



**Nyambura & 3 others v Independent Electoral and Boundaries Commission  
& 5 others; Kimando (Interested Party) (Constitutional Petition  
E021 of 2025) [2025] KEHC 10457 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10457 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CONSTITUTIONAL PETITION E021 OF 2025  
RN NYAKUNDI, J  
JULY 18, 2025**

**BETWEEN**

**JOYCELENE LEAH NYAMBURA ..... 1<sup>ST</sup> PETITIONER  
FRANCIS PAUL ..... 2<sup>ND</sup> PETITIONER  
ANDREW MUDIBO ..... 3<sup>RD</sup> PETITIONER  
KENYA TABLE TENNIS ASSOCIATION ..... 4<sup>TH</sup> PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT  
MUTHEE GAJURU ..... 2<sup>ND</sup> RESPONDENT  
SALONIK OLE KOYIET ..... 3<sup>RD</sup> RESPONDENT  
NDERITU GIKARIA ..... 4<sup>TH</sup> RESPONDENT  
NATIONAL OLYMPIC COMMITTEE - KENYA (NOCK-K) .. 5<sup>TH</sup> RESPONDENT  
SPORTS REGISTRAR ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**DANIEL MUNGAI KIMANDO ..... INTERESTED PARTY**

**RULING**

1. Before this court are two pending applications, one dated 18<sup>th</sup> June, 2025 and another dated 20<sup>th</sup> June, 2025. The application dated 18<sup>th</sup> June, 2025 was lodged by the Petitioners expressed under the



provisions of Rule 3(2), (3), (4) and (5), 19, 23 and 24 of the Constitution of Kenya seeking orders as follows:

- a. Spent
  - b. Pending hearing and determination of this application an order do issue allowing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners to participate in the NOC-K Electoral Congress as voting delegates of the Kenya Triathlon Federation, the Kenya Handball Federation and the Kenya Table Tennis Association respectively.
  - c. Pending hearing and determination of the petition an order do issue allowing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners to participate in the elections as voting delegates of the Kenya Triathlon Federation, the Kenya Handball Federation and the Kenya Table Tennis Association respectively.
  - d. Pending hearing and determination of the Application, the 3<sup>rd</sup> Petitioner be allowed to vie for the seat of Secretary General of the NOC-K Executive Committee.
  - e. In the alternative, pending hearing and determination of the application a temporary injunction do issue suspending the NOC-K Executive Committee Elections scheduled to take place on 19<sup>th</sup> June, 2024.
  - f. Pending hearing and determination of the petition a temporary injunction do issue suspending the NOC-K Executive Committee Elections scheduled to take place on 19<sup>th</sup> June, 2024.
  - g. Costs of the application be provided for.
2. The application is anchored on grounds that:
- a. Elections are the means through which people express their sovereignty by ceding some of their powers to leaders to represent them in different positions. They are the cornerstone of Kenya's democracy as they give legitimacy to public institutions and contribute to political stability.
  - b. Elections are a process that is not limited to the events of voting, counting and announcement of results.
  - c. Petitioners are Presidents of:
    - i. Kenya Triathlon Federation.
    - ii. Handball Federation.
    - iii. Kenya Table Tennis Association.
  - d. These Federations are Members of the 5<sup>th</sup> Respondent by dint of Article 5.2.1 of the NOCK Constitution and have fulfilled the requisites of Article 6 of the NOCK Constitution.
  - e. Article 7 of the NOCK Constitution enlists the pre-requisites of qualifications for membership of the 5<sup>th</sup> Respondent.
  - f. Affiliation to the 5<sup>th</sup> Respondent Party comes with a raft of Rights and privileges that include the right to vote, to elect, to be elected and to nominate members for election in the executive Committee as enumerated in Article 10 of the NOCK Constitution.
  - g. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are constitutional links and point persons with 5<sup>th</sup> Respondents, and have the right and power to vote during its General Assembly as contemplated in Article 13.2.1 of NOC-K Constitution.



- h. In exercising such privileges, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners have attended several General Assemblies of NOC-K as voting delegates.
- i. That one of the cardinal roles of such General Assembly is to elect Members of the Executive Committee in accordance with NOC-K Constitution, *Sports Act* and Constitution of Kenya. Such elections are held in the 4<sup>th</sup> Respondent's Electoral Congress.
- j. Pursuant to Article 8.1 of the NOCK Constitution, the 4<sup>th</sup> Petitioner features and has been categorized as a voting member in NOC-K's register of Members.
- k. The 4<sup>th</sup> Petitioner is a Member of the National Olympic Committee of Kenya and is listed a Member of good standing and features in its Voter Register and its President, the 3<sup>rd</sup> Petitioner had been cleared to contest in the Secretary General's position slated for 19.06.25.
- l. The 5<sup>th</sup> Respondent's Executive Committee called for Annual General Meeting which was held on 10<sup>th</sup> December 2024 wherein an electoral roadmap as itemized was presented and adopted enlisting different deadlines as a precursor to the Electoral Congress noting that elections is a process.
- m. However, the Petitioners together with the Kenya Taekwondo Federation have been barred from participating in the NOC-K Executive Committee elections scheduled to take place on 19<sup>th</sup> June, 2025 despite being duly nominated by their respective federations as voting delegates.
- n. The Decision to lock out the Petitioners is based on an erroneous interpretation and application of the NOC-K Constitution and the Constitutions of the specific federations.
- o. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners presented their gravamen before the Sports Disputes Tribunal which did not resolve the matter on the merits but returned a verdict directing parties to resolve the matter within the internal dispute resolution mechanisms; which have been overtaken by events given that the Petitioners have been locked out in the impending elections.
- p. The 3<sup>rd</sup> and 4<sup>th</sup> Petitioners have been barred by the Sports Disputes Tribunal, just hours to elections thus allowing no time for resolution before the electoral congress.
- q. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners have been disallowed on the ground that they were non-compliant to Rule 5.2 of the NOCK Elections Rules and Regulations 2025.
- r. The impugned NOC-K Election Rules and Regulations 2025 approved by the International Olympic Committee as contemplated by Article 32 of the NOCK Constitution, have never been of the NOCK Constitution.
- s. The 4<sup>th</sup> Petitioner has been arbitrarily locked out relating membership of NOC-K without being accorded a chance to be heard on the merits of the membership.
- t. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners were nominated and endorsed by resolution of the members of their respective federations.
- u. Furthermore, the constitutions of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners' federations recognize the President as the Representatives of their federations in all events including voting in elections.
- v. Disallowing the Petitioners from participating in the elections is an unfair limitation of their civic right which is guaranteed under article 38 of *the constitution* of Kenya 2010; the *Sports Act*, 2014; the NOC-K Constitution, the Triathlon Constitution, the Handball Federation and the Football Kenya Federation.



- w. Unless this Application is certified urgent, and heard on priority basis, the election process will proceed, locking out the Petitioners thus denying them the right of representation, thereby causing irreparable loss to the Petitioners.
3. In response to the application, the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents filed grounds of opposition to the petition and application and prayed that they be dismissed with costs. They raised the following grounds:
- a. First, that it is refreshing to note that the petitioners have come to the Honorable court in a petition and in an application supported by an affidavit of Joycelene Leah Nyambura under oath and had failed to outline and disclose the following matters below which matters were material to the granting of the Ex-parte interim orders and therefore such a party or parties were peddling falsehood under oath before a court of law and a material non-disclosure. The consequences of such a conduct are well settled in law. Any advantage gained by such non-disclosure of ex-parte orders will be taken away from the offending party, the petitioner herein. The material and pertinent non-disclosures are set out in the body of this application namely that the petitioners had litigated their claims before the Sports Disputes Tribunal at Nairobi in SDTSC NO. E020 OF 2025, SDTSC NO. E022 OF 2025, SDTSC NO.E025 OF 2025, SDTSC NO.E027 OF 2025, SDTSC NO.E027 OF 2025, SDTSC NO.E029 OF 2025 and SDTSC NO.E038 OF 2025 which matters were fully heard on their merits and final determination rendered and therefore res-judicata.
- b. That the petitioners had rushed to the High Court of Kenya at Eldoret after exhausting all their claims in SDTSC NO. E022 OF 2025, SDTSC NO. E025 OF 2022, SDTSC NO. SDTSC NO E027 OF 2025, SDTSC NO. E029 OF 2025 and SDTSC NO. E038 OF 2025. The above matters were all determined on the merits. In fact, all the above claims were dismissed. At the outset all the parties were fully heard before the Sports Disputes Tribunal sitting at Nairobi and therefore the argument that they were being condemned unheard is not only preposterous but an act of splitting selected hairs and a gross distortion of facts and above all, a flagrant act of misleading a court of law. Nobody has the right or the luxury to mislead a court of law. That needs to be made absolutely clear. The issues raised in this petition and the application herein were a re-litigation.
- c. That it is the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents/applicants' case urged very strongly that the petitioners were engaged in an abuse of court process by engaging two-court process and therefore involved in some gamble, a game of chance to get the best in the judicial process. This ought to be explicitly uncountenanced by the honorable court invoking its inherent powers to bring the abuse of process to an end by dismissing and/or striking out the filings from the record to sweep clean the record.
- d. That as a measure of full candor and full circumspection, it is important to state here that the petitioners wants to go round the doctrine of Res Judicata by clothing, dressing and by doing a cosmetic facelift of their case in order to give it a different complexion and to come to court for "a second bite at the cherry". It is trite law, something crystal clear that "they are only entitled to one "bite at the cherry".
- e. That after all and at all events, all the above Sports Disputes Tribunal litigation were concluded on their merits and determined and the parties were all based in Nairobi and the petitioners had filed their cases before the Sports Disputes Tribunal at Nairobi and immediately upon their final determination, they rushed to the High Court of Kenya at Eldoret to stop the NOCK Elections scheduled for the 19th June, 2025 (now past) by filing their case at a 11th



½ hour. Notably also all the respondents were parties in the Tribunal cases above and were all based in Nairobi, making the instant filing as one which the Honourable Court ought to decline jurisdiction and down tools and to strike out in limine and ex-debito justitiae both the application and the petition herein dated the 18<sup>th</sup> June, 2025.

- f. There is nothing constitutional in the instant petition as the petition raises the same issues and/or grievances around the NOCK Constitution, Nock Election Rules and Regulations, 2025 that the requirement that the Federation letters must be jointly signed by both the President and the Secretary General of the respective Federations and the attendant purposive interpretation which matters were fully adjudicated by the honorable Sports Disputes Tribunal in SDTSC E022 of 2025, SDTSC E025 of 2025, SDTSC E027 of 2025, SDTSC 029 of 2025 and SDTSC No. E038 of 2025 in which the petitioners herein filed their respective claims and fully participated in the hearing by filings and highlighting of arguments culminating in the final determination by the Sports Disputes Tribunal on various dates. It is that fresh and simple.
- g. That therefore the following are the salient and pivotal facts upon which the instant petition and application turns and which facts need to be brought to light;- (a) The common denominator in the in the above SDTSC NO.E025 OF 2025, SDTSC NO.E027 OF 2025, SDTSC NO.E038 OF 2025 is that the claimants (then and now the petitioners in this petition) wants to be allowed to participate in the Nock Elections, 2025 as the duly nominated voting delegates for the Kenya Triathlon Federation (Joycelene Leah Nyambura President), Kenya Handball Federation (Francis Paul-President) and Kenya Table Tennis Association (Andrew Mudibo-President). (b) Secondly, that the common denominator in the Sports Disputes Tribunal cases above and the instant petition is the challenge to the Nock Elections Rules and Regulations, 2025 passed on the 12<sup>th</sup> March, 2025. Regulation No.4 thereof which required that nomination letters from the Federations shall be signed by the President and the Secretary General (Article 17.4) of the Nock Constitution for it to be valid. This is what the petitioners are seeking to go round or for orders to declare it unconstitutional. That challenge was taken to the Sports Disputes Tribunal in the above cases and was dismissed. The Sports Disputes Tribunal validated that requirement of the Nock Elections and Regulations, 2025. That same issue has now been litigated in the current Petition and is the subject of prayers (a), (b) and (c) of the petition dated the 18th June, 2025, something that was crystal clear. (c) That the same 3rd and 4th petitioners wants in this petition before the High Court an order in terms of prayers (a), (b) and (d) of the Petition, in a manner plainly speaking to go round the honorable Sports Disputes Tribunal Order in SDTSC NO. E038 OF 2025 and to be allowed not only to participate in the Nock Elections, 2025 but also that the Kenya Table Tennis Association be declared as a duly affiliated Member of Noc-Kenya, something that had been barred in SDTSC NO, E038 OF 2025. (d) Therefore what is crystal clear beyond a peradventure in the Sports Disputes Tribunal cases above and the instant petition is that, the petition herein is a re-litigation of the issues already adjudicated and thereby offends the doctrine of res-judicata. A party or parties have no right to file multiplicity of litigations by doing a cosmetic surgery and/or cosmetic face-lift to their cases to give it a different complexion in order to evade the doctrine of res judicata and to come to court for "a second bite at the cherry".
- h. That the petitioners having litigated their respective cases and determination rendered, have now done a cosmetic surgery to their pleadings and/or to their respective cases and to "pigeon hole" it as a petition in an attempt to evade the doctrine of res judicata by trying to new a new cause of action vide a petition.



- i. That under Rule 23 of the Sports Disputes Tribunal Rules any party dissatisfied with a decision of the Tribunal may lodge an appeal to the Court of Arbitration for Sports. For the 1st, 2nd and 5th respondents, the remedy was not exhausted by the petitioners in a doctrine of exhaustion of internal disputes resolution mechanisms.
- j. That the doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.
- k. That it is trite law that the doctrine of res-judicata is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of *the Constitution*, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.
- l. That therefore in the instant petition and the application the petitioners have now clothed their grievances into a Constitutional petition by invoking the various Articles of *the Constitution* of Kenya in an attempt to go round the honorable Sports Disputes Tribunal orders in SDTSC NO.E022 OF 2025, SDTSC NO.E025 OF 2025, SDTSC NO.E027 OF 2025, SDTSC NO. E029 OF 2025 and SDTSC NO. E038 OF 2025 and also SDTSC NO.E020 OF 2025 by seeking in the new litigation Constitutional declarations that the decision was without any legal basis and unconstitutional but one thing is crystal clear, the petitioners are seeking the same remedies as they sought before the Sports Disputes Tribunal in the Tribunal cases above. For full circumspection we will reproduce the reliefs sought in this Constitutional petition (Constitutional Petition No. E021 OF 2025).

“..... 6. As a result, the Petitioners seeks the following or other appropriate reliefs:”

- (e) A declaration be and is hereby granted that the decision of the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents to bar the Petitioners from participating in the NOC-K executive committee elections dated 19<sup>th</sup> June, 2025 is unconstitutional.
- (f) A declaration be and is hereby granted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are duly nominated voting delegates of the Kenya Triathlon Federation, The Kenya Handball Federation and the Kenya Table Tennis Association respectively.
- (g) A declaration that the 3<sup>rd</sup> Petitioner was duly nominated as a Candidate to vie for the Position of Secretary General.
- (h) A declaration be and is hereby made that the 4th Petitioner is a duly affiliated member of NOC-Kenya.
- (i) Any other orders this honorable Court deems fit.....”



- m. That as for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> respondents part and with all due respect to the other side, they urge the view that the issues raised in this constitutional petition dated the 18<sup>th</sup> June, 2025 and the application dated the 18<sup>th</sup> June, 2025 were essentially res judicata. The cosmetic face lift vide the petition and coming together of the petitioners (having earlier filed separate litigations and/or claims before the Sports Disputes Tribunal) was only that a cosmetic facelift in an attempt to negate and/or to avoid the doctrine of res judicata. The coming together of the petitioners and filing of a joint constitutional petition now clothed and/or "dressed" as a petition and suing the respondents herein was for the sole purpose of decoration and dressing and nothing else because at the end of the day, the petitioners seeks to go round the honorable Sports Disputes Tribunal determination in SDTSC NO. E022 OF 2025, SDTSC No. E025 of 2025, SDTSC No. No 022 of 2025, SDTSC NO. E029 OF 2025, SDTSC No. E038 of 2025 and in SDTSC No. E020 of 2025. They are also seeking to go round the NOCK Constitution and the NOCK Elections Rules and Regulations, 2025, passed by the NOCK General assembly in the meeting of the 12<sup>th</sup> March, 2025 in which under Rule 4 of the Nock Election, 2025, Rules and Regulations enjoined and we quote; ".....Regulation 4 -Nomination process; that a nomination letter from the Federation shall be signed by the President and Secretary General (Section 17.4 of the Nock Constitution)....."
- n. That in a nutshell and in one word, the petitioners vide the petition wants and/or seeks orders to be allowed to participate as nominated voting delegates and also as candidates in the Nock Executive Committee Elections, 2025 and in this we refer the honorable Court to the substantive prayers in the petition dated the 18<sup>th</sup> June, 2025 prayers (a), (b), (c), (d) and (e) and prayers (b), (c), (d), (e) and (f) of the Notice of motion dated the 18<sup>th</sup> June, 2025.
- o. That the gravamen of the petitioners' petition herein is that they have been barred from participating in the NOCK Executive Committee Elections and they have done this argument without disclosing to the honorable Court that they had passed and ratified the same Rule 4 of the NOCK Elections Rules and Regulations, 2025 passed and ratified by the NOCK General Assembly. The petitioners herein were present in that meeting of the Nock General Assembly of the 12<sup>th</sup> March, 2025 as attendees No. 50, 18 and 29 respectively. That the above Elections Rules and Regulations were passed and ratified in that meeting in which the petitioners were present and participating and the doctrine of estoppel does not allow them to escape from the same NOCK Elections, Rules and Regulations which they passed.
- p. That a litigant has no right to pursue paripassu two processes which will have the same effect in two courts either at the same time or at different times with a view of obtaining victory in one of the process or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks.
- q. That it is trite law that the ex-parte interim orders obtained through material non-disclosure are liable to be set aside ex debito justitiae (as of right). This is so because a party seeking ex-parte orders has a legal obligation and responsibility to make full and frank disclosure of all material facts of the case and within his/her/its knowledge. Failure to do so, disentitles the party from the equitable relief that may have been obtained and in this case it warrants that the interim orders issued herein are vacated and/or set aside ex-debito justitiae to wipe the slate clean.
1. This court considered the said application and issued interim orders which triggered the application dated 20<sup>th</sup> June, 2025 brought under Order 51 rule 1 of the Civil



Procedure Rules, Section IA, 18 and JA of the Civil Procedure Act, Rule 25 of the Constitution of Kenya (Protection of rights and fundamental freedom) Practice and Procedure Rules, 2013 in which the Applicants sought the following orders:

- a. Spent
- b. That pending the hearing and determination of this application the Honourable court be pleased to set aside, vary or discharge forthwith the interim orders issued on the 19<sup>th</sup> June 2025 together with all and subsequent directions in the matters.
- c. That the Honourable Court be pleased to issue orders to dismiss and/or to strike out the Petition dated the 18<sup>th</sup> June 2025 together with the Notice of Motion dated the 18<sup>th</sup> June 2025 for being an abuse of the Court process and also for being resjudicata, the subject matter herein having been and/or had been a subject of litigation in and adjudicated by a Sports Disputes Tribunal at Nairobi in: Sports Disputes Tribunal Case No. E022 of 2025: Kenya Fencing Federation & 13 Others vs. Returning Officer, IEBC & NOCK; Sports Dispute Tribunal Appeal No. E029 of 2025: Kenya Fencing Federation & 13 Others vs. Muthee Gakuru – Returning Officer, NOCK Elections 2025, IEBC & NOCK; SDTSC No. E027 of 2025: Joycelene Leah Nyambura & Another vs. Elections Board, NOCK & Another; SDTSC No. E025 of 2025: Francis Paul (suing on his own behalf and as President of the Kenya Handball Federation) vs. Muthee Gakuru – Returning Officer, NOCK Elections 2025 & 4 Others and SDTSC No. E038 of 2025: Daniel Mungai Kimando vs. Kenya Table Tennis Association, Andrew Mudibo & 3 Others, and NOCK.
- d. That the Honourable Court be pleased to issue orders to suspend, set aside, vary and/or discharge forthwith the interim orders issued on the 19<sup>th</sup> June 2025 for having been obtained without a full and frank disclosure of the material facts namely that the matters had been litigated in the Sports Disputes Tribunal at Nairobi in Sports Disputes Tribunal Case No. E022 of 2025: Kenya Fencing Federation & 13 Others vs. Returning Officer, IEBC & NOCK; Sports Dispute Tribunal Appeal No. E029 of 2025: Kenya Fencing Federation & 13 Others vs. Muthee Gakuru – Returning Officer, NOCK Elections 2025, IEBC & NOCK; SDTSC No. E027 of 2025: Joycelene Leah Nyambura & Another vs. Elections Board, NOCK & Another; SDTSC No. E025 of 2025: Francis Paul (suing on his own behalf and as President of the Kenya Handball Federation) vs. Muthee Gakuru – Returning Officer, NOCK Elections 2025 & 4 Others and SDTSC No. E038 of 2025: Daniel Mungai Kimando vs. Kenya Table Tennis Association, Andrew Mudibo & 3 Others, and NOCK.
- e. That upon setting aside, variation and/or discharge of the interim orders herein, the Court Orders that the Noc-K Executive Committee Elections, 2025 do proceed forthwith and/or immediately.
- f. That the costs of the petition dated 18<sup>th</sup> June 2025 of the Notice of Motion Application dated the 18<sup>th</sup> June 2025 and of the instant application be borne by the petitioners herein.

5. The Application is based on the following grounds among others:



1. That there is nothing constitutional in the instant petition as the petitioners raise the same sports governance issues that they had previously raised in the Sports Disputes Tribunal (SDT).
2. That the NOCK Elections Rules and Regulations, 2025 required that the Federation letters be jointly signed by both the President and the Secretary General of the respective Federations.
3. That the requirement above arises from Regulation 4 – Nomination Process – which stipulates that a nomination letter from the Federation shall be signed by the President and Secretary General (see Section 17.4 of the NOCK Constitution).
4. That, in a nutshell and in one word, the Petitioners, vide the Petition and the Notice of Motion, seek orders to be allowed to participate as nominated voting delegates and also as candidates in the NOCK Executive Committee Elections, 2025.
5. That in this regard, reference is made to the substantive prayers in the Petition dated 18th June 2025 – prayers (a), (b), (c), (d), and (e) – and prayers (b), (c), (d), (e), and (f) of the Notice of Motion dated 18th June 2025.
6. That it is not permissible for the parties to evade the application of the doctrine of res judicata by simply conjuring up parties or issues with a view to giving the case a different complexion from the one that was given in the former suit. That is precisely the case here.
7. That the gravamen of the Petitioners’ case is that they have been barred from participating in the NOCK Executive Committee Elections.
8. That they have done so without disclosing to the Honourable Court that they had participated in passing and ratifying the same Rule 4 of the NOCK Elections Rules and Regulations, 2025.
9. That the Petitioners herein were present in the meeting of the NOCK General Assembly held on 12th March 2025 as attendees Nos. 50, 18, and 29 respectively.
10. That the Elections Rules and Regulations were passed and ratified in that meeting in which the Petitioners were present and participated.
11. That the doctrine of estoppel does not allow them to escape from the same NOCK Elections Rules and Regulations, 2025 which they helped pass.
12. That it is fundamental to have regard to the Second Schedule to the *Sports Act*, 2013 (hereinafter “the Act”), which inter alia requires sporting organizations to designate the Tribunal as the dispute resolution forum for sporting disputes.
13. That the Petitioners are undoubtedly sports organizations as defined under Section 46 of the *Sports Act*.
14. That they are required under the Second Schedule to the Act to put in place a constitution which conforms to the requirements set out in the Sports Disputes Tribunal policy and rules for sports disputes resolution.
15. That this statutory requirement overrides any contractual provision entered into by the parties, and it goes to the root, namely the issue of jurisdiction.
16. That a Court’s jurisdiction flows from either *the Constitution* or legislation or both.
17. That a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law.



18. That it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
  19. That jurisdiction is everything and without it, a Court must down its tools the moment it finds that it lacks jurisdiction.
  20. That Section 58 of the *Sports Act* provides that the Sports Disputes Tribunal shall determine sports disputes.
  21. That it is therefore not permissible for a party to proceed before the High Court when the proper forum is the Sports Disputes Tribunal.
  22. That the instant matter was previously and finally heard and determined by the Sports Disputes Tribunal in SDT Case No. E022 of 2025, and Appeal No. E029 of 2025.
  23. That the Tribunal also determined SDTSC Nos. E025, E027, and E038 of 2025.
  24. That the above decisions conclusively dealt with the issue of nomination, voting rights, and eligibility of the Petitioners.
  25. That the filing of this Petition and Motion afresh is an attempt to re-open the same issue already adjudicated.
  26. That the Petition and Application therefore offend the doctrine of res judicata.
  27. That parties are bound by decisions rendered by competent courts and tribunals.
  28. That it is impermissible to re-litigate the same issues under a disguised constitutional petition.
  29. That the High Court is not clothed with original jurisdiction in sports disputes.
  30. That sports disputes are governed by the statutory framework set out in the *Sports Act* and the Second Schedule thereof.
  31. That the Sports Disputes Tribunal has exclusive jurisdiction to determine such disputes.
  32. That the Petitioners have not appealed or sought review of the SDT's final decisions.
  33. That there is no judicial review application pending before this Court to challenge the SDT decisions.
  34. That the Petition and Motion are therefore improperly before this Court.
  35. That the Honourable Court ought to dismiss the Petition and the Application for want of jurisdiction.
  36. That there was material non-disclosure by the Petitioners in obtaining the interim orders.
  37. That the said orders were obtained without informing the Court that the same matters had been previously determined.
6. The Application is supported by the Annexed Affidavit dated 20<sup>th</sup> June 2025 sworn by FRANCIS MUTUKU whose averments echo the grounds of the Notice Motion Application on the face of the record.
  7. The Application is also further supported by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents vide their further Affidavit dated 3<sup>rd</sup> July 2025 sworn by FRANCIS MUTUKU who avers as follows:



- a. That vide the SDTSC No. E020 of 2025 Suleiman Sumba (suing on his behalf and as the president of Kenya Taekwondo Federation) –vs– The returning officer, NOCK Kenya Elections, 2025 and the Elections Board of the NOCK Elections & others. In this matter the 1st petitioner Federation was the 2nd interested party and the 1st petitioner herself participated by filing an affidavit and is therefore bound by the said Judgement.
- b. That upon dismissal of the said case the claimant therein just like the petitioners herein did a cosmetic uplift of the case and lodged High Court of Kenya HCCHRPET No. 213 of 2025 Suleiman Sumba vs Muthee Gakuru – Returning Officer, NOCK Kenya Elections, 2025 and the Elections Board of the NOCK Elections & one other. The case is pending before Hon. Justice Bahati Mwamu in Milimani Law Courts Nairobi.
- c. That a glance at the prayers sought in the petition clearly shows that it is a camouflage appeal against the decision of the Tribunal but more importantly it is a prayer that covers all the affected federations including the instant petitioners.
- d. That on the other hand after the dismissal of the SDTSC No. E020 of 2025 the 1st petitioner and 2nd petitioner filed other cases basically raising the same issues that had been determined in the same SDTSC No. 020 of 2025. The 1st petitioner filed SDTSC No. E027 of 2025 Joycelene Leah Nyambura (suing on her behalf and as the president of Kenya Triathlon Federation) – VS– Muthee Gakuru – returning officer, NOCK Kenya Elections, 2025 and the Elections Board of NOCK & others while the 2nd petitioner herein filed the SDTSC No. E025 of 2025 Francis Paul (suing on his behalf and as the president of Kenya Handball Federation) –Vs– Muthee Gakuru – returning officer, NOCK Kenya Elections, 2025 and the Elections Board of the NOCK Elections & others. The two matters were consolidated and judgment rendered.
- e. That I urge the Honourable court to look at paragraph 38 of the consolidated ruling/decision. The Honourable Tribunal found an overlap between the previously determined cases and the matters before it at paragraph 41 of the decision. Indeed, the Sports Disputes Tribunal reached a determination that the SDTSC NO. E027 OF 2025 and SDTSC NO. E025 OF 2025 were res judicata. That was a determination of the matter on the merits contrary to the petitioner narration that the matter did not reach a determination on the merits.
- f. That vide the SDTSC No.038 of 2025 Daniel Mungai Kimando –vs– Kenya Table Tennis Association & Others and for clarity purposes the claimant therein is the 7th respondent in the instant petition while the 3rd and 4th petitioners herein were the 1st and 2nd respondents in the SDTSC case. The said case was heard and judgement was rendered.
- g. That while the petitioners herein lodged the instant petition and even obtained ex-parte orders, the 3rd and 4th petitioners had concurrently filed an application for review before the Sports Disputes Tribunal.
- h. That on the day this Honourable Court issued the said ex-parte orders parties were actually before the SDT for the hearing of the review application only for the 3rd petitioner herein to personally accuse in fact threatened the Tribunal chair of consequences of alleged bias and before declining to have the application heard and subsequently withdrawing the said application. We believe that the attitude shown at the Tribunal by one of the petitioners herein was because they had already obtained the orders herein even though they did not disclose at that point.
- i. That I must also bring to the attention of the court the fact that whereas the 3rd and 4th petitioners are before this Honourable court, they are also before Justice Ng’arng’ar in the High



Court at Bomet vide JR No. 004 of 2025. Before this court is the President of the Federation together with the Federation, that is the 3rd and 4th petitioners herein while before Bomet High Court is the Secretary General of the very same Federation challenging the very same decision that the 3rd and 4th petitioners are challenging herein before this court.

- j. That for avoidance of any doubt the petitioners were present in the Extra Ordinary AGM on the 12th March, 2025 where they passed/adopted the NOCK Elections Rules and Regulations, 2025, Rule 4 thereof requiring the President and the Secretary General of each federation to sign the nomination letter for the voting delegate.
- k. That having passed the above Rules and Regulations on the 12th March, 2025, they are estopped in law from rushing to court and claim that their voting rights have been infringed, but more fundamentally, they are bound by the rules and regulations which they passed and/or which were passed in their presence.
- l. That let me add here that in matters NOCK Elections and generally in matters NOCK, I will state that the NOCK has its own Constitution and rules which regulates its internal affairs. It is the NOCK Supreme law and must be strictly adhered to.

8. The Application was canvassed by way of written submissions which are summarized as hereunder:

#### **1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents Submissions**

- 9. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents filed their written submissions dated 30<sup>th</sup> June 2025 through their learned Counsel Mr. Arusei. The Learned submitted as follows on the following issues.
- 10. On the Preliminary Issue of Jurisdiction, the Learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents begun by arguing that the present dispute is entirely sports-related and thus falls squarely within the jurisdiction of the Sports Disputes Tribunal (SDT), not the High Court. They assert that the [Sports Act](#) (Section 58) provides a specific and exclusive mechanism for resolving such disputes. To support this, he relied on the following decisions:
  - a. R v Anti-Doping Agency & Sharad Rao, JR No. 433 of 2017 where the Court held that “I have considered the issues raised herein. Section 58 of the [Sports Act](#) provides as follows: The Tribunal shall determine— (a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including— (i) appeals against disciplinary decisions; (ii) appeals against not being selected for a Kenyan team or squad; (b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and (c) appeals from decisions of the Registrar under this Act.” Further, Hon. Justice Odunga in that case remarked: “For men, it is clear that all decisions made by the National Sports Organizations or Umbrella National Sports organizations are to be referred to the Sports Tribunal...”
  - b. And further, quoting Mohammed Ibrahim, JA, in Yusuf Gitau Abdallah v. Building Centre (K) Ltd & 4 Others [2014] eKLR: “A party cannot be heard to move a Court in glaring contradiction of the judicial hierarchical system of the land... A party cannot in total disregard of these fundamental legal redress frameworks move the apex Court.”
- 11. On the second issue of the Dispute is Not Constitutional, the Learned Counsel argued that the Petitioners have disguised a sports governance dispute as a constitutional issue. He submitted that this is an attempt at “cosmetic surgery” to present the matter under Article 22 of [the Constitution](#). However, as the Petitioners had already participated in SDT cases (SDTSC Nos. E025, E027, and E038 of 2025),



and exhausted that mechanism, the High Court lacks original jurisdiction. Reliance was made to the following cases:

- a. Owners of the Motor Vessel “Lilian S” v Caltex Kenya Ltd (1989) KLR 1 where the Court held that “...Without jurisdiction, a court has no power to make one more step. Where a court has no jurisdiction, it downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
  - b. Kakuta Maimai Man vs. Peris Pesu Tobiko & 2 Others (2013) eKLR where the Court held that “...So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is definitive and determinative and pronouncement on it once it appears to be in issue is a desideratum imposed on courts out of decent respect for economy and efficiency...”
  - c. Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others (Supreme Court) where the Court held that “A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”
12. The Learned Counsel further submitted that, the SDT’s jurisdiction under Section 58(b) was interpreted in: Dennis Kadito v Sofapaka FC where it was held that “...It is not sufficient that the matter before the Tribunal should be a ‘sports-related dispute’; the parties to the dispute must also agree to refer the matter to the Tribunal and the Tribunal must agree to hear the matter. It is clear that there is therefore a three (3) stage process...”
13. On the issue of whether Res Judicata Applies, the Learned Counsel submitted that the Respondents argue that the Petition is barred by the doctrine of res judicata as the issues have been litigated and determined in the SDT and cannot be re-opened in the High Court. Reliance was put in the cases:
- a. Kenya Commercial Bank Ltd v Benjoh Amalgamated Ltd [2017] KECA 98 (KLR) (at page 9/17) where it was held that “The rule or 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...”
  - b. Also quoted is the Case of William Koros (Legal Representative of Elijah Koros) v Hezekiah Kiptoo Komen & 4 Others (2015) eKLR where it was held that “...Courts... have not shied away from invoking the doctrine as a bar to further suits. As was stated in Henderson v Henderson (1843) 67 ER 234...”
  - c. The Learned Counsel further made reference to the case of Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others (2018) eKLR where it was held that “...All the facts raised in this case, including the alleged violation of constitutional rights... are matters that could have been raised in the previous proceedings... The case is founded on the same cause of action, same issues, same facts, and same circumstances...” The Court further held: “...It is trite law that a litigant will not be allowed to litigate a matter all over again once a final determination has been made... Mere addition of parties does not defeat the doctrine of res judicata...”
14. The Learned Counsel also made reference to the following cases:
- a. John Florence Maritime Services Ltd & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others (2015) eKLR where the Court held that “...They cannot be allowed



to reopen the same case now on constitutional grounds. The appellants' claims of violations... would and could have been raised within JR..."

- b. Peter Kitonyo v Cabinet Secretary, Ministry of Public Service, Youth & Gender Affairs & Others (2020) eKLR where it the Court noted "...I have very carefully considered the pleadings in JR 233 of 2019... It is evident that the facts and issues raised are substantially the same..."
15. On the issue of Consequences of Delay, the Learned Counsel submitted that the Respondents warn that delaying the NOCK Executive Committee Elections, which had already been postponed twice (24<sup>th</sup> April and 19<sup>th</sup> June 2025), would result in irreparable harm and institutional paralysis. He added that the Respondents urge that the Court should strike out the Petition in limine to prevent damage to sports governance and uphold judicial discipline.
16. It was the final submissions and prayer of the Learned Counsel that the Honourable Court: Strike out the Petition and Application dated 18<sup>th</sup> June 2025 for want of jurisdiction and for offending the doctrine of res judicata; Uphold the exclusive jurisdiction of the Sports Disputes Tribunal as provided under Section 58 of the *Sports Act* and allow the NOCK Executive Committee Elections to proceed immediately.

### **Analysis and determination**

17. The application dated 18<sup>th</sup> June, 2025 as crafted raises fundamental questions about the scope and application of the doctrine of res judicata in the context of sports governance disputes, and the proper relationship between specialized tribunals and the general jurisdiction of the High Court. It is equally important to note that the application seeks reliefs which are largely the foundation of the main petition. To put this matter to perspective, I have found the need to carefully examine the chronological sequence of events that have unfolded between the parties, the nature of the issues canvassed in multiple proceedings, and the extent to which prior determinations by competent tribunals may preclude fresh litigation on substantially similar matters.
18. The genesis of the present dispute can be traced to the National Olympic Committee of Kenya's preparation for its Executive Committee Elections originally scheduled for 24<sup>th</sup> April 2025, subsequently postponed to 19<sup>th</sup> June 2025. Central to the controversy was the implementation of the NOCK Elections Rules and Regulations 2025, particularly Regulation 4, which mandated that nomination letters from member federations bear the joint signatures of both the President and Secretary General of the respective federations. This requirement, ratified during an Extra-Ordinary General Assembly held on 12<sup>th</sup> March 2025, became the focal point of disagreement when several federations found themselves unable to comply with the dual-signature mandate due to internal governance disputes.
19. The present Petitioners, comprising the Presidents of the Kenya Triathlon Federation, Kenya Handball Federation, and Kenya Table Tennis Association, along with the Association itself, sought redress from this Court through a constitutional petition filed on 18<sup>th</sup> June 2025. Upon consideration of the application, this Court issued interim orders on 19<sup>th</sup> June 2025 certifying the matter as urgent and granting a temporary injunction suspending the NOCK Executive Committee Elections scheduled to take place on that same day, pending hearing and determination of both the application and the petition. Significantly, while the Petitioners had sought specific orders allowing them to participate as voting delegates and candidates in the electoral process, this Court's interim relief was more conservative in scope, focusing primarily on halting the electoral process altogether rather than mandating modified participation arrangements.



20. The issuance of these interim orders on 19<sup>th</sup> June 2025 directly triggered the filing of the application dated 20<sup>th</sup> June 2025 by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents. This responsive application, brought under Order 51 rule 1 of the Civil Procedure Rules, sought to set aside, vary or discharge the interim orders, arguing that they had been obtained through material non-disclosure and that the entire petition constituted an abuse of court process due to *res judicata*.
21. A careful analysis of the prior proceedings reveals a web of litigation involving the same fundamental issues now before this Court. Between April and June 2025, no fewer than four separate cases were filed before the Sports Disputes Tribunal, each challenging various aspects of the NOCK election process and the eligibility of the present Petitioners' federations to participate as voting delegates or nominate candidates for executive positions.
22. The first in this series was SDTSC No. E020 of 2025, filed by Suleiman Sumba on behalf of the Kenya Taekwondo Federation, challenging the nomination and electoral processes leading up to the NOCK Elections. Significantly, the 1<sup>st</sup> Petitioner in the present case, Joycelene Leah Nyambura, actively participated in those proceedings by filing an affidavit and is therefore bound by the judgment rendered therein. Following the dismissal of that case, similar proceedings emerged with remarkable consistency in their core complaints and desired relief.
23. SDTSC No. E027 of 2025 was subsequently filed by Joycelene Leah Nyambura herself, suing in her capacity as President of the Kenya Triathlon Federation, against the very same respondents now before this Court. Concurrently, SDTSC No. E025 of 2025 was filed by Francis Paul, the 2<sup>nd</sup> Petitioner herein, suing on behalf of the Kenya Handball Federation. The Sports Disputes Tribunal, recognizing the substantial overlap in parties, issues, and relief sought, consolidated these two matters for hearing and determination.
24. The consolidated proceedings addressed the central question of whether the Kenya Triathlon Federation and Kenya Handball Federation could participate in the NOCK elections as voting delegates despite failing to comply with the dual-signature requirement under Regulation 4. The Tribunal, after careful consideration of the pleadings and submissions, reached a definitive conclusion. At paragraph 41 of its consolidated ruling, the Tribunal explicitly found that there was a significant overlap between the issues raised in the consolidated cases and those previously determined in earlier proceedings, and concluded that the matters before it were *res judicata*.
25. Parallel to these developments, SDTSC No. E038 of 2025 was filed by Daniel Mungai Kimando against the Kenya Table Tennis Association and Andrew Mudibo, the very same 3<sup>rd</sup> and 4<sup>th</sup> Petitioners now before this Court. This case, too, centered on the eligibility of the Kenya Table Tennis Association to participate in the NOCK electoral process and the authority of its officials to nominate candidates. The Tribunal heard and determined this matter, rendering a final judgment on the substantive issues.

### **The Jurisdiction Question**

26. The preliminary question for determination is whether this Court should hear the controversy presented to it in light of the claims made on *Res Judicat*. Nyarangi JA in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR*: -

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for



a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

27. The mandate and jurisdiction to deal with constitutional matters is provided under Article 165(3)(b) of *the Constitution*. The said Article provides that this Court has jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened. It provides:
- “b) subject to clauses (4) and (5), the High court shall have jurisdiction to determine whether a right or fundamental Freedom in the bill of rights has been denied, violated, infringed or threatened.”
28. The constitutional mandate conferred upon the High Court under Article 165(3) encompasses a broad jurisdictional authority to adjudicate all matters save for those specifically reserved to other judicial bodies under Article 162(2) or those expressly circumscribed by Article 165(6). This expansive constitutional empowerment of the High Court represents a deliberate design choice by the constitutional framers and should not be readily diminished or relinquished without compelling justification. The High Court thus possesses comprehensive jurisdiction to entertain and resolve diverse categories of disputes that fall within its constitutional purview. In determining whether this Court is properly seized of jurisdiction to hear and determine the present petition, the analysis must be grounded in the jurisdictional framework established by Article 165(3)(d)(i) and (ii), which provides the constitutional lens through which this jurisdictional inquiry should be conducted.
29. The question of jurisdiction in the present matter presents an intersection of constitutional rights, specialized statutory frameworks, and the doctrine of *res judicata*, requiring careful consideration of competing jurisdictional claims. The Respondents raise substantial arguments that the Sports Disputes Tribunal possesses exclusive jurisdiction over sports-related disputes and that the present petition constitutes an impermissible attempt to relitigate matters already conclusively determined. These arguments warrant consideration alongside the Petitioners' constitutional jurisdiction claims.
30. The Respondents correctly observe that Section 58 of the *Sports Act* establishes the Sports Disputes Tribunal with specific jurisdiction over sports-related disputes, and that this represents a deliberate legislative choice to channel such matters through a specialized forum with expertise in sports governance. The Respondents' argument that parties cannot circumvent specialized tribunal jurisdiction by simply reframing administrative disputes in constitutional terms has precedential support and reflects legitimate concerns about the question forum shopping.
31. Moreover, the chronology of proceedings reveals a concerning pattern that supports the Respondents' abuse of process arguments. The same parties pursued substantially similar relief through multiple SDT cases (E020, E025, E027, and E038 of 2025), received adverse determinations, and then filed constitutional petitions in three different High Courts; Milimani, Eldoret, and Bomet. This coordinated litigation strategy across multiple forums, particularly when the parties and issues substantially overlap, raises genuine concerns about manipulation of court processes to obtain favorable forum selection.
32. However, while these arguments are substantial, they must be weighed against the constitutional mandate under Article 165(3)(b) and the distinct nature of constitutional violations that are beyond administrative compliance matters. The constitutional jurisdiction conferred upon this Court is express and derives directly from *the Constitution* itself, creating jurisdiction that cannot be ousted.



33. I have considered the various SDT determinations, while acknowledging their finality on administrative matters, reveals that they did not address the constitutional dimensions now before this Court. In the Taekwondo case (SDTSC E020 of 2025), the Tribunal applied estoppel principles but did not analyze whether the electoral rules violated constitutional principles of equal treatment or fair administrative action. The consolidated Triathlon/Handball cases (E027/E025) were dismissed on res judicata grounds without any constitutional analysis because that mandate is only assigned to this court. Lastly the Table Tennis case (SDTSC E038 of 2025) focused on registration compliance under administrative law but did not address constitutional violations of democratic participation rights.
34. The constitutional claims now advanced largely on violations of Article 38 (political participation), Article 27 (equality and non-discrimination), and Article 47 (fair administrative action) involve distinct legal frameworks, a different standard of review, and remedies that the Sports Disputes Tribunal lacks jurisdiction to provide. Constitutional interpretation, declarations of constitutional invalidity, and constitutional redress are powers expressly reserved to constitutional courts under Article 165(3)(b). The Sports Disputes Tribunal, while competent in sports governance matters, cannot adjudicate constitutional violations or provide constitutional remedies.
35. The parallel proceedings at Milimani and Bomet, while concerning, do not necessarily oust this Court's jurisdiction but do require a coordinated approach. The Milimani petition appears to cover affected federations generally, while the Bomet proceedings involve judicial review of the same SDT decision challenged by the Secretary General of Kenya Table Tennis Association.
36. The Respondents' estoppel argument that Petitioners participated in passing the very electoral rules they now challenge is merited but does not preclude constitutional review. Constitutional rights cannot be waived through participation in rule-making processes, and constitutional violations may arise from the application of facially neutral rules in a discriminatory manner. The doctrine of constitutional supremacy under Article 2 means that even consensually adopted rules must conform to constitutional standards.
37. Balancing these competing considerations, this Court finds that while the Respondents' jurisdictional challenges are substantial and raise legitimate concerns about forum shopping, the constitutional dimension of the present petition brings the matter within this Court's constitutional jurisdiction under Article 165(3)(b). The Sports Disputes Tribunal determinations, while final on administrative compliance matters, did not adjudicate the constitutional violations now alleged. The constitutional claims involve distinct legal issues and remedies that are beyond the administrative framework within which the Sports Disputes Tribunal operates.
38. Accordingly, this Court finds that it possesses jurisdiction to determine the constitutional claims advanced in this petition, while acknowledging the finality of SDT determinations on administrative matters and the need for judicial restraint in the face of multiple parallel proceedings. The constitutional violations alleged that is the denial of democratic participation rights, discriminatory application of electoral procedures, and failure to observe fair administrative action, require constitutional adjudication that is not within the province of sports governance and engages fundamental constitutional principles that this Court is empowered and obligated to protect.

### **The Question of Res Judicata**

39. The next issue that needs consideration is the place of Res Judicata in the instant petition. The res judicata arguments are considerable when examined against the SDT determinations. In SDTSC No. E020 of 2025, the Tribunal made substantive findings applying the doctrine of estoppel, concluding that parties who participated in passing electoral rules could not subsequently challenge



their application. The consolidated cases SDTSC E027 and E025 of 2025 were dismissed as res judicata after the Tribunal found substantial overlap with previously determined issues. In SDTSC No. E038 of 2025, the Tribunal made comprehensive findings about KTTA's registration status and eligibility to participate in electoral processes. These were final determinations on the merits by a competent tribunal, not merely procedural dismissals.

40. In *Wamanda & 2 others v Egoli Estates Limited & another* (Environment and Land Case Civil Suit 103 of 2020) [2024] KEELC 1416 (KLR) the courts stated as follows:

“ 13. In the case of John Florence Maritime Services Limited & another vs Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), the Supreme Court delved into an in-depth discussion of the concept of res judicata thus; “This court in the case of *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another* Motion No 42 of 2014 [2016] eKLR (Muiri Coffee case) held as follows regarding the doctrine of res judicata:

“Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. Such a perception has a basis in comparative jurisprudence; in the Ugandan case of *Hon Norbert Mao v Attorney-General, Constitutional Petition No 9 of 2002; [2003] UGCC3*, the petitioner brought an action on behalf of 21 persons from his constituency, for declarations under article 137 of the Uganda Constitution, and for redress under article 50 of that Constitution. The matter arose from an incident in which officers of the Uganda Peoples Defence Forces attacked a prison, and abducted 20 prisoners, killing one of them. Unknown to the petitioner, another action had already been filed under article 50, seeking similar relief; and Judgment had been given in *Hon Ronald Reagan Okumu v Attorney-General, Misc Application No0063 of 2002, High Court HCT 02 CV MA 063 of 2002*. The Constitutional Court dismissed the petition, on a plea of res judicata, declining the petitioner’s pleas that certain important constitutional declarations now sought, had not been accommodated in the earlier Judgment. In *Silas Make Otuke v Attorney-General & 3 others*, [2014] eKLR, the High Court of Kenya agreed with the Privy Council decision in *Thomas v The AG of Trinidad and Tobago (1991) LRC (Const) 1001*, in which the Board was “satisfied that the existence of a constitutional remedy as that upon which the appellant relies does not affect the application of the principle of res judicata”.

54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively. It emerges that, contrary to the respondent’s argument that this principle is not to stand as



a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of article 159 of *the Constitution*, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.<sup>56</sup> The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293): The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.” The essence of the res judicata doctrine is further explicated by Wigram, V-C in *Henderson v Henderson* (1843) 67 ER 313, as follows:... where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time” [emphasis supplied]. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in *Bernard Mugo Ndegwa v James Nderitu Githae & 2 others*, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision. That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in *ET v Attorney-General & another*, (2012) eKLR, thus: 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 v 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 v 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 face-lift on every occasion he comes to court, then I do not see the use of the doctrine of *res judicata*.’

41. The doctrine of *res judicata* serves the fundamental purpose of bringing finality to litigation and preventing the endless re-litigation of settled matters, its application in the present case must be examined against the distinct jurisdictional and substantive differences between the Sports Disputes Tribunal determinations and the constitutional claims now before this Court. The doctrine requires examination of whether the matter in issue is identical, the parties are the same, there is sameness of title or claim, there is concurrence of jurisdiction, and whether there was finality in the previous decision.
42. While the parties are substantially the same and the SDT decisions were final determinations by a competent tribunal within its sphere of jurisdiction, the critical elements of identity of matter and sameness of claim reveal fundamental distinctions that preclude the application of *res judicata*. The SDT cases addressed administrative compliance with sports governance rules, registration requirements under the *Sports Act*, and adherence to NOCK electoral regulations within the specialized framework of sports administration.
43. As I have elsewhere in this ruling and for emphasis purpose, the present constitutional petition, while arising from the same factual matrix, raises distinct legal issues concerning constitutional violations that go beyond administrative compliance. The constitutional claims different remedies, being constitutional declarations and constitutional redress versus administrative orders; and different frameworks, being Bill of Rights protection versus sports governance.
44. *Res judicata* in my considered view would then apply to matters which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time of the previous proceedings. However, constitutional violations requiring constitutional interpretation and remedies could not have been brought forward before the SDT, which lacks constitutional jurisdiction. The SDT's mandate under Section 58 of the *Sports Act* is confined to sports-related disputes and does not extend to constitutional adjudication.
45. Therefore, while the factual circumstances overlap, the legal causes of action are distinct, and the constitutional dimensions of the dispute were not and could not have been determined by the SDT. The present petition does not constitute an impermissible attempt to relitigate administrative compliance matters through a mere change of legal clothing, but rather seeks constitutional adjudication of fundamental rights violations that arise from the same facts but require constitutional analysis beyond the scope of sports tribunal jurisdiction.

#### **Are the reliefs sought in the application dated 18<sup>th</sup> June, 202 merited?**

46. First and foremost, there is the justifiability issue as to whether this constitutional application and the bedrock of the petition as lodged before this court is for constitutional avoidance as part of the legal team for the Respondents invited this court to make a finding to that effect. It is trite law that standing concerns whether someone who approaches court is the right person to present the matter through a plaint, claim, originating summons or petition etc. to the court for adjudication under Art. 50(1) of *the Constitution*. The Republic of Kenya's legal system is underpinned under the common law and therefore generally courts take a restrictive approach to standing. In essence, any litigant, party or



person who approaches any level of courts for a remedy is required to have an interest in the subject matter of the litigation meaning that he must be personally adversely affected by the alleged violation or infringement or wrong. However, the approach to standing under the Bill of Rights in chapter 4 matters contrast dramatically with the common law approach. The differentia maximum with the common law approach is that effective enforcement of rights demands a broader approach to standing to defend or seek interpretation of the various articles of *the constitution*. In our case, Art. 22 provides as follows:

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by:
  - (a) a person acting on behalf of another person who cannot act in their own name,;
  - (b) A person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.”

47. In Art. 19, it lays the framework of the rights and fundamental freedoms as an integral part of Kenya’s democratic state and is the framework for socio-economic and cultural policies. The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realization of the potential of all human beings. The drafters of *the constitution* in Art. 20 expressly provided that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. In interpreting the Bill of Rights, a court, tribunal or other authority shall promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom and the spirit, purport and objects of the Bill of Rights. It is the basis in which Art. 24 of the same Constitution states inter alia that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors including:

- a. The nature of the right or fundamental freedom.
- b. The importance of purpose of the limitation.
- c. The nature and extent of the limitation.
- d. The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

48. In perspective from these provisions when a petitioner alleges that a fundamental right has been infringed or threatened, Art. 19, 20 and 22 may be relied upon to obtain standing on justifiability of the violations or infringement.



49. It is therefore my view that Constitutional courts should rather adopt a broader approach to standing and this would be consistent with the mandate conferred upon this court in Art. 165(2)(b) which reads as follows:

“jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened and this is to serve to ensure that constitutional rights enjoy the full measure of protection to which they were protected and guaranteed.”

50. For purposes of the Bill of Rights litigation, which transcends within the spectrum of Art. 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50 and 51 of *the Constitution*. In so far as this petition is concerned, some of the key justiciable Articles include Art. 36 which provides as follows: “Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. The more significant constitutional imperative implicit in the application as beefed up with the petition is Art. 38 on political rights that every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under this Constitution or any office of any political party of which the Citizen is a member. In pari materia, the petition makes reference to an organization duly registered operating in the name and style of National Olympic Committee of Kenya with a full fledged constitution and other regulatory instruments in managing the affairs of its members duly registered and recognized as per its memorandum and articles of association. In other words, the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner applying a generous approach to the requirement of standing in human rights matters, they have sufficiently met that threshold to approach this Constitutional court. It is crystal clear from the pleadings in the petition and the application, they are acting in their own interest and the associations which they are legitimate members exercising their right of association and be part of the objectives and the governing Constitution. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners have laid down in my view sufficient interest which at least directly will affect them linked to the categories of the provisions of in the NOC-K Constitution, other affiliated sports associations and they have cited with the specifics within the fundamental rights which has been infringed or threatened if the elections will be allowed without an enquiry whether *the Constitution* has been violated by the Conduct of certain class of the leadership in the NOC-K legal entity.

51. It cannot be gainsaid that the Republic of Kenya is a sports nation, a giant of some sort which has not been dethroned particularly in athletics. The NOC-K itself is affiliated to the International Olympics Committee. It has been shown by the petitioners directly or indirectly that the public has a sufficient interest in the requested remedy of having a fair and free elections. When an association like NOC-K acts in the interest of its members in so far as the allegation is made that a provision of *the constitution* more so in the Bill of Rights has been infringed or threatened, it is not necessary to show that common law requirements are complied with. There is therefore the ripeness of the remedies sought for by the petitioners in this sense dealing with the timing of the issues which have arisen between the 1<sup>st</sup> & 2<sup>nd</sup> petitioners as against the Respondents. In principles, the petitioners have shown that they have exhausted the possibilities of ordinary reliefs before invoking the Bill of Rights directly by way of a petition.

52. In terms of Art. 10 of *the Constitution*, the Sports Registrar in the decision making process was making by the National Values and principles of governance which purposes as follows:

“(a) Applies or interprets this constitution, enacts, applies or interprets any law or makes or implements public policy decisions. In this respect, national values



and principles of governance of significance and critical and include the rule of law, democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality, Human rights, non-discrimination etc” (See also Art. 259 of *the Constitution*).

53. The Supreme Court has on several occasions committed itself to an approach to interpretation of the Bill of Rights, commonly known as Chapter four of *the Constitution* to a purposive interpretation and also sometimes referred to as value oriented. Purposive interpretation is aimed at teasing out the core value which underpins the listed fundamental rights in an open and democratic society based on human dignity, equality and freedom and then to prefer the interpretation of a provision that best supports and protects those values. In this regard, in *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others*, Supreme Court Petition No. 26 of 2014 [2014] eKLR, the apex court approved the following statement:

“In *Pepper vs. Hart* [1992] 3 WLR, Lord Griffiths observed that the “purposive approach to legislative interpretation” has evolved to resolve ambiguities in meaning. In this regard, where the literal words used in a statute create an ambiguity, the Court is not to be held captive to such phraseology. Where the Court is not sure of what the legislature meant, it is free to look beyond the words themselves, and consider the historical context underpinning the legislation. The learned Judge thus pronounced himself:

“The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”

54. From the comparative jurisprudence, the Canadian Supreme Court in *R v. Big M Drug Mart Ltd* (1985) 18DLR at page 321, 395 & 396 it was held:

“The meaning of a right or freedom guaranteed by the charter was to be ascertained by an analysis of the purpose of such a guarantee, it was to be understood in other words in the light of the intention it was meant to protect. In my view, this analysis is to be undertaken and the purpose of the right or freedom in question is to be sought by reference to the character and larger objects of the charter of rights and freedoms itself, to the language chosen to create the specific right or freedom to the historical origins of the concepts enshrined and where applicable to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the charter. The interpretation should be a generous rather than a legalistic one aimed at fulfilling the purpose of the guarantee and securing for individuals, the full benefit of the charter’s protection.”

55. It is also true as reflected in the Encyclopedia Britannica that constitutional government means:

“The existence of a constitution which may be a legal instrument or merely a set of fixed norms of principles generally accepted as the fundamental law of the polity that effectively control the exercise of political power. The essence of constitutionalism is the control of power by its distribution among several state organs or offices in such a way that they are



each subjected to reciprocal controls and forced to cooperate in formulating the will of the state.”

56. Thus the reading in and reading out of the key instruments or tools governing the relationship between the 1<sup>st</sup> & 2<sup>nd</sup> Petitioner and the Respondents particularly the Election Rules and Regulations 2025 is workable and can hold the various federations together on governance and leadership. Indeed, that may be so but it has not been able to legislate the alternative remedy if things go wrong for reasons that the rules provide the roadmap on nomination of candidates but says nothing in the event there are internal leadership wrangles which I can refer that man is vile.
57. One learned author Edmund Burke many centuries ago once said:
- “all persons possessing any portion of power ought to be strongly and awfully impressed with the idea that they act in trust and they are to account for their conduct in that trust to the one great master, author and founder of society.”
58. In my view, the doctrine of trust is applicable to both the impugned instruments in question in this petition since they lay the foundation of representative democracy. Though the language in the respective clauses were stated in the context of exercising what I call representative democracy but did not envisage situations of leadership wrangles with the general membership pertaining to the recommendation for nomination of vying for the respective positions in the National Olympic Committee of Kenya.
59. Thus democratic setup has its limbs firmly entrenched in the ability of the people to elect their representative and the faith that the representatives so elected will represent their interest though this right to vote is not a fundamental right yet it is a right that lies at the heart of democratic form of government may it be national, county or to the extent of this petition NOC-K and its affiliations. The right to be voted in as a president or secretary general or any other leadership position in any of the organization is the most cherished value of democracy as it inculcates in the registered members a sense of belonging. There is an irrefutable presumption that any undue interference with the nomination process by either the membership or umbrella association amounts to betrayal of faith and trust of the collective in fulfillment of their aspiration of democratic self-governance in those institutions or federations. On the higher level of constitutionalism, democracy has been best defined as the government of the people, by the people and for the people which expects preference of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmation of *the Constitution* and regulatory framework morality, which is the cornerstone of good governance (see *Manoj Marula v. Union of India* (2014) 9 SCC 1)
60. To these matters which concern the Nation as whole there is need for fair balance in the power of the center which is NOC-K and the respective independent affiliate federations intended to be as free as possible to pursue their own local and international interests for the benefit of nurturing and promoting talent of the unique sports activities. There is need therefore that on governance as between the national body and the affiliate federations mutual respect be actualized for the workability of their respective enabling legal tools or instruments like the constitutions, articles of association including but not limited to the electoral management rules or regulations. This is the battle ground of this petition. The fact that under the scheme of their Constitution, the greater power is conferred upon the center vis a vis the various affiliate federations does not mean that they are mere appendages of the centre. This court will therefore have a bird’s eye view on the onerous responsibility of decisional process in the sphere which ultimately locked out the 1<sup>st</sup> & 2<sup>nd</sup> petitioner not to be part of the democratic process from the two perspectives advanced in their respective submissions.



61. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) provides that:

“Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

62. It is in the case of *Anarita Karimi Njeru v Republic* 1979 eKLR where the court held that-

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

63. The above precedent has been subsequently cited with approval by various courts of superior jurisdiction. In *Kenya Medical Practitioners, Pharmacists and Dentists’ Union v University of Nairobi & another* [2021] eKLR, this court wholesomely discussed the precision requirement in the following manner:

“87. The foregoing finding (*Anarita Karimi* case) received endorsement from the court of Appeal in Nairobi Civil Appeal No 290 of 2012, *Mumo Matemu v Trusted Society of Human Rights Alliance* when the Learned Judges remarked on the importance of compliance with procedure under article 159 of *the Constitution*, the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* and need for precision in framing issues in constitutional petitions. It was observed thus: -

(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.

88. The learned judges further bolstered the foregoing finding by making reference to the decision of Jessel, MR in *Thorp v Holdsworth* (1876) 3 Ch D 637 at 639 where he made the following findings: -

... 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....

89. In making a finding that the High Court was right in its assessment that the petition before it had not been drafted with the necessary precision, the learned appellate judges reaffirmed the Anarita Karimi Njeru principles and made the following findings: -

(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 1<sup>st</sup> 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 1<sup>st</sup> respondent.

Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

64. Having examined the constitutional petition against the established jurisprudential standards, this Court finds that the petition satisfies the particularity and precision threshold required under the Anarita Karimi Njeru principle. The petitioners have, in a clear and elaborate manner, described the gravamen of their petition by identifying the specific constitutional provisions that warrant this Court's intervention and tying them up with the factual matrix of the case. In paragraphs of their petition, the petitioners particularize their grievances by identifying the twin aspects of discrimination through unequal application of electoral rules and the resultant violation of political participation rights as provided for in Articles 27 and 38 of *the Constitution* respectively. The petition demonstrates with sufficient precision the manner in which the exclusion from NOC-K elections despite proper federation nomination constitutes a constitutional violation.
65. The violations alleged herein relate to the manner in which NOC-K elections are to be essentially conducted, the gravamen being whether properly nominated federation delegates can be excluded from electoral participation based on technical compliance with Regulation 4 of the NOC-K Election Rules and Regulations 2025. *The Constitution* generally regulate the manner in which democratic processes ought to be conducted, including within specialized governance structures such as sports organizations



in this case. Article 38 of *the Constitution* guarantees every adult citizen the right to participate in democratic processes without unreasonable restrictions, including the right to vote and to be a candidate for office. The NOC-K Constitution establishes a representative democratic framework whereby affiliated federations participate in governance through their duly elected and nominated delegates, creating a constitutionally significant democratic process that engages fundamental rights protection.

66. The NOC-K Constitution does not operate in a legal vacuum but must conform to constitutional principles of democratic participation and equal treatment. Under Article 10 of the NOC-K Constitution, affiliated federations enjoy specific rights and privileges including the right to vote, to elect, to be elected and to nominate members for election in the executive Committee. The NOC-K constitutional framework is deliberate in recognizing federation presidents as the designated representatives with voting rights. The Petitioners, as duly elected presidents of their respective federations and properly nominated as voting delegates, fall squarely within this constitutionally protected category of democratic participants in this court's considered view.
67. This petition invites a brief discussion on Art. 27 of *the Constitution* on equality and freedom from discrimination. Equality is a difficult and deeply controversial social ideal. The idea of equality is a moral idea that people who are similarly situated in relevant ways should be treated similarly. *The Constitution* of Kenya requires the citizens to grapple with these difficult issues on equality. It commits the state and other Constitutional organs and affiliates tasked with the function of governance be either in the economic, social, cultural arena to work towards achieving equality. *The Constitution* tells that the type of society that it aspires to create is one based on equality, dignity and freedom. This doctrine of equality clause encompasses distinctively two frames, one is formal equality which means sameness of treatment that the law must treat individuals in the same manner regardless of their circumstances. Second, is substantive equality which takes these circumstances into account and requires the law to ensure equality of outcome. A purposive approach to Constitutional interpretation means that Art. 27 must be read as grounded on a substantive conception of equality.
68. In the circumstance of this petition, I take the following view based on the stages of enquiry in line with the facts and submissions by the respective legal counsels seized of this matter. First, do the provisions in the election rules differentiate between people or members or categories of persons in the respective federations? If so, does the differentiation bear a rational connection to a legitimate governance purpose which may be enshrined in the respective instruments independent of NOC-K Constitution? If it does not, then there is a violation of Art. 27 of *the Constitution*. Even if it does bear a rational connection, it might nevertheless amount to discrimination. Second, does the differentiation amount to unfair discrimination. This requires a situational analysis on the facts that what differentiation amounts to discrimination, if it is on a specified ground under Art. 27(4) of Constitution, then discrimination would have been established. If it is not a specified ground, then whether or not there is discrimination will depend upon whether objectively the grounds based attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner. The other situational analysis is whether if the differentiation amounts to discrimination does it amount to unfair discrimination? if it has been found to have been on a specified ground, then unfairness will be presumed. If on unspecified ground, unfairness will have established by the petitioner. the test of unfairness focuses primarily on the impact of the discrimination on the petitioner and others in his/her situation. If the discrimination is found to be unfair, then a determination will have to be made as to whether the provisions of the elections rules can be justified under the limitation clause under Art. 24 of *the Constitution*.



69. Basically, this means that in answering this application with a panoramic view of the petition, there is a preliminary inquiry of the impugned clauses or conduct of the Respondents differentiated between the petitioners and categories of other persons in the same fulcrum. In my considered view, this is a threshold test in which there can be no question of a violation of Art. 27(4) of *the Constitution*. It is not very clear to conceive and appreciate the conduct which led to the petitioners being barred from participating in the NOC-K elections against the legitimate expectation of the right to representation and inclusivity. The differentiation in my further considered view has not been shown to be rational.
70. The rigid application of Regulation 4's dual-signature requirement, which mandates nomination letters to be signed by the President and Secretary General of member federations, creates constitutional infractions through direct discrimination between federations based on their internal governance circumstances. There is direct discrimination between federations that can produce dual signatures and those experiencing internal governance disputes, despite both categories being equally affiliated members of NOC-K in good standing. This constitutes an affront not only to Article 27 of *the Constitution*, but also to the democratic principles underlying representative sports governance. The practice places unnecessary restrictions on democratic participation, particularly affecting federations experiencing temporary internal challenges, thereby infringing the political rights guaranteed under Article 38 of *the Constitution*.
71. While it is acknowledged that the Petitioners participated in the NOC-K General Assembly meeting of 12<sup>th</sup> March 2025 where Regulation 4 was adopted as attendees No. 50, 18 and 29 respectively, their participation in the rule-making process does not preclude a constitutional review of the resulting provisions. The doctrine of constitutional supremacy under Article 2 means that even consensually adopted rules must conform to constitutional standards, and constitutional rights cannot be waived through participation in organizational rule-making processes. The fact that parties may have agreed to certain procedures does not immunize those procedures from constitutional scrutiny where they create discriminatory effects or unreasonable restrictions on fundamental rights. The constitutional issue is not whether Regulation 4 was properly adopted through internal processes, but whether its application creates constitutional violations that goes beyond the internal governance sphere and engage fundamental rights protection under the Bill of Rights.
72. The constitutional violations identified cannot be cured by reference to technical compliance with subsidiary regulations that themselves create constitutional infractions. As emphasized in In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] 3 KLR 718, *the Constitution* must be interpreted holistically to give effect to its democratic values and principles. The NOC-K Election Rules and Regulations 2025, while adopted through internal processes, cannot override constitutional guarantees of equal treatment, democratic participation, and fair administrative action. The doctrine of constitutional supremacy under Article 2 means that even consensually adopted rules must conform to constitutional standards, and technical compliance with regulations cannot justify the denial of fundamental constitutional rights. In sum, therefore, it is the finding of this court that the exclusion of properly nominated federation delegates from NOC-K elections based solely on Regulation 4's dual-signature requirement constitutes a derogation of political rights under Article 38 and an affront to Article 27 of *the Constitution* for want of equal application and benefit of the law, while simultaneously violating the principles of fair administrative action guaranteed under Article 47 of *the Constitution*.
73. In light of the fact that the 3<sup>rd</sup> & 4<sup>th</sup> Petitioners have elected to pursue their claims before the High Court at Bomet vide JR No. 004 of 2025, where the Secretary General of the Kenya Table Tennis Association is challenging the very same decision that forms the subject matter of this petition and in



the interest of avoiding conflicting orders, the orders issued by this Court shall apply and bind only the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners.

74. From the foregoing analysis, the following orders shall apply in respect of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners:
- a. A declaration is hereby granted that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are duly nominated voting delegates of the Kenya Triathlon Federation and the Kenya Handball Federation respectively.
  - b. The NOC-K is hereby directed to recognize and register the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as legitimate voting delegates of their respective federations for all electoral and governance purposes.
  - c. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents are hereby directed to prepare and conduct the NOC-K Executive Committee Elections within twenty-one (21) days from the date of this ruling, with the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners participating as voting delegates of their respective federations.
  - d. The costs of the application shall be borne by the parties.
  - e. Each party has leave to apply.

75. Orders accordingly.

**DATED AND SIGNED AT ELDORET THIS 18<sup>TH</sup> DAY OF JULY, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

