Kenya Karate Federation v Sports Disputes Tribunal; Shisia & 3 others (Interested Parties) (Judicial Review E213 of 2025) [2025] KEHC 10608 (KLR) (Judicial Review) (21 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10608 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW E213 OF 2025

JM CHIGITI, J

JULY 21, 2025

BETWEEN

KENYA KARATE FEDERATION ..... APPLICANT

AND

SPORTS DISPUTES TRIBUNAL ..... RESPONDENT

AND

PHANICE APIYO SHISIA ..... INTERESTED PARTY

REUBEN ODIPO ..... INTERESTED PARTY

DAVID KIMANI ..... INTERESTED PARTY

DANIEL AURU ..... INTERESTED PARTY

JUDGMENT

1. The applicant that is before this court for determination is the one dated 17th July 2025 wherein the applicant is seeking;

    1. An Order of Certiorari do issue, directed at bringing into this Honourable Court and quashing the entire decision of the Sports Disputes Tribunal rendered on the 14th day of July 2025 in SDTSC No. E051 of 2025, Phanice Apiyo Shisia v Kenya Karate Federation & 2 Others, including all consequential orders, directives, and actions arising therefrom.

    2. An Order of Prohibition do issue, directed at the Respondent, prohibiting it by itself, its servants, agents, or any other person acting under its authority, from enforcing, implementing, or in any way giving effect to the impugned decision rendered on the 14th day of July 2025 in

SDTSC No. E051 of 2025, Phanice Apiyo Shisia v Kenya Karate Federation & 2 Others, or from taking any further steps aimed at altering the national team selection or interfering with the Applicant's technical and administrative processes in relation to the UFAK 2025 African Karate Championship or any other subsequent competitions, arising from the said impugned decision.

3. The Court be at liberty to make such further and other orders as it deems fit to meet the ends of justice.

4. The costs of this Application and the proceedings herein be awarded to the Applicant, as the Respondent's and 1st Interested Party's actions have necessitated the institution of these proceedings.

2. The application is supported by the Supporting and the Supplementary Affidavits of James M. Gikonyo. It is his case that, the 1st Interested Party approached the Tribunal prematurely, without exhausting the Dispute Resolution Commission (DRC) established under Article 62 of the Applicant's Constitution.

3. The DRC, being a functional, accessible, and specialized mechanism, was the proper forum for initial resolution of the grievance. The invocation of the Tribunal's jurisdiction without first engaging this internal forum offends the principle of exhaustion and undermines the legislative intent behind Article 62.

4. While the Applicant recognizes that the exhaustion requirement is not absolute, and that Section 9(4) of the *Fair Administrative Action Act* allows courts or tribunals to assume jurisdiction in exceptional circumstances, as restated in William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others [2020] eKLR, the threshold for invoking such exception has not been met in this case.

5. The Court in that matter held that:

> "...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... The second principle is that the jurisdiction of the courts to consider valid grievances from parties who lack adequate audience before the forum created by 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."

6. According to him, the Tribunal erred in finding that the Dispute Resolution Commission (DRC) was non-existent or unassembled. He argues that the Tribunal's statement that the Commissions "seem to speak to the future" and that it was "unwise to let an important Commission such as the DRC await competition before being assembled" was factually incorrect and unsupported by the evidence.

7. The Applicant's Dispute Resolution Commission was not prospective, theoretical, or dormant. It was duly established, operational, and competent at the material time, as evidenced by public communications, athlete forums, and internal structures disclosed to the Tribunal.

8. He argues that the Tribunal wrongly held that the DRC's operationalization in April 2025 fell short of expectations for a functional internal dispute resolution mechanism, despite clear evidence that the Federation's current leadership only assumed office in late 2024 and promptly operationalized the DRC within months.

9. The 1st Interested Party neither pleaded nor demonstrated that the DRC was inaccessible, biased, or ineffective, nor did she attempt to engage with the internal mechanism before directly approaching the Tribunal.

10. The Applicant submits that the Doctrine of Exhaustion is constitutionally anchored under Article 159(2)(c) of *the Constitution* of Kenya, 2010, which obligates courts to promote alternative forms of dispute resolution, including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms. In line with this constitutional imperative, the Kenya Karate Federation established the Dispute Resolution Commission as its internal forum for resolving disputes arising under its Constitution.

11. He invites court to be guided by the case of William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others [2020] eKLR, where the Court held:

> "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*."

12. I tis argued that the 1st Interested Party, sidestepped the functional, affordable, and impartial DRC, contrary to the principle of exhaustion as recognized in Kenyan jurisprudence. Similarly, in Speaker of the National Assembly v Karume [1992] KLR 21, the Court of Appeal stated:

> "Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed."

13. The DRC, established under the 1st Applicant's Constitution, was properly constituted, operational, and capable of handling athlete disputes efficiently and fairly.

14. The Tribunal wrongfully intruded into the technical domain of the Federation's Coaches Commission, undermining their professional judgment and expertise in athlete selection. The inclusion order ignores the multi-stage selection process, continuous technical assessments, and the strategic planning required for team performance at continental championships.

15. The Tribunal did not order the substitution of any athlete in the finalized national team but instead directed the addition of the 1st Interested Party to the existing team. This directive disregards the established team quotas, which had been capped at a total of 28 athletes, now improperly increased to 29.

16. The Tribunal treated the Kenya Open Championship as the conclusive final selection event, disregarding the uncontroverted evidence that it was a preliminary scouting event, whose primary purpose was to identify athletes for inclusion in the provisional national team pool.

17. The Tribunal further erred by failing to appreciate that the 1st Interested Party was not uniquely affected, as she was not the only medalist excluded from the final national team. Other athletes, including Tyson Mboya, Vincent Mboya, and Joshua Macharia, etc despite securing podium finishes at the Kenya Open, were similarly excluded after failing to meet the final selection threshold during the comprehensive post-event evaluations.

18. The Tribunal erred by failing to consider that prior international performance, experience, and strategic wild card inclusion were valid, established selection criteria recognized within competitive

sports, including Karate. This was exemplified by the selection of Mr. Daniel Auru to the Provisional National Team, whose prior international representation and proven performance justified his inclusion over recent domestic medalists.

19. The Tribunal fundamentally erred in its assumption that Mr. Daniel Auru was not part of the national provisional team, using this mistaken belief to undermine the integrity of the Federation's selection process.

20. It is regrettable that the Tribunal, without basis, reached the conclusion that Mr. Auru was introduced as a new athlete outside the provisional pool. This finding is both factually incorrect and procedurally unfair. The Tribunal unlawfully substituted its own judgment for that of the Coaches Commission and selection bodies, despite lacking technical expertise.

21. He argues that implementing the Tribunal's decision will materially prejudice Kenya's national sports interests, disrupt ongoing team preparations, and compromise the integrity and cohesion of the national team ahead of an imminent international competition.

22. It is argued that the Tribunal's directive compelling the inclusion of the 1st Interested Party in the national team was irrational, unreasonable, and procedurally flawed for the following reasons:

    a. The 1st Interested Party did not satisfy the established, multi-factor selection criteria governing national team inclusion.

    b. The decision ignored mandatory competition quotas, technical requirements, and the carefully structured team composition essential for performance and strategic balance.

    c. The Tribunal's order mandates the addition of an athlete who holds no technical or strategic role within the national team, thereby misallocating limited resources, disrupting final preparations, and undermining the effectiveness of Team Kenya for the UFAK 2025 African Karate Championship scheduled for 20th to 28th July 2025.

23. The decision to include the 1st Interested Party at that late stage imposed an unbudgeted financial burden on the Federation, which is a non-profit body responsible for prudent management of public and private sponsorship funds. No consideration was given as to who would bear the additional costs arising from the Tribunal's directive, thereby exposing the Federation to financial strain and misallocation of its limited resources.

24. He argues that the 1st Interested Party's failure to meet the final selection threshold does not, in itself, constitute discrimination, nor was any differential treatment shown when compared to similarly situated athletes.

25. The Tribunal erred in failing to appreciate that the 1st Interested Party was not replaced by Mr. Daniel Auru or any specific athlete; rather, her exclusion resulted from the implementation of the established multi-factor selection criteria, under which she ranked lowest during the final evaluations.

26. Upon discovery of the administrative error leading to her provisional inclusion, the Federation was compelled to correct the oversight in compliance with the competition's strict quota limits and selection standards.

27. The Order issued by the Tribunal is an impossible one to implement, as the budget for the UFAK 2025 African Karate Championship team has already been set, finalized, and approved by the relevant government authorities.

28. It is in the interest of justice, fairness, and the proper administration of sports governance that the application be allowed, so as to uphold the integrity of the Federation's selection process, protect the rights of all athletes involved, and ensure that decisions are made in accordance with established rules and procedures.

29. The assertion that new athletes were introduced outside the provisional list is factually incorrect and was not supported by the evidence before the Tribunal. All final team members, including Mr. Daniel Auru, were part of the original provisional team list dated 25th April 2025.

30. Reliance is placed in Republic v Kenya Pipeline Company Limited; Director of Criminal Investigations & another (Interested Parties); Exparte Francis Amina Juma [2019] eKLR, which cites the decision in R v Barnet London Borough Council exp Nilish Shah [1983] 1 All ER 226 (HL), it is settled law that an administrative or executive authority entrusted with discretion must exercise that discretion reasonably and within the bounds of legality.

31. Reliance is placed in Kenya National Examination Council v Republic Exparte Geoffrey Gathenji Njoroge & 9 Others [1997] KECA 58 (KLR), where the Court of Appeal held that:

> "...the High Court would not be entitled to order the Council, when carrying out the process of marking the examination papers, to award any particular mark to any particular candidate. That duty or function lies wholly within the province of the Council and no court has any right to interfere."

32. In the present case, no evidence has been adduced to show that the Coaches Commission acted arbitrarily, unreasonably, or contrary to the Federation's Constitution.

33. It is its case that by ordering the 1st Interested Party's inclusion, the Tribunal overlooked that her reinstatement would necessarily exclude another athlete, who was not a party to the proceedings contrary to Article 50 of *the Constitution* and natural justice principles amounting to a procedural impropriety, but the Tribunal ignored it entirely.

34. The Tribunal's actions have disrupted the rights and legitimate expectations of athletes already selected in accordance with lawful and fair processes. These non-party athletes, whose inclusion was challenged indirectly through the claim, were never notified, joined, or invited to defend their positions, violating the basic tenets of natural justice and the constitutional guarantee of a fair hearing.

35. The Tribunal's reasoning that requiring affected athletes to be joined would "clog the justice system" does not override constitutional guarantees. Efficiency cannot justify denial of procedural fairness. As established in Republic v Kenya Pipeline Company Ltd; Director of Criminal Investigations & Another (Interested Parties); Ex-Parte Francis Amina Juma [2019] eKLR, decisions must comply with both legality and procedural fairness, irrespective of administrative inconvenience.

36. The Secretary General argues that the 1st Interested Party selectively advances only her own interests, while disregarding the rights of other athletes, whose team positions were directly prejudiced by the Tribunal's orders.

37. He argues further that Ms. Wambui Mwangi only filed the application seeking leave as a procedural intervention due to the urgency of the matter, and solely to assist Ms. Wachira on the instructions of Ms. Wachira, who was temporarily unavailable. This procedural assistance does not in any way amount to a conflict of interest.

38. Without prejudice to the foregoing, it is argued that Ms. Wambui Mwangi was never intended to testify as a witness, and her position as an athlete in the national team is wholly unrelated to the issues before this Honourable Court. No conflict of interest arises in law or fact. This Honourable Court is solely concerned with assessing whether the Respondents' actions met the constitutional and legal thresholds of procedural fairness, reasonableness, and respect for the rights of all affected parties. It is his case that without prejudice to the above, the registration process is locked and the process put to rest.

The 1st interested party's case;

39. According to her that the Application is an abuse of the court process, fatally defective, and aimed solely at circumventing a lawful, reasoned, and procedurally sound decision rendered by the Respondent on 14th July 2025 in SDTSC No. E051 of 2025, the subject of these proceedings.

40. It is her case that the Ruling declared that her exclusion from the travelling team for the 2025 UFAK African Karate Championship was procedurally unfair, devoid of justification, and consequently ordered her reinstatement.

41. She argues that the Secretary General, appeared and confirmed to the Tribunal that the Federation had received an invitation letter for her to travel and that her visa processing was underway. The Tribunal granted both parties the opportunity to file pleadings, responses, affidavits, and submissions. The hearing proceeded virtually where oral arguments were made and the Respondent rendered its ruling the same day due to the urgency of the matter.

42. According to her, there existed no publicly available or objectively verifiable criteria that was applied in her removal from the final travelling team. She argues that she was not provided with any individual assessment scores, feedback, or technical justification and the coaches' rationale has remained vague and unsubstantiated throughout.

43. It is further her case that she qualified for the national team following the Kenya Open Championship held from 15th to 16th March 2025, where she emerged Gold Medalist in the Kumite Female +68kg category. The Applicant has a binding mechanism for team selection as demonstrated in the letter dated 25th April 2025 that constituted the National Provisional Team where my name featured based on merit.

44. She is concerned that the Coaches Commission upon whose recommendation she was dropped never published, shared, or relied on a pre-existing, codified, or approved selection criteria, nor was she subjected to a fair technical evaluation.

45. She believes that the Federation's decision was arbitrary and reactive, triggered by the need to accommodate another athlete, Mr. Daniel Auru, who had not qualified. According to her the Dispute Resolution Commission within the Federation which the Applicant now seeks to sanctify was not functional at the time of the Complaint.

46. She argues that on or about 7th July 2025, she contacted Mr. Dennis Masibu Wandati, a member of the Commission, who informed her that the body had not been operationalized nor convened to hear any dispute leaving her with no internal remedy.

47. It is her case that even assuming the Commission had been functional, the matter was urgent, time-sensitive, and involved her right to participate in international competition whose deadlines were imminent. The Respondent rightly found that it would have been futile, prejudicial and unjust to await internal resolution mechanisms.

48. It is further her case that the general principle of exhaustion of internal mechanisms is not absolute. Courts and Tribunals have consistently held that where internal mechanisms are inaccessible, ineffective, or would occasion prejudice, they may be bypassed. The Respondent considered these exceptions in its Ruling and rightly assumed jurisdiction.

49. She argues that the Advocate for the Applicant, Ms. Wambui Mwangi, is not only acting in this matter but is also an athlete and a named participant in the travelling team and therefore stands to benefit directly from my exclusion. According to her, personal interest in the outcome of these proceedings raises serious ethical and conflict-of-interest concerns.

The 4th Interested Party's Case;

50. He supports the Application. He argues that the insertion of his was made by the Coaches' Commission based on merit and performance, and not due to his role in the Athletes' Commission, which has no influence or authority over athlete selection for international competitions. It is his case that the Sports Disputes Tribunal dated 14th July 2025 in SDTSC No. E051 of 2025, adversely affected him without affording him a fair hearing and should be stayed or invalidated.

51. He argues that he has been a dedicated member of the national Karate team since 2018, who has consistently represented the country at various international competitions based on merit and performance. He has participated in the international tournaments, among others in 2018,2019 and 2024.

52. He argues that he was duly named in both the National Provisional Team 2025 as per the letter dated 25th April 2025 and in the final travelling list of athletes selected to represent Kenya at the upcoming African Karate Championship in Abuja, Nigeria. He argues that being in the Male Kumite under-67kg category, which is entirely different in both gender and weight class from that of the 1st Interested Party, Phanice Shisia, he is not in direct competition with her for any team slot.

53. He argues that the inclusion of his name in the team is being falsely used as having been in replacement of the 1st Interested Party. He takes great exception to the contents of paragraph 30 of the 1st Interested Party's affidavit before the Sports Tribunal, which alleges that he was selected because of his position in the Athletes' Commission.

54. This allegation is false, defamatory, and malicious. It undermines his professional standing as a committed and disciplined athlete. He should have been granted the opportunity to respond to such serious and misleading accusations before any decision was made against him. The allegations made against him before the Sports Tribunal are unsubstantiated and irrelevant to the Petitioner's grievance. They have caused him unwarranted reputational damage and psychological distress.

55. The allegations made by the 1st Interested Party against him ought to have been the subject of an evidentiary hearing, in which he as the subject of the allegations, would have been given an opportunity to rebut the same.

56. According to him the failure to do so renders the decision of the Sports Tribunal procedurally flawed and contrary to the principles of natural justice and *the Constitution*, particularly the right to be heard. This is especially serious given that the intended consequence of the 1st Interested Party's complaint was to have him removed from a position in the national team for which he had been duly selected.

The 3rd Interested Party Case

57. The 3rd Interested Party supports the Application.

58. According to him the Tribunal fundamentally erred in its finding that the Coaches Commission failed to conduct a transparent and criteria-based selection process. He submits that unlike in Khaaliqa Nimji v Kenya Squash Racquets Association [2018] KESDT 10 (KLR), where the sports body ignored its own published criteria, in this case, the Coaches Commission strictly adhered to the Federation's established and approved selection criteria.

59. The process was not only technically sound but also objectively verifiable through assessment sheets, ranking data, and documented evaluations, all of which the Tribunal failed to properly consider.

60. Article 10 of the Applicant's Constitution expressly mandates that:

> " The systems and procedures that are set up within the Federation shall be implemented consistently without bias or discrimination. In this regard, the selection of the Kenya national teams and the technical personnel for the teams shall be done in good time and transparently using fair criteria; and that the criteria for authorization and registration of sportspersons and sportspersons' representatives shall be codified, transparent and fair."

61. He submits that the Coaches Commission's actions complied fully with this constitutional obligation, conducting the selection in a transparent, fair, and performance-based manner. By disregarding this framework and substituting its own judgment for the technical discretion of the Coaches Commission, the Tribunal not only misapprehended the factual matrix but also improperly interfered with the specialized autonomy guaranteed by the Federation's Constitution. The finding of bias and lack of transparency was therefore legally and factually incorrect and should be set aside.

62. In Kabras Sugar RFC v Kenya Rugby Union; Derrick Ashiundu (Interested Party) [2021] KESDT 387 (KLR), the Tribunal reaffirmed that it will not interfere with the exercise of discretion by a Page 1 of 2decision-making body unless satisfied that the body misdirected itself and arrived at a wrong decision, or that its exercise of discretion was manifestly unreasonable, leading to injustice.

63. It is his case that the Coaches Commission exercised its technical discretion transparently and in strict adherence to the Federation's constitutional mandate and established criteria. No evidence was placed before the Tribunal to show that the Commission misdirected itself, acted unreasonably, or breached any procedural fairness standards.

64. The Tribunal, therefore, erred by improperly substituting its own judgment for that of the Commission, contrary to the principles set out in PIL Kenya Ltd v Oppong [2009] KLR 442, as adopted in the Kabras Sugar RFC decision. This unwarranted interference undermined the technical autonomy of the Commission, resulting in an unjustifiable distortion of the lawful selection process.

65. In conclusion, the 3rd Interested Party respectfully submits that the Tribunal misapprehended the factual and procedural context of the selection process, unjustifiably interfered with the technical discretion vested exclusively in the Coaches Commission, and thereby undermined the integrity of a lawful, merit-based, and transparent process.

Analysis and determination;

Upon perusing the application, the court finds the issue for determination is whether the application has merit or not.

66. In order to succeed, the applicant has to satisfy the court that its case falls within the principles as enunciated in the case of Pastoli v. Kabale District Local Government Council and Others [2008] 2 EA 300 as follows:

> "In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...
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> Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...
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> Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...

Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

67. Upon considering the application and the supporting evidence this court has established that the Kenya Karate Federation was registered by the Sports registrar in Nairobi on 4th March 2021 as set out in the registration certificate number 314 of 4th March 2021.

68. The applicant has proven that on 11th April 2025 the Secretary General of Kenya Karate Federation set up a dispute resolution commission in line with to Article 47 of the Kenya Karate Federation's Constitution comprised of a chairman and two members.

69. The court has looked at the mandate of the said alternative dispute resolution commission, which involves the receiving and hearing of disputes investigation, decision-making, and recommendation upon receipt of complaints.

70. Article 62 of the Karate Federation Constitution also provides for alternative dispute resolution. The court has looked at *the constitution* and noted that it categorically provides that all disputes between the parties touching on any provisions of *the constitution* shall be resolved through the internal mechanisms among the affected parties and the parties cannot reach an amicable settlement.

71. It stipulates that disputes shall thereafter be referred to the sports dispute Tribunal. It is not in dispute that the sports dispute tribunal rendered the impugned ruling on the 14th July 2025.

72. The court finds that the tribunal acted ultra vires when it proceeded to interrogate and address a host of issues, inter alia the mode of communication adopted by the dispute resolution committee for notifying stakeholders of the existence of the dispute, when it went ahead to interrogate the communication channels, when it went ahead to observe that it appears that the current internal dispute resolution mechanism falls short of the expectation of a properly set up DRM as part of the dispute resolution.

73. It is this court's finding that the fact that the Internal Dispute Resolution Commission was operationalized in April 2025 does not mean that it is incapable of resolving disputes. Indeed, the Secretary General confirms in his Supporting Affidavit that the Applicant's Dispute Resolution Commission was not prospective, theoretical, or dormant.

74. He further confirms on oath that it was duly established, operational, and competent at the material time, as evidenced by public communications, athlete forums, and internal structures disclosed to the Tribunal.

75. He went further in his supplementary Affidavit to point out that the DRC was never given the opportunity to address the dispute, as the 1st Interested Party deliberately bypassed it, opting to file a claim before the Respondent prematurely. He further argued that the Federation's commitment to resolving the dispute internally is evidenced by its prompt response to her initial inquiry, prior to any external filing.

76. The upshot of the foregoing that the Tribunal ignored the doctrine of exhaustion. In the case of Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 (2020) eKLR the court elaborately dealt with the doctrine of exhaustion as follows: -

> " 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* and was aptly elucidated by the High Court in R v. Independent Electoral and Boundaries Commission (I.E.B.C) Exparte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court opined thus:
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> 42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words: 'Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.'
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> 43. While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is Geoffrey Muthiga Kabiru & 2 others – v- Samuel Munga Henry & 1756 others [2015] eKLR, where the Court of Appeal stated that:
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> '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 fora of last resort and not the first port of call the moment a storm brews...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 the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

77. The Court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows: -

> " 59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In R. v Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Exparte 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 v Aelous (K) Ltd and 9 Others.)
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> 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.
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> 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.
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> 62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is

especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court. “

78. Guided by the foregoing cases, the court finds that the tribunal acted ultra vires when it arrived at the finding that the internal dispute, resolution procedures must be the most credible, fair and functional for stakeholder to recognize and rely on them with confidence.

79. The tribunal acted illegally and beyond its power in dismissing or disregarding the existence and the powers of a duly set up dispute, resolution mechanisms that was available, and that ought to have been allowed to determine the dispute.

80. It was for the Respondent to interrogate and assess the working mechanisms of the Committee that was mandated and willing to settle internal disputes.

81. Placed in prism of the well settled principles in the Pastoli case (Supra) the tribunal acted illegally in the way it addressed the issue of the internal dispute resolution mechanism that is provided for under *the constitution* of Karate Federation and the existing internal dispute resolution commission.

82. The drafters of our Constitution found it fit to incorporate alternative dispute, resolution mechanisms in Article 159 so as to pave way for alternative dispute resolution mechanisms. This court is moving towards encouraging alternative dispute resolution in a way that will ensure that these specialized structures thrive so promote quick access to justice.

83. It is clear that this was the intention that the Karate Federation had in mind when it incorporated the alternative dispute resolution structure in its constitution. The determination and the intention to invoke the alternative dispute resolution in its affairs was implemented when its secretary general set up the committee on the alternative dissolution structures in April 2025.

84. The least that the Sports Tribunal could have done was to give the Committee on alternative dissolution the opportunity to resolve the dispute. That was not to be.

85. It is clear in my mind that the Tribunal just like this court lacks the unique machinery, the expertise, the tools and the specialized knowledge when it comes to identifying, assessing and determining who should be included in the coveted list of the Karate players who qualify to travel to represent Kenya in the international fronts.

86. This is confirmed by the federations Secretary General in his Replying Affidavit where he asserted that the selection of the national Karate team, is based on technical assessments, training evaluations, team composition needs, and other sport-specific criteria, which is a function exclusively vested in the Applicant’s technical organs, and does not warrant interference by the Tribunal or any judicial body, except where illegality, procedural unfairness, or bad faith is demonstrably shown.

87. In the present case, no evidence has been adduced to show that the Coaches Commission acted arbitrarily, unreasonably, or contrary to the Federation’s Constitution. The 1st Interested Party’s dissatisfaction with non-selection does not in itself justify the Tribunal substituting its own judgment for that of the technical experts.

88. The court has also considered the question whether the Interested Parties participated in the proceedings at the Sports Tribunal.

89. The Supreme Court in the case of Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment) held that under Article 50(2) of *the Constitution* procedural fairness in the administration of justice involved the fair hearing rule that

required a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.

90. The high court in Britam General Insurance Limited v Ukwale Agnes Ndungu [2019] eKLR applied the dicta of the Supreme Court of India in Sangram Singh v Election Tribunal Koteh 1955 AIR 425 that emphasized that the principle of natural justice requires;

"that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

91. The consequence of breach of the rules of natural justice Nancy Musili v Joyce Mbete Katisi [2018] eKLR is the denial of the right to be heard that renders any decision made null and void ab initio.

Justice Odunga (as he then was) explained in the case of Republic v Commission on Administrative Justice & 2 others Exparte Michael Kamau Mubea [2017] eKLR the importance of an affected party being accorded an opportunity to be heard as follows:

> " 112. In my view, reference to hearing the other side must have been with respect to oral representation since I do not see how a decision affecting a person can be made without affording that person an opportunity to present his case either orally or by in writing in light of the provisions of Article 47 and 50 of *the Constitution*. However, the law is clear that where a tribunal decides to hear one party then it must hear all the parties."

92. This court is satisfied from the record that the Tribunal denied the other Interested Parties who are affected by the outcome the right to be heard as guaranteed under Article 50 as well as under Article 47 of *the Constitution*. This is a fundamental infraction and violation of the rules of natural justice that vitiates the entire proceedings and the decision.

93. The court is satisfied that the Respondent was served with the pleadings and the courts directions herein as directed by the court. However, no response had been filed nor received by the applicant as at the time of writing this judgment and the respondent is fully aware of what is going on.

94. The Interested Parties were granted leave to participate in the proceedings.

95. The 1st interested party further argued that the Applicant has a binding mechanism for team selection as demonstrated in the letter dated 25th April 2025 that constituted the National Provisional Team where her name featured based on merit. She is also concerned that the Coaches Commission upon whose recommendation she was dropped never published, shared, or relied on a pre-existing, codified, or approved selection criteria, nor was she subjected to a fair technical evaluation.

96. She then argued that the Federation's decision was arbitrary and reactive, triggered by the need to accommodate another athlete, Mr. Daniel Auru, who had not qualified. He was condemned unheard.

97. Having arrived at the above findings, an order of prohibition falls into place given that there is nothing left at the Sports Tribunal for determination.

98. In order to serve the ends of justice, this court has the power under Article 165 to issue orders that that will achieve the need of the hour as further empowered by The *Fair Administrative Action Act*. Article 50 of *the constitution* guarantees the Interested Parties to the right to fair hearing which this court must promote.

Order;

1. An Order of Certiorari is hereby issued directed the Sports Disputes Tribunal bringing into this Court and quashing the entire decision of the Sports Disputes Tribunal rendered on the 14th day of July 2025 in SDTSC No. E051 of 2025, Phanice Apiyo Shisia v Kenya Karate Federation & 2 Others, including all consequential orders, directives, and actions arising therefrom.

2. An Order of Prohibition is hereby issued directed at the Respondent, prohibiting it by itself, its servants, agents, or any other person acting under its authority, from enforcing, implementing, or in any way giving effect to the impugned decision rendered on the 14th day of July 2025 in SDTSC No. E051 of 2025, Phanice Apiyo Shisia v Kenya Karate Federation & 2 Others, or from taking any further steps aimed at altering the national team selection or interfering with the Applicant's technical and administrative processes in relation to the UFAK 2025 African Karate Championship or any other subsequent competitions, arising from the said impugned decision.

3. The Secretary General of the Kenya Karate Federation is hereby ordered to convene the dispute resolution commission to hear and determine the dispute as raised by Phanice Apiyo Shisia within 24 hours.

4. The same shall be done within the framework of Article 47 of the Kenya Karate Federation constitution as read alongside article 62 of the Federations' constitution which hearing must allow all the Interested Parties to participate in the said dispute resolution hearing.

5. The Secretary general of the Kenya Karate Federation shall thereafter process their travel documents, visas and the travel logistics for the successful sports persons so as to enable them to participate in the tournament.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JULY, 2025.

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J. CHIGITI (SC)

JUDGE