



**Tribeless Youth & another v National Assembly & another (Petition E694 of 2024)
[2025] KEHC 9808 (KLR) (Constitutional and Human Rights) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E694 OF 2024

AB MWAMUYE, J

JUNE 12, 2025

**IN THE MATTER OF ARTICLE 1,10,22,23,27,33,35,73,93,94,95,129,165(3),201
AND 258 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF PUBLIC BENEFITS ORGANISATION ACT

AND

**IN THE MATTER OF THE YOUTH ENTERPRISE
DEVELOPMENT FUND ORDER, LEGAL NOTICE NO.63 OF 2007**

AND

**IN THE MATTER OF THE CONSTITUTIONAL PRINCIPLES OF GOOD
GOVERNANCE AND PRUDENT USE OF FINANCIAL RESOURCES**

AND

**IN THE MATTER OF INADEQUATE PUBLIC PARTICIPATION
IN THE PROCESS OF THE YOUTH BILL 2024**

BETWEEN

TRIBELESS YOUTH 1ST PETITIONER

SASA PLACE 2ND PETITIONER

AND

NATIONAL ASSEMBLY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT



RULING

(On the 2nd Respondent's Notice of Preliminary Objection dated 11/03/2025)

1. This Petition was filed on 17th December 2024 by Tribeless Youth and Siasa Place, two civic-oriented organizations with interest in youth policy and governance. The Petition challenges certain provisions of the Youth Bill, 2024, specifically Clauses 35–41 and 45–47, on grounds that the Bill duplicates existing statutory institutions and undermines constitutional values of prudent resource use and good governance. The Petitioners further allege that the public participation conducted in relation to the Bill was inadequate, exclusionary, and in violation of Articles 10, 27, 33, and 35 of *the Constitution*. Contemporaneously, the Petitioners filed a Notice of Motion seeking conservatory orders to halt further progression of the Bill pending the hearing and determination of the Petition.
2. The 2nd Respondent, the Attorney General, filed a Notice of Preliminary Objection dated 11th March 2025, seeking to strike out the Petition and the application on grounds that the Court lacks jurisdiction to determine constitutional questions in relation to a legislative proposal that has not yet been enacted into law. The 1st Respondent, the National Assembly, filed submissions in support of the Preliminary Objection and took the position that the Petition is premature, speculative, and offends the constitutional doctrines of ripeness, exhaustion, and separation of powers.
3. On 26th November 2024, the State Department for Youth Affairs and Creative Economy issued a circular inviting the public to participate in consultative forums on the Youth Bill, 2024. According to the Petitioners, the forums were scheduled in only eight locations nationwide and did not adequately represent Kenya's diverse geographic and demographic makeup. The Petitioners argue that this selective approach disenfranchised marginalized and rural populations and thus failed the constitutional threshold for effective public participation.
4. Further, the Petitioners object to clauses within the Bill that propose the creation of a Youth Fund and an Office of the Youth Registrar, which they argue duplicate roles already served by the Youth Enterprise Development Fund (*Legal Notice No. 63 of 2007*) and the Public Benefit Organizations Regulatory Authority under the Public Benefits Organizations Act. They contend that such duplication violates Articles 10 and 201 of *the Constitution* by promoting waste and inefficiency in public finance management.
5. The Petitioners submit that although the Youth Bill, 2024, has not yet been enacted, its contents pose a real and imminent threat to constitutional values and rights. They argue that this Court has jurisdiction to intervene under Articles 22 and 258 of *the Constitution*, which permit any person to institute proceedings where a contravention of *the Constitution* is alleged or threatened. They contend that the inadequacy of public participation and the duplicative nature of the Bill's provisions amount to a threatened violation of Articles 10, 27, 33, 35, and 201. The Petitioners further argue that the absence of harmonization between the proposed institutions and those already in existence offends constitutional principles of accountability, transparency, and prudent financial management.
6. They maintain that their grievances are justiciable and not speculative, asserting that courts have previously intervened in the legislative process where a Bill threatens to infringe constitutional safeguards. They rely on *Law Society of Kenya v Attorney General & 2 Others* [2013] eKLR, where the High Court intervened to safeguard constitutional integrity during the legislative process, and on the broader principles articulated in *Trusted Society of Human Rights Alliance v Attorney General & 2 Others* [2012] eKLR, concerning the importance of public participation in governance.



7. The 1st and 2nd Respondents take the position that the Petition is premature and should be dismissed for lack of jurisdiction. The 2nd Respondent argues that the High Court’s jurisdiction under Article 165(3)(d)(i) can only be invoked in respect of a law that has been enacted not a legislative proposal. They rely heavily on the decision of the Supreme Court in the Building Bridges Initiative (BBI) Case Petition No. 12 of 2021, where the Court held that “before a Bill is enacted into law or an Act of Parliament, the courts do not have jurisdiction to determine the same for lack of ripeness.”
8. Both Respondents further invoke the doctrine of separation of powers, noting that legislative authority under Article 94 of *the Constitution* is exclusively vested in Parliament. To invite judicial scrutiny over a legislative proposal at the policy formulation stage would amount to interference with Parliament’s law-making mandate. They cite *Wanjiru Gikonyo & Others v National Assembly & Others* [2016] eKLR and *Robert N Gakuru & Another v Governor Kiambu County & 3 Others* [2013] eKLR, both of which emphasized that courts should not interfere with bills under development as doing so would violate the ripeness doctrine.
9. Additionally, the Respondents invoke the doctrine of exhaustion, asserting that the Petitioners ought to have petitioned Parliament under Article 119(1) before approaching the Court. They cite the classic authority in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, which held that statutory and constitutional redress mechanisms must be strictly followed.
10. The core issue raised in the Notice of Preliminary Objection filed by the 2nd Respondent and fully supported by the 1st Respondent is whether this Honourable Court has jurisdiction to entertain a constitutional petition challenging the Youth Bill, 2024, which remains a legislative proposal yet to be tabled before or considered by Parliament. Both Respondents contend that this Petition offends the doctrines of ripeness, non-justiciability, and separation of powers. The 2nd Respondent cited Article 165(3)(d)(i) of *the Constitution*, arguing that the High Court’s jurisdiction in constitutional interpretation applies only in relation to an enacted “law,” not to proposals or drafts. It was emphasized that Articles 2(4) and 94(5) similarly contemplate the subject of constitutionality only in relation to duly enacted laws. This interpretation is supported by the Supreme Court’s ruling in the BBI Case (Petition No. 12 of 2021) where Njoki Ndung’u SCJ categorically held that “before a Bill is enacted into law or an Act of Parliament, the courts do not have jurisdiction to determine the same for lack of ripeness.”
11. The Respondents further submit that by prematurely invoking the jurisdiction of this Court, the Petitioners have bypassed the constitutional route provided under Article 119(1), which allows any person to petition Parliament to consider enacting, amending, or repealing any legislation. They rely on the Court of Appeal’s decision in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, which affirmed that where *the Constitution* or statute provides a specific redress mechanism, it must be strictly followed. The 1st Respondent emphasized that the Petitioners did not utilize this channel but instead invited the Court to interfere in a process that had not matured into a justiciable dispute. The 1st Respondent also referenced *Wanjiru Gikonyo & Others v National Assembly & Others* [2016] eKLR, where Onguto J. explained that a court must refrain from entertaining hypothetical disputes that have not crystallized into real legal controversies.
12. The Petitioners, on their part, argued that there is a real and imminent threat of constitutional violations, particularly with respect to the duplication of roles under clauses 35–41 and 45–47 of the Youth Bill, 2024, and the inadequacy of public participation forums. They contend that such legislative drafting and consultative failings contravene Articles 10, 27, 33, 35, and 201 of *the Constitution*. However, even accepting the Petitioners’ concerns as genuine, the timing of their intervention renders the matter speculative. As the Court noted in *Commission for the Implementation of the Constitution*



v National Assembly & 2 Others [2013] eKLR, "It is not the mere introduction of a Bill that affects rights but rather the making of law that does so." Thus, until Parliament concludes the legislative process and the Bill is enacted and assented to, no justiciable issue arises to warrant judicial determination.

13. Moreover, both Respondents rightly argued that the doctrine of separation of powers mandates that each arm of government exercises its constitutional function without undue interference. The role of courts is to adjudicate rights after they have been violated or are under imminent threat from enacted law not to supervise Parliament's internal legislative procedures or policy development. In *Doctors for Life International v The Speaker of the National Assembly* [2006] ZACC 11, the South African Constitutional Court stressed that challenges to the constitutional validity of a Bill must await the completion of the legislative process. Similarly, the High Court in *Robert N Gakuru & Another v Governor Kiambu County & 3 Others* [2013] eKLR, declined to issue conservatory orders against a county bill still under debate, noting that "the Court ought not at this stage to interfere with the process of the enactment however undesirable that Bill may appear."
14. In view of the foregoing, this Court finds the Petition premature and non-justiciable. The Youth Bill, 2024 remains at the policy formulation stage and has not yet been introduced, debated, or passed by Parliament. Accordingly, the High Court's jurisdiction under Article 165(3)(d)(i) has not crystallized. The proper course available to the Petitioners was to engage the legislative process directly through a petition under Article 119, or to await enactment and thereafter challenge the constitutionality of the resulting statute if warranted. To intervene at this stage would violate constitutional limits and set a precedent for judicial overreach. Consequently, this Court holds that it lacks jurisdiction to determine the Petition at this stage.
15. From the foregoing analysis, it is evident that the Youth Bill, 2024 remains at the preliminary policy formulation stage and has not been introduced, debated, or passed by Parliament, nor assented to by the President as required under Article 116 of *the Constitution*. As such, there exists no law upon which the constitutional jurisdiction of this Court under Article 165(3)(d)(i) can be invoked. The subject matter of this Petition is therefore not ripe for determination and offends the doctrines of ripeness, justiciability, and separation of powers. This Court cannot adjudicate speculative concerns or pre-enactment disputes that fall within the legislative domain.
16. Consequently, I find merit in the Preliminary Objection dated 11th March 2025 filed by the 2nd Respondent. The Petitioners' Notice of Motion application dated 17th December 2024 and the Petition of even date are both struck out for want of jurisdiction. This Court reiterates that its constitutional mandate does not extend to reviewing broad policy suggestions or draft Bills that have not crystallized into enforceable legal instruments. The Petitioners retain the liberty to petition Parliament under Article 119(1) of *the Constitution*, or to challenge the resulting legislation, if and when enacted, should the constitutional questions persist.
17. On the issue of costs, this Court is mindful that the Petition, while premature, was filed in the public interest and raised important constitutional concerns about public participation and fiscal responsibility. Accordingly, each party shall bear its own costs.
18. Orders accordingly. File closed.

DATED, SIGNED, AND DELIVERED ON THIS 12th DAY OF JUNE 2025.

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BAHATI MWAMUYE.



JUDGE.

