> " 3. The Plaintiff avers that she has been a member of the defendant's Sacco since February 2015 and for he last 8 years she has been operating Bank Account Number 0000141735 where she has been transacting all her bankings and withdrawals and for all those years she never encountered any problem with the Defendant."

It is trite that a party is bound by her own pleadings, and there is an arguable case therefore that the Plaintiff/2nd Respondent herein is a member of the Defendant/ex parte applicant herein.

Ousting of jurisdiction of Court

32. Section 76 of the Cooperative *Societies Act* expressly provides that

> " 76. Disputes
>
> (1) If any dispute concerning the business of a co-operative society arises—
>
> (a) among members, past members and persons claiming through members, past members and deceased members; or
>
> (b) between members, past members or deceased members, and the society, its committee or any officer of the society; or
>
> (c) between the society and any other co-operative society, it shall be referred to the Tribunal.
>
> (2) A dispute for the purpose of this section shall include—
>
> (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
>
> (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not; (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.
>
> [*Act No. 2 of 2004*, s. 35, *Act No. 14 of 2008*, s. 71.]"

33. It is for the Court to determine whether the dispute between the parties herein field in court is the proper subject of the limitation of section 76 of the Act, and therein lies the arguable case.

34. Consequently, on the test in Meixner, the applicant is entitled to the grant of leave to file judicial review proceedings for orders of certiorari and prohibition. In view of the threatened execution of the order of the trial court made in exercise of jurisdiction, which is subject of this judicial review challenge, an order for stay of the decision pending hearing of the Notice of Motion for the orders of Certiorari and Prohibition is appropriate.

35. In applications for Certiorari, the grant of leave shall not be made on expiry of six months from the decision or order sought to be quashed in terms of Order 53 Rule 2 of the Civil Procedure Rules which provides as follows:

> " [Order 53, rule 2.] Time for applying for certiorari certain cases.
>
> 2. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or

such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired."

36. The ruling sought to be quashed by Certiorari herein was made on 18/2/2025 and the application for leave was filed two days later on 20/2/2025, within the six-month limit.

37. Without prejudice to the decision of the determination of the Court in the application for Judicial Review to be filed, this Court must grant leave so that the question of the jurisdiction of the trial court may be examined and determined. Otherwise, this Court, as court of law, will improperly appear to condone the exercise of jurisdiction by the trial court on a matter it has no jurisdiction, in violation of the binding principle in the case-law authority of the well-known Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.

Substantive Notice of Motion.

38. Under Order 53 Rule 3 of the Civil Procedure Rules, the steps consequent upon grant of leave are as follows:

" [Order 53, rule 3.] Application to be by notice of motion.

3. (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing."

Orders.

39. Accordingly, for the reasons set out above, the Court finds that the Preliminary Objection on exhaustion of remedies is not properly taken.

40. The application before the Court is a challenge on the trial court's jurisdiction in the matter, which could properly be taken by a prayer for Certiorari to quash the impugned decision made without jurisdiction and by Prohibition to restrain further proceedings in the matter.

41. The Court will, therefore, proceed to grant the application for leave to file judicial review proceedings for certiorari and prohibition as prayed.

42. The grant of the leave shall operate as stay of the further proceedings in the subordinate court.

43. The Notice of Motion shall be filed and served within twenty-one (21) days in accordance with the Rules of the Court.

44. The costs of the application shall be costs in the Cause.

45. Mention for directions on the Notice of Motion on 26/5/2025.

Order accordingly.

DATED AND DELIVERED THIS 24TH DAY OF APRIL 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Kamau for Mr. Kibue for the Applicant.

Ms. Wangari for Ms. Njeri for the respondent.

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