



**Mmbwanga (Suing on behalf of the minor students of Friends School-Senende Soccer Team) v Kenya Secondary Schools Sports Association (KSSSA) & 4 others; Secretary Board of Management, Friends School-Senende (Interested Party) (Petition E003 of 2025) [2025] KEHC 8299 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8299 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
PETITION E003 OF 2025**

**JN KAMAU, J**

**JUNE 13, 2025**

**RULING**

**IN THE MATTER OF THE ALLEGED VIOLATION AND  
INFRINGEMENT OF THE FUNDAMENTAL RIGHTS AND FREEDOMS  
OF THE MINOR STUDENTS OF FRIENDS SCHOOL-SENENDE**

**AND**

**IN THE MATTER OF THE DECISION BY THE HAMISI SECONDARY  
SCHOOLS SPORTS ASSOCIATION (HSSSA) BARRING FRIENDS  
SCHOOL-SENENDE SOCCER TEAM FROM PARTICIPATING IN THE  
KENYA SECONDARY SCHOOLS SPORTS ACTIVITIES TERM TWO 2025**

**BETWEEN**

**NOAH MMBWANGA (SUING ON BEHALF OF THE MINOR STUDENTS OF  
FRIENDS SCHOOL-SENENDE SOCCER TEAM) ..... PETITIONER**

**AND**

**THE KENYA SECONDARY SCHOOLS SPORTS ASSOCIATION  
(KSSSA) ..... 1<sup>ST</sup> RESPONDENT**

**THE HAMISI SECONDARY SCHOOLS SPORTS ASSOCIATION  
(HSSSA) ..... 2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF EDUCATION . 3<sup>RD</sup> RESPONDENT**

**THE SUB-COUNTY DIRECTOR OF EDUCATION - HAMISI .... 4<sup>TH</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**



**THE SECRETARY BOARD OF MANAGEMENT, FRIENDS SCHOOL-  
SENENDE ..... INTERESTED PARTY**

**RULING**

**Introduction.**

1. In his Petition dated 10<sup>th</sup> June 2025 and filed on 11<sup>th</sup> June 2025, the Petitioner herein sought for orders that :-
  - A. A declaration that the decision by the 1<sup>st</sup> Respondent, Kenya Secondary Sports Association (KSSSA) through the 2<sup>nd</sup> Respondent, Hamisi Secondary Schools Sports Association (HSSSA) barring Friends School Senende soccer team from participating in the County Competitions and subsequent National Championships based on the alleged provision of false information regarding one of the players.
  - B. A declaration that the fundamental rights and freedoms of the innocent students playing in the Friends School Senende soccer team, as guaranteed under Articles 27, 47 and 53 of the Constitution of Kenya, 2010, have been violated by the Respondents.
  - C. An order of certiorari removing to this honourable court and quashing the decision by the 1<sup>st</sup> Respondent, the Kenya Secondary Schools Association, KSSSA, through the 2<sup>nd</sup> Respondent, Hamisi Secondary Schools Sports Association (HSSSA) dated the 9<sup>th</sup> of June 2025 disqualifying Friends School Sinende soccer team from participating in the Kenya Secondary Sports Activities 2025 including the County Regionals and National Champions.
  - D. An order of mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately reinstate Friends School Senende soccer team to participate in the County Championships scheduled to start on 11<sup>th</sup> June 2025.
  - E. In the alternative and without prejudice to the foregoing, an interim order directing the Respondents to allow Friends School Sinende soccer team to participate in the upcoming County Competitions pending the hearing and determination of this Petition.
  - F. Any other or further orders that this Honourable Court may deem just and expedient to grant in the circumstances.
  - G. The costs of the Petition be borne by the Respondents.
2. He brought his said Petition under the Certificate of Urgency and Notice of Motion application dated 10<sup>th</sup> June 2025 and filed on 11<sup>th</sup> June 2025. He sought for orders that pending hearing and determination of this Petition, an interim order do issue directing the Respondents to allow Friends School Senende Soccer team to participate in the upcoming Vihiga County Secondary Schools Sports Competitions.
3. He swore an affidavit in support of the said application on 10<sup>th</sup> June 2025. He averred that he was the Parent Representative of the Interested Party parents and/or guardians having been elected so by his fellow parents to represent the interests of parents and students. He contended that the Interested Party herein registered to compete in Kenya Secondary Schools Sports Activities-Term Two for the year 2025.



4. He pointed out that the team played in various stages whereby they emerged as winners including the sub-county competitions, in which they were ranked at position one (1) in the league qualifying to proceed to the Vihiga County Secondary Schools Sports Competitions and subsequently, Regional, Nationals and East and Central Africa Championships.
5. He stated that after playing in the finals of sub-county competitions and automatically qualifying for the county competitions, the Interested party was informed by the Respondents that some documents as submitted in relation to one player namely Vincent Vusakha, were not in order as some were related to another student by the name Vincent Embenzi.
6. He further contended that the Interested Party was asked to avail the two(2) students for physical identification and through verdict delivered on 10<sup>th</sup> June 2025 and vide letter dated 9<sup>th</sup> June 2025, the Respondents disqualified the entire Interested Party's Soccer Team when only one student's documents were faulted.
7. He asserted that upon receipt of the verdict, the Interested Party filed an appeal to the Supreme Jury within the prescribed period of time as provided under Article 15(d) of the Constitution of the Kenya Secondary Schools Sports Association. He argued that the verdict of the appeal was supposed to be rendered on the day of the appeal and within timelines that would ensure the appealing team's opportunity to play is not compromised but that as at the time of filing this Petition, the Respondents had not issued any direction and/or decision on the Appeal lodged by the Interested Party.
8. He pointed out that Vincent Vusakha whose documents were purportedly false was a bonafide student of the school, having been admitted on 4<sup>th</sup> September 2023 vide admission number 11990 and had consistently attended classes and participated in school sporting activities including representing the school in the soccer games organised by the Respondents at different levels
9. It was his contention that the Respondents did not state with clarity on the exact documents that they found questionable and the school was not granted an opportunity to explain the anomaly and or the confusion if any and were thus condemned unheard. He added that consequently, over fifteen (15) students who had been diligently and painstakingly trained and legitimately qualified through to County competitions, stood to be unfairly punished and deprived of their right to participate in the County, Regionals, National and East and Central Africa Championships. It was his contention that the said players were not involved in any alleged transgression and their rights should not be prejudiced by the actions of others or procedural decision.
10. It was categorical that the National Championships represent a culmination of years of hard work, dedication and sacrifice for the young players and their participation was critical for their talent development, exposure, potential scholarships and overall well being and growth. He added that the Interested Party had over the years demonstrated and achieved distinguished results in both class work and sporting activities and barring its student from fielding a soccer team in the championships due to a mix up in the documentation of one of the players shall cause immense psychological trauma to the other students who had not been faulted and to entire student body.
11. He further averred that the decision and the process leading thereto, constituted a gross violation and infringement of the students' fundamental rights and freedoms guaranteed under Articles 22, 23, 27, 47 and 53 of the Constitution of Kenya, 2010 and Section 14(e) of the Kenya Secondary Schools Sports Association Constitution in disqualifying the entire team when only one player was faulted. He asserted that despite the verdict having been made on 9<sup>th</sup> June 2025, the same was availed to the Interested Party on 10<sup>th</sup> June 2025 to frustrate and bar the Interested Party from appealing against the said verdict.



12. He further contended that it was undisputed that both Vincent Vusakha and Vincent Embenzi were bonafide students of the Interested Party and were currently in their Fourth form and any mix up transportation of their documents was a genuine error due to the similarity in their names. He was emphatic that the co-curricular activities were integral part of the curriculum in realising holistic education and development for children under the *Basic Education Act* 2013 and that it was during such competitions that the student's talents were showcased and spotted by various stakeholders including sponsors, soccer academies and clubs among others, who eventually adopt the students and help them nurture their talents, and sponsor them financially to pursue their careers and thus barring them from participating was a violation of their rights.
13. In opposition to the said Petitioner's application, the Respondents and the Interested Party filed a Notice of Preliminary Objection dated 12<sup>th</sup> June 2025 on even date. They contended that the application was in contravention of Section 9(2) of the *Fair Administrative Action Act* No 4 of 2015 and to the extent of the Petition, it was premature hence in contravention of the doctrine of Exhaustion of available administrative remedies. They were emphatic that this court lacked the jurisdiction to entertain the Petitioner's application at this juncture.
14. Their Written Submissions were dated and filed on 12<sup>th</sup> June 2025 while those of the Petitioner were also dated and filed on 12<sup>th</sup> June 2025. This Ruling is based on the said Written Submissions which both parties relied on their entirety.

#### **Legal Analysis.**

15. The Respondents and the Interested Party submitted that the gist of the doctrine of exhaustion of available remedies was that a person was to pursue all available administrative remedies before seeking judicial remedies to an administrative decision. They added that that prevented individuals from filing of suits which could have been resolved using the existing administrative mechanism outside the judicial system, prematurely in court. They pointed out that the advantage of the doctrine was that it ensured administrative efficiency, reduction in judicial burdening, encouraged alternative dispute resolution and promotes institutional competence.
16. They asserted that in this instant case, the dispute arose from the verdict given by the Respondents herein banning the Friends School-Senende Boys from participating in the 2025 Kenya Secondary Schools Sports Association (KSSA) Sports Tournament. They contended that in the decision, the Respondents held that the school had an ineligible player whose documentation was questionable which resulted in impersonation, a fact that the Petitioner herein had admitted and which was contrary to Section 17(a)(i) of the KSSA Constitution. They were categorical that it was on that ground that the whole school team was banned.
17. They further submitted that the KSSA Constitution had elaborate procedures on how to deal with any dissatisfaction in any verdict which the officers concerned make. They invoked Section 15(a)-(h), of the KSSA Constitution and argued that the Petitioner had not presented any proof that he appealed the verdict to the Supreme Jury. They added that the Petitioner had only filed a letter that was written to the County Director of Education Vihiga County with reference being appeal against the verdict disqualifying their school soccer team.
18. They contended that from the said letter, it could be deciphered that no appeal was filed before the Supreme Jury. They pointed out that the Petitioner's annexure marked "NML 1" was a decision by the Executive Committee in writing as required by Section 15(b) of the KSSA Constitution, Annexure marked "NML 2" was a letter to the Principal, Friends School Senende requiring the School to avail Vincent Embenzi Form 4, 2025 and Vincent Vusakha, Form 4 for physical identification before the



- Committee upon unearthing impersonation and that Annexure marked “NML3” was an appeal by Friends School Senende to the County Director of Education purporting to appeal against the decision of the executive.
19. They were emphatic that the Petitioner did not appeal to the Supreme jury but chose to appeal to the Patron directly who is the Director, thereby failing to follow the procedure. They pointed out that the Constitution was clear that the decision of the Supreme Jury would lie to the Patron which was the final channel of appeal. They argued that the Patron who was the Director of Education, Vihiga had not given his decision since no appeal had been presented before him rendering the instant suit premature by failure to follow the available procedure.
  20. On his part, the Petitioner’s case was that after the contested decision was delivered to the Interested Party on 10<sup>th</sup> June 2025 who in turn lodged a re-appeal to the Supreme Jury through the County Director of Education, Vihiga County who was a member of the Supreme Jury as provided under Article 15(e) at bulletin 3. He argued that that was done through the provided timelines after the verdict had been delivered and within the parameters of Article 15 (d) and (e) of KSSSA Constitution.
  21. He further argued that the Supreme Jury was expected to deliver a verdict on the Re-appeal on the same day or at least before the start of the County competitions to enable any of the aggrieved parties to seek reprieve by appealing to the Patron but that the said verdict was yet to be delivered and that the games had kicked off and were currently at group stages.
  22. He pointed out that their efforts to appeal having been frustrated was what led to the filing of this suit. He asserted that his move of approaching this court was qualified under the principle of exceptional circumstances that empowered the courts to disregard the principle of exhaustion.
  23. In this regard, he placed reliance on the case of Krystline Salt Limited v Kenya Revenue Authority[2019]eKLR where it was held that where an internal remedy would not be effective and/or where its pursuit would be futile, a court could permit a litigant to approach the court directly.
  24. He also referred this court to the case of Muka & Another v Malala & 12 Others; Commission for University Education & 2 Others (Interested Party)(Consolidated) [2022] KEHC 10131 (KLR) where it was held that the court must determine whether the exhaustion requirement would serve the values enshrined in the Constitution.
  25. Notably, Article 15 of the KSSSA Constitution provides for Jury/Appeals as follows:-
    - a. A jury shall be constituted by the Association to make decisions on technical matters related to the ongoing games, whose decisions shall be ratified by the Executive Committee. Members of the jury from the affected regions shall not participate in that particular case being discussed, KSSSA shall appoint a replacement for that particular case.
    - b. The decision of the Executive Committee shall be in writing.
    - c. An appeal shall be made within 30 minutes after the end of the match in question, through an Executive Committee Member of the affiliate via the Commisar. The affected team(s) appealing to the jury shall pay a fee of Kshs 5,000/= (five thousand) refundable if the case is won.
    - d. The decision of the Executive may be contested to the Supreme Jury within thirty minutes of the decision of the Executive. The re-appeal fee shall be 10,000/= (ten thousand) refundable if the case is won.
    - e. The Supreme Jury shall comprise:-



The Chairman of Heads Association-National or host region  
Chairman KSSSA  
Host RC or County CDE and TSC County Director  
Director's representative (not the Executive Officer)  
Secretary-KSSSA (Convener)

- f. Any team/player contesting the decision of the Supreme Jury, shall appeal to the Patron. This shall be the final channel of appeal.
  - g. At the lower levels, the channel of appeal shall be progressive, from Sub-county, if dissatisfied to the County, then to the Region, then to the National body (KSSSA) and finally to the Patron.
  - h. All aggrieved teams/players must exhaustively follow the appeal channel in 15(a) to (g) above.
  - i. Any team that does not follow this channel, will have violated KSSSA rules and shall not be eligible to participate in KSSSA activities.”
26. A perusal of the Petitioner's Annexure marked “NML 3” showed that the Appeal was made directly to the County Director of Education, Vihiga County. To the mind of this court, the appeal ought to have first been made to the Executive Committee in writing. The Petitioner did not provide a copy of this Appeal and/or the receipt to prove that indeed, the appeal was made as was required in Article 15 (b) of the *Constitution*. It was not possible to ascertain at what time the Appeal was done so that a determination could be made that the appeal was made within thirty (30) minutes as had been indicated in Article 15 (c) of the *Constitution*.
27. If the School was dissatisfied, it was required to appeal to the Supreme Jury which had its distinct members to handle the disputes arising as stipulated in Article 15(d) of the *Constitution*. Although, the Petitioner filed a Further Affidavit indicating that a sum of Kshs 10,000/= was paid for the re-appeal, the letter dated 10<sup>th</sup> June 2025 was written directly to the County Director of Education. There was nothing to show that the Appeal was made to the Supreme Jury which consisted of a representative of the County Director and not necessarily the County Director himself or herself
28. If the School was dissatisfied with the decision of the Supreme Jury, it ought to have filed an appeal to the Patron. According to Article 5 (a) of the *Constitution*, the Patron of the Association was the Director Field Coordination and Cocurricular Activities Ministry of Education while under Article 5 (d) of the *Constitution*, the County Director of Education was the Patron of the County Secondary Schools Sports Association. The letter of 10<sup>th</sup> June 2025, if the same was the appeal, was addressed to the County Director of Education Vihiga County who by himself or herself exclusively was not part of the appeal process envisaged in Article 15 of the *Constitution*. The said re-appeal therefore appeared to have been un-procedural and irregular.
29. Notably, the Petitioner seemed to refer to the Interested Party having lodged an Appeal to the Executive and Supreme Jury yet the Interested Party was a party herein and had not submitted these documents itself. The Petitioner had no locus standi to present the documents on behalf of the Interested Party who was the one who was aggrieved and was a party herein..
30. This court took the firm view that where there was a prescribed resolution mechanism, parties were required to first exhaust it before approaching the court. This was known as the doctrine of exhaustion.
31. In the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, it was held that the question of exhaustion



of administrative remedies arose when a litigant, aggrieved by an agency's action, sought redress from a court of law on an action without pursuing available remedies before the agency itself.

32. The doctrine of exhaustion ensured that matters could not be considered in court until an aggrieved party had first exhausted the dispute resolution mechanisms that were outside the court system to protect his or her interests, where he or she had consented to such dispute resolution mechanisms.
33. This court agreed with the Respondents and the Interested Party that the Petitioner had approached this court prematurely by failing to first pursue an appeal through the Supreme Jury and the Patron in regard to his claim against the Respondents herein. The decision of the Patron was said to be final as per Article 15 (g) of the Constitution. the Constitution did not provide a channel for an appeal lodged to the court.
34. Although the Petition herein was couched as a constitutional issue, the crux of the matter was that it was actually an appeal against the decision that banned the School from participating in the County games. Overturning a decision of a body the parties herein had opted to determine its disputes would have been tantamount to this court overreaching itself and delving in matters that were outside its scope as far as the Constitution herein was concerned.
35. It was therefore the finding and holding of this court that the School ought to have exhausted all other available remedies before invoking the jurisdiction of this court. As this court had no jurisdiction in this matter, it had to down its tools forthwith. In the case of Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited (1989), it was held that jurisdiction was everything and without it a court had no power to take one more step. Jurisdiction was conferred by statute and was not assumed without any legal basis.
36. Having found that this court had no jurisdiction to handle this matter at this juncture, it would be an academic exercise to determine the issue of whether or not an ineligible player warranted a bar on the whole team. In addition, the question of whether or not Vincent Vusakha was a student in the School as was submitted in the Respondents' Written Submissions leading to the banning of the entire school team was now beyond this court as it had found that it did not have any jurisdiction to deal with this matter.

#### **Disposition.**

37. For the foregoing reasons, the upshot of this court's decision was that the Respondents' Preliminary Objection dated and filed on 10<sup>th</sup> June 2025 was merited and the same be and is hereby upheld. The effect of this order is that the Petitioner's Petition and Notice of Motion application dated 10<sup>th</sup> June 2025 and filed on 12<sup>th</sup> June 2025 had no limb to stand on and consequently, the same stands as automatically struck out.
38. The above notwithstanding, this court noted that the substantive Petition herein could still not have been sustained for the reason that it was filed under a Miscellaneous case type instead of a substantive Petition case type.
39. In view of the fact that the Respondents were represented by the Attorney General, it is hereby directed that each party will bear its own costs of this Petition.
40. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 13<sup>TH</sup> DAY OF JUNE 2025**



**J. KAMAU**  
**JUDGE**

