Hussein & 3 others v Muslim Bhadala Jamat Committee & 2 others; Sodha & another (Interested Parties) (Constitutional Petition E032 of 2022) [2025] KEHC 5737 (KLR) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5737 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CONSTITUTIONAL PETITION E032 OF 2022

J NGAAH, J

MAY 9, 2025

BETWEEN

YUNUS HAROON HUSSEIN ..... 1ST PETITIONER

ANWARALI ABDULA ..... 2ND PETITIONER

MOHAMED RAFIQ HAROON ..... 3RD PETITIONER

MOHAMED FARUK ELIAS HASSAN ..... 4TH PETITIONER

AND

THE MUSLIM BHADALA JAMAT COMMITTEE ..... 1ST RESPONDENT

THE MUSLIM BHADALA JAMAT BOARD OF TRUSTEES .. 2ND RESPONDENT

THE MUSLIM BHADALA JAMAT OFFICE BEARERS ..... 3RD RESPONDENT

AND

JAFARALI KASSAM SODHA ..... INTERESTED PARTY

IRFAAN JAFARALI ..... INTERESTED PARTY

JUDGMENT

1. Before court is a constitutional petition dated 28 July 2022 seeking a raft of declarations, a conservatory order and an order for judicial review. The prayers have been framed as follows:

> "a. A declaration that members of the Grana clan are by default of the gazette notice dated 19th June 1956 are and have been(sic) members of and associated with the Muslim Bhadala Jamat- Community.

b. A declaration that the constitutional rights under article 27 (1), (2), (3) and (5) of *the Constitution* of Kenya, 2010 have been infringed, denied, violated or threatened by the managing committee and the trustee of the Muslim Bhadala Jamat Community herein the 1st and 2nd respondent.

c. A declaration that the constitutional rights under article 43 (1) (a) and (c) of *the Constitution* of Kenya 2010 have been infringed, denied, violated or threatened by the managing committee and the trustee of the Muslim Bhadala Jamat Community herein the 1st, 2nd and 3rd respondents.

d. A declaration that the constitutional rights under article 53 (1) (c) and (d) of *the Constitution* of Kenya 2010 have been infringed, denied, violated or threatened by the managing committee and the trustee of the Muslim Bhadala Jamat Community herein the 1st and 2nd respondent.

e. A conservatory order staying the implementation of the decision and the appointment of any members in the capacity as the managing committee and members of the trustee pending the execution of order number (f) below.

f. A declaration that the constitutional rights under article 2 (4) of *the Constitution* of Kenya 2010 has been infringed, denied, violated or threatened by the managing committee, the board of trustees and the office bearers of the Muslim Bhadala Jamat Community herein the 1st and 2nd respondent and that a declaratory order herein issue for fresh general election to be conducted within 30 days from the date of issuance of the order.

g. An order of judicial review in the nature of certiorari quashing the decision of the 1st respondent, 2nd respondent and the 3rd respondent preventing the petitioner, the interested party and all the members of the Muslim Bhadala Jamat Community, by virtue of the orders granted in paragraph (a) above preventing their participation in the elective process and other activities of the Muslim Bhadala Jamat Community.

h. The costs of the petition to be borne by the Respondents herein.

i. Any other orders the court may deem fit."

2. The petition is supported by an undated affidavit sworn by the 1st petitioner, Yunus Haroon Hussein. The paragraphs in the affidavit are uniquely numbered in the sense that the numbering starts from number 60 and goes all the way to number 118.

3. The description given to the petitioners in paragraph 1 of the petition is as follows:

> " The petitioners herein are adults male of sound mind, a member(sic) of the Muslim Bhadala Jamat a citizen of Kenya residing in Mombasa, and in particular the Grana clan origin and descent."

4. It is apparent from this averment that although there are four persons named as petitioners in the petition, the description given is of only one person. As a matter of fact, the rest of the averments made in the petition and in in the affidavit in support of the petition only refer to "the petitioner" as if the petition is brought by a single petitioner.

5. In paragraphs 10 and 11 of the petition, for instance, it has been averred as follows:

> "10. The petitioner is a Kenya citizen and a member of the Grana clan within the Muslim Bhadala Jamat-Community within clause no. 4 of the revised constitution and rules dated 17th January, 1978 of the Muslim Bhadala Jamat Mombasa; and is born, raised, educated and working for gain in the Republic of Kenya.
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> 11. The petitioner is a descendant of a minority and marginalised Grana Clan within the Muslim Bhadala Jamat-Community Association in Kenya which has lived, interacted and made significant and wide contributions to the establishment of the Association prior to and after independence of the Republic of Kenya todate."

6. And as to what the petition is all about, Yunus Haroon Hussein has sworn as follows:

> "That I bring this petition purely on the basis of the interest of the members of the Muslim Bhadala Jamat facing constitutional infringements and discriminatory treatment, specifically the Grana clan within the community and my capacity as a member of the community interested in the goings-ons of the Muslim Bhadala Jamat Community; the Muslim Bhadala Board of Trustees and the Muslim Bhadala Jamat Committee office bearers."

7. Parties to the dispute agree that Muslim Bhadala Jamat, is an association registered under the *Societies Act*, cap. 108. I will henceforth refer to it as simply "the association".

8. It is for the reason that the petition should be considered in its proper perspective that I found it necessary to bring out these issues out at the very outset.

9. That said, Yunus Haroon Hussein has sworn that the Grana clan has been discriminated against, marginalised and racially profiled by the respondents and, in particular, by a letter dated 15 June 20218, the respondents sought to bar the Grana clan from participating in the elections of the association that were then scheduled to be held on 26 June 2022

10. A copy of a letter exhibited in support of this fact is however dated 15 November 2018. It is from the association and addressed to its members informing them of a special general meeting scheduled for 25 November 2018 for purposes of presenting and discussing audited accounts of the association. The letter ends with a reminder that only bona fide members of the association will be allowed to attend the meeting. To quote the author:

> "You are also informed that only bona fide Bhadala's will be allowed to attend and take part in this important exercise. Non Bhadala's will strictly, not be allowed."

11. According Hussein, "unqualifed and incompetent persons...illegally clinging to the administrative positions for nearly 8 years to a decade long" are in office of the association and this has contributed to the alienation of the Grana clan from the participation in the association's activities.

12. To be precise, Hussein has cited the letter of 15 November 2018 to which reference has been made and deposed that it is, by and large, the genesis of the dispute before court. In paragraph 69 of his affidavit, he has sworn as follows:

> "69. That the cause of action can be traced back as a genesis when the Muslim Bhadala Jamat secretary, Mr. Omar H. Dosani issued with approval of the Committee members and the Board of Trustees, correspondence in a letter dated 15th November, 2022 informing members of the community of a special general meeting with the letter closing off with the words "you are also informed that only bona fide Bhadala's will be allowed to attend and take part in this important Jamat exercise."

13. A similar communication is said to have been made "by word of mouth" with respect to the association's annual general meeting that was set to be held on 26 June 2022 when election of the officers of the associations were to be conducted.

14. The petitioners protested their exclusion from participation in the association's meeting and, in particular, in the voting exercise. Despite the respondent's attitude towards the Grana clan, Hussein has sworn that the members of this clan have, over the years, been paying their subscriptions of membership in the association and making other monetary donations to the association.

15. Other than side-lining the petitioners from the association, the respondents are alleged to have been applying a constitution that has not been adopted by the association.

16. As far as violation of *the Constitution* is concerned, various articles of *the Constitution* have been enumerated in the petition which "the petitioner" is said to be "aware of" as ascribing or guaranteeing certain fundamental rights and freedoms. The only specific reference to the alleged respondents' violation of the petitioners' constitutional rights is found in paragraph 48 of the petition (under the sub-head "specific constitutional violation") where it has been pleaded as follows:

> "48. That the Petitioner avers that having systematically discriminated the petitioner and the interested parties for their ascribing to the Grana clan and their participation in the Badala Muslim Jamat within this cultural description where the respondents have illegally and arbitrarily restrained their rights and constitutional rights to ascribe to the Bhadala Muslim Jamat socially, culturally, and economically; to vote in the community general elections; have been denied community benefits including burial permits, children registration of birth certificate; access to social and educational benefits."

17. The respondents opposed the petition and filed what they described as "response to the petition" and a replying affidavit to the motion for conservatory orders but which, as far as I can gather, has also addressed the petition. The affidavit was sworn by Shiraz Mohamed Thaim who has sworn that, at the time material to this petition, he was the chairman of the management committee of the association.

18. According to Thaim, a suit similar to the instant petition was filed in this Honourable Court as High Court Civil Case No. 106 of 2018. In that suit, the petitioners had, among other things, accused the respondents of impropriety in managing the affairs of the association. The suit was, apparently, dismissed and, therefore, the instant petition is an attempt by the petitioner, to regurgitate the same issues that have been disposed of by this Honourable Court.

19. As far as membership of the Grana clan in the association is concerned, Thaim has sworn that the association has 32 clans which do not include the Grana clan. The association of the Grana clan with the Muslim Bhadala Jamat community arises from the relationship between an old man called Grana and the association's members' forefathers in the 1950s. Both Grana and the Muslim Bhadala Jamat community's forefathers are said to have been seafarers. Although Grana and his extended family would attend the Muslim Bhadala Jamat community's social events, they never joined the community and the two groups do not intermarry.

20. In submissions in support of the petition, it has been submitted that the respondents ought to be held accountable for violations and infringement of the petitioners' rights. They have invoked article 165(3)(b) of *the Constitution* which grants the court jurisdiction to determine whether a right or fundamental freedom has been denied, violated, infringed, or threatened. The petitioners' primary concern, it is urged, is their violation of their rights and the legality of the respondents' holding offices in the association in various capacities.

21. The petitioners have also invoked article 22 of *the Constitution* on the right to petition the court for enforcement of the Bill of Rights. They urge that they have legal standing to bring this case and, in this regard, they have cited Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR, Petition No. 150 of 2011; Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR; and Trusted Society of Human Rights Alliance v Mumo Matemu & Another (2014) eKLR.

22. It is also urged on behalf of the petitioners that the petitioners' constitutional rights have been violated by the respondents and, relying on Katiba Institute & 3 Others v Attorney General & 2 Others (2018) eKLR, it has been urged that constitutional interpretation must begin with article 259(1) of *the Constitution*, which sets out guiding principles for interpretation. They have also cited The State v Acheson (1991) 20 SA SOS, where the importance of constitutional structures in judicial decisions was recognized. Other authorities cited on constitutional interpretation include Government of the Republic of Namibia v Cultura 2000 (1994) 1 SA 407 at 418; Njoya & 6 Others v Attorney General & Another (2004) eKLR; Tinyefuze v Attorney General of Uganda, Constitutional Petition No. 1 of 1997 (3 UGCC); Attorney General of Tanzania v Rev. Christopher Mtikila (2010) EA 13; and In the Matter of Kenya National Human Rights Commission, Supreme Court Advisory Opinion Ref. No. 1 of 2012.

23. As far as the issue of costs is concerned, the petitioners relied on Reid, Hewitt & Co. v Joseph, AIR 1918 Cal 717; Myres v Defries (1880) 5 Ex D 180; and Morgan Air Cargo Limited v Evrest Enterprises Limited (2014) eKLR and urged that the award of costs is not automatic and lies within the court's discretion, which must consider not just the outcome of the case but also its specific circumstances. However, given the alleged infringement of their fundamental rights, the petitioners have urged the court to allow the petition with costs to them.

24. In response to the petitioners' submissions, it has been urged on behalf of the respondents that the petition is barred by the doctrine of res judicata because, issues raised in this petition have been directly and substantially addressed in civil case no. 106 of 2018; this case was conclusively determined by the judgment dated 23 August 2022. The respondents have urged that the doctrine of res judicata, is intended to protect the public interest by preventing repeated litigation of the same issues once conclusively resolved by a court of competent jurisdiction. In support of their submissions, the respondents have relied on Siri Ram Kaura v M.J.E. Morgan, *CA 71/1960* (1961) EA 462, as approved in Kennedy Mokua Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende (2022) eKLR; Uhuru Highway Development Ltd v Central Bank of Kenya, Exchange Bank Ltd (in

voluntary liquidation) and Kamlesh Mansukhlal Pattni; The Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others (2017) eKLR; and Njangu v Wambugu and Another, Nairobi HCCC No. 2340 of 1991 (unreported).

25. It has also been urged on behalf of the respondents that the petitioners' claim is based on the false premise that the Grana clan is a member of the Muslim Bhadala Jamat Community.

26. It is also submitted that the petitioners have failed to demonstrate how their constitutional rights have been or are being violated. Citing the Anarita Karimi Njeru versus Republic (No.1) (1976-1980) KLR 154, the respondents have urged that it is not enough for the petitioners to cite constitutional provisions allegedly breached; they must also provide concrete evidence or a factual foundation of the violations alleged. They further relied on Consortium for the Empowerment & Development of Marginalised Communities & 2 Others v Chairman, Selection Panel for Appointment of Chairperson & Commissioners to Kenya National Human Rights Commission & 4 Others (2013) eKLR in support of this position.

27. The respondents have also submitted that the petitioners' petition is fundamentally defective and incurable and that it does not meet the threshold for establishing a prima facie case. In this regard they have cited John Waweru Wanjohi & Others v Attorney General, High Court Petition No. 373 of 2012, consolidated with Kipngetich Maiyo & Others v Kenya Land Commission Selection Panel & Others, High Court Petition No. 426 of 2012, where the court highlighted the importance of precise and adequate pleadings. The respondents contended that the petitioners have not set out their claims with the required precision and specificity to support allegations of constitutional rights violations.

28. In summary, the respondents have urged the petition lacks merit and the reliefs sought are not warranted. Accordingly, they have urged the court to dismiss the petition in its entirety with costs.

29. One of the issues raised by the respondents and which presents itself as an issue that should be disposed of at the very outset is the question of whether the petition is res judicata. And to answer this question, I look no further than the record which shows that on 6 July 2023, Sewe, J. delivered a ruling whose gravamen was the same question of res judicata and which, for this reason, is pertinent to the determination of this petition. This is notwithstanding the fact that the ruling was in respect of a motion for conservatory orders. In that ruling, the learned judge addressed the question of res judicata and noted as follows:

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> "(6) The respondents opposed the application. They relied on the replying affidavit sworn on 25th October 2022 by Shiraz Mohamed Thaim. The affiant averred, inter alia, that the petition and the instant application are res judicata; the same issues having been determined between the parties or between parties under whom they were litigating, in Mombasa High Court Civil Case No. 106 of 2018 in which a final decision was rendered on 23rd August 2022. They annexed copies of the judgment delivered in the previous suit together with other pertinent documents to buttress their averments.
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> (7) There is no gainsaying that res judicata is a plea that goes to the jurisdiction of the court, and which, if successfully raised, has the potential of disposing the entire suit; for section 7 of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, does provide that:
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> "No court shall try any suit or issue in which the matter in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under

whom they or any of them claim, litigating under the same title...and has been heard and determined and finally determined by such court."

(8) Moreover, it is now settled that res judicata as a principle applies to applications as well, and can only be invoked, in the case of an application where a similar application has been filed after a determination, on the merits or by consent, in respect of the same subject matter in a previous application. Hence In Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 Others) Civil Appeal No. 36 of 1996], the Court of Appeal made this point thus:

"There is not one case cited to show that an application in a suit once decided by courts of competent jurisdiction can be filed once again for rehearing. This shows only one intention on the part of the legislature in India and our *Civil Procedure Act*. That is to say, there must be an end to applications of a similar nature; that is to say further, wider principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation..."

(9)I have accordingly perused the notice of motion dated 22nd November 2018, the supporting affidavit and the replying affidavit filed in the former suit and noted that the very issues raised therein are in the same issues that have been raised in the instant application. For instance, prayer 2 of the notice of motion dated 28th July 2022 is a replication of prayer 2 of the notice of motion dated 22nd November 2018, while prayer 4 of the instant notice of motion corresponds neatly with prayer 3 in the earlier notice of motion filed in Mombasa HCCC No. 106 of 2018. It is also plain that the affidavits filed in respect of the two applications contain more or less similar averments.

(10) It is indubitable that a court of concurrent jurisdiction heard and determined the earlier application on merit; thereby granting orders pending the hearing and determination of the main suit. The main suit likewise heard and determined on merit vide the judgment dated 23rd August 2022. The suit was dismissed and the officials and members of the Muslim Bhadala Jamat Mombasa ordered to call for an annual general meeting in accordance with *the Constitution* of the Society. It is plain, then, that the instant application is indeed res judicata.

(11) In independent Electoral & Boundaries Commission v Maina Kiai & 5 Others (2017) eKLR the Court of Appeal explained that:

"The rule of doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there will be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrpute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice."

(12) It matters not that the dispute is now disguised as a constitutional petition by different players suing on behalf of the disgruntled members of the Muslim Bhadala Jamat Association of Mombasa; for res judicata applies, not only on

the basis of facts expressly pleaded, but also those that ought to have been pleaded in the first instance. Accordingly, I agree entirely with the position taken by Hon. Majanja, J. in E.T. v Attorney General (2012) eKLR that:

"The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi vs National Bank of Kenya Limited and Others (2001) EA 177 the court held that, 'parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit'. In that case the court quoted Kuloba J., in the case of Njangu vs Wambugu and another Nairobi HCCC No. 2340 of 1991 (unreported) where he stated, 'if parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic facelift on every occasion he comes to court then I do not see the use of the doctrine of res judicata…"

(14) In the result, the notice of motion dated the 28th July 2022 is hereby struck out with the costs for being res judicata."

30. Now, there is no doubt that the basis of the application that was before the learned judge are the same issues upon which the instant petition is founded. As a matter of fact, the depositions in the affidavit supporting the motion which was struck out are word for word with the averments in the petition. It follows that if the court has held that the application for conservatory orders was bad for res judicata, a similar application having been heard and determined in a separate suit in which the application had been filed, the petition would fall for the same reason.

31. As earlier noted, Sewe, J. was clear from the very beginning that "… there is no gainsaying that res judicata is a plea that goes to the jurisdiction of the court, and which, if successfully raised, has the potential of disposing the entire suit…". It would be implausible to hold, on the one hand, that an application is res judicata because it raises the same issues that have been raised and determined in application in a different suit and hold, on the other hand, the suit in which the application has been filed is not similarly tainted yet both the suit and the application are founded on the same facts. It follows that, for the same reason that the motion was struck out, the instant petition could easily have been laid to rest, on the same date that the motion was struck out.

32. But even if the petitioners were to be given the benefit of doubt, that the doctrine of res judicata is inapplicable to their petition, the petition would still fall on at least two other grounds. First, it is clear that the section 25 of the *Societies Act*, cap. 108 requires every society to have a register of its members. The section reads as follows:

25. Register of members

(1) Every registered society shall keep a register of its members in such form as the Registrar may specify or as may be prescribed, and shall cause to be entered therein the name and address of each member, the date of his admission to membership and the date on which he ceases to be a member.

33. The petitioners' petition is founded on the presumption that the petitioners are members of the association. However, they have not produced any register to demonstrate, among other things, that they are members of the association or that there exists such a register that contains such other details of their membership of the association as prescribed in section 25 of the Act.

34. It follows that, without evidence of membership in the association, the petitioners have no basis of seeking to participate in the activities of the association which activities would include, the association's meetings, whether special or annual.

35. As far as the annual general meetings of a society are concerned, and perhaps for the avoidance of doubt, Section 29 of the *Societies Act* is to the effect that only members of a society may participate in the society's meetings; it reads as follows:

> 29. Meetings of societies
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> (1) Every registered society shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting—(a)render a full and true account of the moneys received and paid by the society, such account being audited in accordance with the rules of the society; and
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> (b)cause to be elected or appointed all such officers, trustees and auditors and, where applicable, such committees as are required in accordance with *the constitution* and rules of the society.

36. In the absence of any evidence of membership in the association, the respondents have no right, and had no right, to participate in the affairs of the Society and the respondents cannot be faulted for having insisted on the admitting only bona fide members in the association's meetings.

37. What this means is that there is neither factual nor legal basis upon which the petitioners can claim that their constitutional rights have been infringed or violated or threatened with infringement or violation only because they have been excluded from the association's activities. Going by the foregoing provisions of the law, their exclusion is legally justified.

38. In any event, besides reciting a series of articles of *the Constitution* on fundamental rights and freedoms, of which the petitioner has consistently pleaded that "he is aware of" no attempts have been made to demonstrate how those particular provisions in *the Constitution* have been violated. There is absolutely no proof of any nexus between those particular provisions of *the Constitution* and their violation or threatened violation.

39. The upshot of the petitioners' petition is that they have simply randomly cited several provisions of *the Constitution* without specifying how those provisions have been violated to the detriment of their constitutional rights. Courts have consistently frowned upon this approach of invoking their jurisdiction in determination of constitutional issues and the leading case in this respect Anarita Karimi Njeru versus Republic (supra) where the High Court, faced with a similar situation, dismissed the petitioner's petition for, among other reasons, lack of correlation between the petitioner's complaints and the provisions of *the Constitution* alleged to have been infringed and the manner in which they are alleged to been violated. The court stated as follows:

> " We would however again stress that if a person is seeking redress from the High Court on a matter which involves *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed. (see paragraph (H) at page 156)."

40. Courts have since taken cue and followed this this line of thinking in many other cases where this question of the need to state with precision a petitioner's grievances and how those grievances arise

from the violation or a threat to violation of *the Constitution* has arisen. For example, in Meme versus Republic (2004) 1KLR, a three-judge bench of the High Court quoted this statement with approval and adopted it as the principle upon which allegations of violation of the constitutional rights must be founded. In dismissing that the petition before it, the court stated at page 688 that:

> " We must state in our judgment that the application before us has not fully complied with that basic test...the main thrust of the applicant's case is founded on generalized complaints without any focus on fact, law or *the constitution* which is being invoked as the umbrella".

41. This is exactly what the petitioners have done here; they are not precise as to those provisions in *the Constitution* that have been infringed and the manner in which they have been infringed.

42. In a more recent decision in Mumo Matemu versus Trusted Society of Human Rights Alliance & 5 Others (2013) KECA 445 (KLR), (paragraphs 38-44) the Court of Appeal followed that decision to emphasise that a dispute before court must be properly defined. In upholding the decision of the High Court dismissing the petition, the Court held that the petition fell below the threshold set by the Anarita Karimi Njeru case. To quote the court:

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> " (c) Was the principle in Anarita Karimi Njeru case requiring that constitutional petitions be pleaded with reasonable precision properly applied by the High Court?
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> (39) The issue was raised that the 1st respondent had omitted to frame their case or complaint with precision as required under the High Court's pronouncement in Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272. Counsel for the appellant submitted that the petition failed the requirement as it did not state the alleged constitutional provisions violated and the acts or omissions complained of with reasonable precision. Apart from citing omnibus provisions of *the Constitution*, the petition provided neither particulars of the alleged complaints, the manner of alleged infringements or the jurisdictional basis of the action before the court. He maintained that such failure to draft the petition with precision had prejudiced the appellant and the other respondents.
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> (40) It was the averment of learned counsel for the 1st, 5th and 6th respondents that the petition had cited with precision complaints regarding the violation of Articles 10 and 73 of *the Constitution*; that Article 159 of *the Constitution* enjoined the courts to administer justice without undue regard to procedural technicalities.
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> (41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

(42) However, our analysis cannot end at that level of generality. It was the High Court's observation that the petition before it was not the "epitome of precise, comprehensive, or elegant drafting." Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."

(43)) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown *the Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of *the Constitution* and the rule of law, without any particulars.

(44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the "epitome of precise, comprehensive, or elegant drafting," without requiring remedy by the 1st respondent. (Emphasis added).

43. In the ultimate, and for reasons I have given, I do not find any merit in the petitioners' petition. It is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED ON 9 MAY 2025.

NGAAH JAIRUS

JUDGE