



REPUBLIC OF KENYA



**Maina v Dynaley Agencies Limited (Petition E054 of 2023)
[2025] KEHC 13005 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 13005 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E054 OF 2023
DO CHEPKWONY, J
JUNE 24, 2025**

BETWEEN

YVONNE MAINA PETITIONER

AND

DYNALEY AGENCIES LIMITED RESPONDENT

RULING

1. The Applicant has filed a Notice of Motion application dated 15th September, 2023 seeking:-
 - a. Spent.
 - b. That in the interim and pending the hearing of this application and Petition the Honourable Court be pleased to issue an Interim Injunction henceforth restraining the Respondent, their agents or people working under their instructions from publishing, producing, circulating or in any way dealing with the Petitioner's/Applicant's data and/or image in their website or the social media handles they control.
 - c. The cost of this application be provided for.
 - d. Any other order the Honourable Court may deem fit and just in the circumstances.
2. The application is premised on the grounds on its face and the Supporting Affidavit sworn by Yvonne Maina on 15th September, 2023 alongside the annexures attached thereto.
3. In response, the Respondent filed a Notice of Preliminary Objection dated 20th December, 2024 in which it has opposed the application and urged that the same be struck out on the basis that the application offends mandatory provisions of Sections 3 (c), 9, 56 and 57, all of the Data Protection Act, Cap 411 which states that a Data Commissioner has powers and procedures to investigate complaints touching on matters privacy. Further, the Respondent contends that the application offends the doctrine of constitutional avoidance which means, a court will not determine a constitutional issue



when a matter may properly be determined in another manner or forum. The Respondent thus urges the court to strike out the Petition and application with costs.

4. On 25th June, 2025, the court directed parties to dispose of the Preliminary Objection in priority as it can dispose off the entire petition. The definition of ‘Preliminary Objection’ was pronounced in the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696, where the Court Stated:-

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

5. The main ground in the Preliminary Objection is that the Petition does not raise any constitutional issue for determination of this court. In order to show whether an issue is a constitutional one, it has to meet the threshold of specificity which was addressed in the case of David Mathu Kimingi –vs- SMEC International PTY Limited (2021)eKLR, where the Court held thus:-

“The main issue for determination in the application before me is whether the Petition raises any issues on violation of *the Constitution* to meet the threshold of a constitutional petition. In the Petition while the Petitioner has cited Article 41 (1) of *the Constitution* as having been allegedly contravened, he has failed to specify the said provision and further give particulars of the said contravention within the body of the Petition. The petitioner further alleges violation of his constitutional right under Article 23(3) in the Orders he seeks in the Petition yet the same is not averred with specificity and particulars given on how the Respondent violated the said right. It is my considered opinion that the Petitioner has failed to satisfy the threshold of specificity as espoused in the celebrated cases of Anarita Karimi Njeru v Republic (No.1) (1979) 1 KLR 154 and Mumo Matemu v Trusted Society of Human Rights Alliance, Civil Appeal No.290 of 2012 (2013) eKLR.”

6. The court finds that this Petition does not raise any constitutional issues to warrant the matter to be brought by way of a constitutional petition. For that reasons the Notice of Preliminary Objection has merits and the effect is that the Notice of motion application and the entire Petition is hereby struck out with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JUNE , 2025.

D. O. CHEPKWONY



JUDGE

In the presence of:

Mr. Mabuka holding brief for Mr. Aguko for the Respondent

Court Assistant - Martin

