



Ongadi & 8 others (Suing on Their Own Behalf, on Behalf of Luo Council of Elders, on Behalf of the Elders and other Residents of Siaya, Kisumu, Homabay, Migori Counties, and in Public Interest) v James Aggrey Bob Orengo Governor of Siaya County & 7 others (Constitutional Petition E002 of 2023) [2025] KEHC 12857 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CONSTITUTIONAL PETITION E002 OF 2023**

**DK KEMEI, J
SEPTEMBER 19, 2025**

BETWEEN

**NYANDIKO ONGADI 1ST PETITIONER
THOMAS OCHANDO 2ND PETITIONER
SILAS ALALA ABONG' 3RD PETITIONER
DR.OKEYO ABEBE 4TH PETITIONER
MARGARET NYAMBOK 5TH PETITIONER
ODUOGO GWENO 6TH PETITIONER
DR.FELIX OKAL 7TH PETITIONER
PIUS ODO'TE 8TH PETITIONER
STEPHEN OLUDHE 9TH PETITIONER**

**SUING ON THEIR OWN BEHALF, ON BEHALF OF LUO COUNCIL OF
ELDERS, ON BEHALF OF THE ELDERS AND OTHER RESIDENTS OF SIAYA,
KISUMU, HOMABAY, MIGORI COUNTIES, AND IN PUBLIC INTEREST**

AND

**JAMES AGGREY BOB ORENGO GOVERNOR OF SIAYA
COUNTY 1ST RESPONDENT
PROF.PETER ANYANG NYONGO GOVERNOR OF KISUMU
COUNTY 2ND RESPONDENT
GLADYS WANGA GOVERNOR OF HOMABAY COUNTY ... 3RD RESPONDENT**



DR.GEORGE MBOGO OCHILO AYAKO GOVERNOR OF MIGORI COUNTY	4TH RESPONDENT
COUNTY GOVERNMENT OF SIAYA	5TH RESPONDENT
COUNTY GOVERNMENT OF KISUMU	6TH RESPONDENT
COUNTY GOVERNMENT OF HOMABAY	7TH RESPONDENT
COUNTY GOVERNMENT OF MIGORI	8TH RESPONDENT

JUDGMENT

1. The 1st to 9th Petitioners have filed a Petition dated 29th June 2023 and amended on 3rd July 2023 alleging that the 1st, 2nd, 3rd and 4th Respondents, since they were elected Governors of their respective Counties, have cajoled, intimidated, harassed, and interfered with the Petitioners in the performance of their functions as office bearers and officials of the Luo Council of Elders including intending to undertake a coup with a view of dethroning the Petitioners and allegedly intending to install a new team including Chairman (“KER”). The Petitioners, therefore, sought judicial review orders against the Respondents.
2. The Petitioners simultaneously filed a Notice of Motion dated 29th June 2023 seeking conservatory orders prohibiting the Respondents, their agents and servants, from issuing and/or taking any instructions, plans, actions and/or activities arising and/or based on the decision and announcement by the 1st, 2nd, 3rd and 4th Respondents to hold a meeting that they describe as an annual cultural event dubbed “Piny Luo 2023” which they scheduled for 30th June 2023 to 1st July 2023 or any other time in Homabay County or anywhere else which will culminate in the presentation of a new “KER” for the Luo Community by the Luo Council of Elders pending the hearing and determination of the application and the main Petition.
3. The Application is supported by a further affidavit sworn on 12th February 2024 by the 1st Petitioner, wherein he avers that the Respondent’s participation in the coronation ceremony clearly and out rightly put them directly as the drivers and catalyzers of the act of contempt, thus the Respondent should be cited for contempt of the orders of this Court and appropriate penalty meted upon them so that it serves as a deterrent to any person who would even imagine disobeying the orders of this Court.
4. On 4th July 2023, D.Ogembo J. issued orders that:
 1. The conservatory orders sought would not have any legal effect, as there are no events to conserve, as the events were already held.
 2. Leave to amend the Petition and application hereby granted, as there is no objection to the same.
 3. The Applicants are at liberty to file contempt proceedings against the Respondents in the normal manner.
 4. The status quo be maintained as it pertains today, regarding this matter.
 5. Further mention on 26th July 2023 for directions.
5. The Petitioners filed the Notice of Motion dated 20th December 2023 and brought under Order 40 and 51 of the Civil Procedure Rules, 2010, Section 5 of the *Judicature Act*, Order 52 of the Rules of the Supreme Court of England 1965 Practice and Procedure Rules, Section 1A, 1B and 3A of the *Civil*



Procedure Act and the Court's inherent powers to punish for Contempt of Court seeking orders inter alia that:

1. Spent.
2. Pending the hearing and determination of this application, this Court be pleased to issue orders restraining the Respondents, their agents, servants and/or assigns from proceeding with the coronation ceremony slated for the 22nd December 2023 or any other intended date which will culminate in the presentation of a new "KER" for the community by the Luo Council of Elders
3. Pending the hearing and determination of the Petition, this Court be pleased to issue orders restraining the Respondents, their agents, servants and/or assigns from proceeding with the coronation ceremony slated for the 22nd December 2023 or any other intended date which will culminate in the presentation of a new "KER" for the community by the Luo Council of Elders.
4. The Hon. Peter Anyang' Nyong'o, being the 1st Respondent herein, be held and found to be in contempt of the Court due to his willful disobedience of the court orders issued on 4th July 2023.
5. Consequent to the grant of prayer 4 above, the Hon. Peter Anyang' Nyong'o be committed to jail for a duration not exceeding six(6) months and/or such other duration as this Court may deem fit and expedient and in addition to or in the alternative to this do impose an appropriate penalty/fine upon the contemnor.
6. The Court may impose such other sanctions as it deems fit until the said contempt is purged.
7. The Officer Commanding Station, Kisumu Police Station, does ensure compliance with the orders 2 and 3 above.
6. The application was premised on the grounds that this Court issued orders on 4th July 2023 directing inter alia the status quo of the Luo Council of elders as pertains that day be maintained but in blatant disregard of the Court orders, the 1st Respondent publicly announced through his verified Facebook Account that the coronation ceremony of the Interested Party Odungi Randa as the KER of the Community by the Luo Council of Elders would take place on 22nd December 2023 at the Ofafa Memorial Hall in Kisumu.
7. Further, the Petitioners filed a Notice of Motion dated 30th January 2024 seeking orders that: the Respondents and Odungi Randa as Interested Party be found to be in contempt of court orders issued on 4th July 2023 and be committed to civil jail for a duration of six months; the Court to declare the coronation event and actual coronation of the Interested Party illegal, inconsequential, null and void for being in violation of the court orders; the status quo ante be restored and maintained.
8. The 2nd and 6th Respondents opposed the application dated 20th December 2023 vide the Grounds of Opposition dated 14th February 2024 stating that:
 1. The Application is misconceived, muddled up, lacks merit, and is bad in law, hence ought to be struck out and/or be dismissed with costs.
 2. The Application does not meet the legal threshold for the grant of the orders sought.
 3. The service of the order dated 4th July 2023, as by law required, is disputed.



4. The Order dated 4th July 2023 is neither clear nor unambiguous, just like it is not plain or unequivocal as to constitute the basis of a charge of contempt.
 5. The averments of disobedience as alleged have neither been proved nor sufficiently been demonstrated as to justify the intervention of this Court in the manner sought.
 6. Exhibit No. 2 is inadmissible in evidence as the purported Certificate of Electronic Evidence is non-compliant with the strict requirements of Section 106(4) (B) of the [Evidence Act](#), Cap 80 of the Laws of Kenya.
 7. The prayers now 2, 3, and 7 of the application have been overtaken by events, hence are not available for granting by this Court.
9. The 3rd and 7th Respondents opposed the entire suit and the Notice of Motion dated 20th December 2023 vide the Notice of Preliminary Objection dated 10th February 2024 on the grounds that:
1. The instant suit and the application offend the Doctrine of Exhaustion laid out in the [Fair Administrative Action Act](#)
 2. The instant suit and application offend the provisions of the Inter-Governmental Relations Act and ought to be dismissed with costs.
10. The 3rd and 7th Respondents urge this Court to dismiss the entire suit and application with costs to the Respondents.
11. In a ruling delivered on 28th February 2024, Ogembo J. stayed the proceedings and ordered that the matter be referred for Court Annexed Mediation. The learned Judge fixed the matter for mention in 60 days to confirm the progress of the ADR process and for any other directions that would be suitable in the circumstances.
12. The 1st and 5th Respondents filed a Notice of Motion dated 7th May 2024 and brought under Order 51 of the Civil Procedure Rules, 2010 and Article 159(2)(c) of [the Constitution](#) seeking orders that the Petition dated 29th June 2023 and amended on 3rd July 2023 be struck out. Alternatively, an order may be issued referring the dispute to arbitration within the framework provided for by [the Constitution](#) of the Luo Council of Elders.
13. The application was premised on grounds supported through the affidavit of the 5th Respondent Deputy County Attorney Leonard Otieno Okanda sworn on even date wherein he averred inter alia; that the Petitioners seek several orders all of which are in the nature of asserting their authority and status as the legitimate officials of the Luo Council of Elders; that [the Constitution](#) of the Luo Council of Elders whose objectives are inter alia to define “rules governing its management role and responsibility to the entire Luo Community” to which the 1st Respondent belongs, has provided a mechanism to resolve leadership disputes, in particular, arbitration as the preferred mode of resolution of disputes before invoking the jurisdiction of the Court or through known traditional disputes resolution mechanisms traditionally used by the Luo Community; that the Petitioners are primarily challenging the alleged involvement and, or participation of the 1st Respondent as a member of the Luo Community in activities allegedly within the exclusive mandate of the Petitioners’ office, yet such issues, including the alleged intention to unveil new officials of the Council should be subjected to arbitration as provided for by [the Constitution](#) of the Council; that the Petition has been filed prematurely as they have not exhausted all remedies available in law for the resolution of the disputes, violating the exhaustion and, or ripeness doctrine.



14. The ADR process collapsed, and therefore, the parties herein insisted on proceeding to canvass their filed applications. Counsels present on behalf of the parties disagreed on which application should be heard first.
15. On 27th November 2024, I gave directions that the matter be referred to mediation, noting that the parties were still willing to have the matter resolved through the mediation process, but if the process collapsed again, the pending applications together with the Preliminary Objection shall be heard and determined together. The second attempt of the mediation process collapsed again and Counsels for the parties herein, insisted on proceeding to hear the pending applications and the Preliminary Objection.
16. On 12th February 2025, i directed parties to fall back to the directions i issued on 27th November 2024 and fixed the matter for a mention to confirm compliance.

Parties Submissions

17. The Petitioners submit that the court order of 4th July 2023 was valid. That the Respondents were present in court through their legally appointed advocates when the Court rendered itself on the matter, thus within the realm of their knowledge. Reliance is placed on *Shimmers Plaza Limited vs National Bank Limited* [2015] eKLR and in *Basil Criticos vs Attorney General and 8 Others* [2012]eKLR that personal knowledge by one’s advocate is the knowledge of the client. It is submitted that the Respondents disobeyed the court orders by proceeding with the coronation ceremony of the Interested Party despite being aware of the existence of the valid Court order. The Petitioners assert that this Court, pursuant to Order 40 Rule 3 of the Civil Procedure, 2010, has the jurisdiction to hear and determine contempt applications as well as punish the same. The Petitioners urge this Court to allow their applications seeking to cite the Respondents for contempt and award them the costs of this suit to be borne by the Respondents.
18. The 1st and 5th Respondents submit that the Petition was prematurely filed and in violation of the exhaustion doctrine for not adhering to the mechanisms provided in their own Constitution before invoking the jurisdiction of this Court. Reference is made to Article 159(2) (c) of *the Constitution*, which addresses the issue of exhaustion of alternative remedies. Reliance is placed on *Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others* [2015] eKLR, and in *Speaker of the National Assembly vs James Njenga Karume* [1992] eKLR on the proposition that the dispute resolution mechanism should be exhausted before the jurisdiction of the courts can be invoked. Further reference is made to Section 6.14 of *the Constitution* of the Luo Council of Elders that “All decisions arising from *the Constitution* of the Luo Council of Elders shall not be subject to any appeals to the normal courts except by Arbitration through the arbitration process set up by the Supreme Council of Elders from among the members of the community.” The Respondents submit that Article 159(2) (e) of *the Constitution* binds the court to promote the purpose of *the Constitution*. The Respondents submit that the Petitioners have not denied that they have not invoked the mechanism provided under their own Constitution. The Respondents urge this Court to decline to exercise jurisdiction and dismiss the Petition in its entirety, or in the alternative, refer it to arbitration within the framework provided for by *the Constitution* of the Luo Council of Elders.
19. The 1st and 5th Respondents deny any willful disobedience of the Court order. They submit that the allegations that the 1st Respondent had publicly announced through his Facebook account that the coronation ceremony of the Interested Party herein as “KER” of the Community by the Luo Council of Elders shall take place remain unsubstantiated. The Respondents urge this Court to dismiss the Contempt applications with costs.



20. The 2nd and 6th Respondents submitted that the alleged public utterances by the 2nd Respondent are vague, generalized, and lack the nexus with any prohibited act under the Court order, as his attendance was in a public and ceremonial capacity. It is submitted that any statements made were cultural acknowledgments devoid of administrative or legal effect. The Respondents assert that no formal application has been made for the admission of the electronic evidence, nor has the evidence been subjected to authentication as required under the *Evidence Act*. It is submitted that the 6th Respondent was not involved in any organization or facilitation of the alleged coronation. According to the Respondents, the language used during the event, although colourful and expressive of cultural solidarity, does not constitute or amount to a formal or administrative coronation. The Respondents submit that the application is speculative, vague, and legally untenable, thus the same should be dismissed as against the 2nd and 6th Respondents with costs.
21. In opposition to the contempt application and in support of the application seeking to strike out the Petition, the 3rd and 7th Respondents place reliance on the doctrine of exhaustion recognized under *the Constitution*, 2010, and the case of William Odhiambo Ramogi & 3 Others vs Attorney General & 4 Others: Muslims for Human Rights & 2 Others(Interested Parties) [2020] eKLR. It is submitted that the Luo Council of Elders is governed by the Council's Constitution and the *Societies Act* and Rules, 1968, which have clearly outlined procedures and provided for a dispute resolution mechanism. Reliance is placed on *Odhiambo vs Safaricom PLC; Communication Authority of Kenya (Interested Party)* [2022] eKLR on the proposition that where there is a clear procedure for redress of a particular grievance provided by *the Constitution* or statute, the procedure should be followed first. According to the Respondents, the averments by the Petitioners do not disclose the exact acts and/or omissions by the Respondents that allegedly willfully, intentionally, or purportedly disobeyed the orders made by the Court. According to the Respondents, there is no court order given by the court of competent jurisdiction addressed to the 3rd and 5th Respondents directing them not to attend or be present in a cultural event. It is submitted that the 5th Respondent is a member of the Luo Community and being invited to attend a Luo cultural event not only as a member of the community but also as the Governor of one of the county governments within the Luo Community does not violate *the Constitution* and disobey the court order therefore allegedly in contempt. It is submitted that there is no evidence that they organized the Luo Community cultural event as falsely alleged by the Petitioners. They assert that they were promoting culture as envisaged under Article 11 of *the Constitution*, 2010. Reliance is placed on Mshila J's decision in *Gitau 11 Others vs County Commander Kiambu & 3 Others* [2024] eKLR, where she affirmed that culture and cultural heritage are the foundation of the Kenyan people and well established in *the Constitution*, 2010, and other statutes. According to the Respondents, allowing the contempt applications offends the cultural heritage of the Luo Community and violates the foundation and culture of the Kenyan people. They urge this Court to allow the application dated 7th May 2014 and dismiss the application dated 30th January 2024 with costs.
22. The 4th and 8th Respondents urge this Court to uphold the Preliminary Objection on the grounds that this litigation is caught up under the doctrine of constitutional avoidance and that the issues are not justiciable in a court of law, but are issues that fall to be determined internally by the membership of the Luo Council of Elders and its organs. It is submitted that the affidavits in support of the motion do not disclose the overt acts on the part of the 4th Respondent that constitute the alleged disobedience and does not even purport to show that the purported disobedience was willful. According to the 4th Respondent, there is no court order directing him never to be present at any ceremony involving Luos as a community. The Respondents submit that the leadership positions in the Council include Ker, Ogaye, Ruodh Goro, Jalup Ruodh Goro Okebe, Jalup Okebe, and Osumba Miruayi, and not Chairman, Vice Chairman, Secretary General, Vice Secretary General, Treasurer, Assistant Treasurer,



Organizing Secretary, Assistant Organizing Secretary, and a Coordinator, thus the Petitioners are impostors and not members of the Council. The Respondents submit that the issues raised in the Petition are on a breach not of statutory provisions but of *the Constitution* of the society. It is submitted that the Petitioners' allegations have nothing to do with rights and fundamental freedoms under the Bill of Rights; thus, the applicability of the doctrine of constitutional avoidance as was well explained by the Supreme Court in *Communication Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others* [2014]eKLR and cited by the Court of Appeal in *Sumayya Athmani Hassan vs Paul Masinde Simidi & Another*[2019]eKLR. The Respondents urge this Court to decline to exercise jurisdiction and dismiss the Petition in its entirety with costs.

23. There were no submissions from the Interested Party.
24. Having considered the applications, Notice of Preliminary Objection, Grounds of Opposition, the grounds on which they are anchored and the affidavits in support and in opposition, as well as the rival submissions made on behalf of the parties herein, I form the view that the issues for determination are whether this Court has the jurisdiction to entertain this matter in light of Section 6.14 of *the Constitution* of the Luo Council of Elders; and whether the doctrine of exhaustion has been flouted.
25. Jurisdiction flows from either *the Constitution* or statute or both, and without jurisdiction, a court cannot be seized of the power to hear and determine a matter.
26. In *Samuel Kamau Macharia & Another v Kenya Commercial Bank and Another* [2012] eKLR, the Supreme Court of Kenya stated thus:

“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.”
27. It is important to restate the words of Nyarangi J.A. in *The Owners of Motor Vessel “Lilian S” –vs- Caltex Kenya Ltd* (1989) K.L.R that;

“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 downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”
28. It is not in dispute that the Luo Council of Elders is an institution as per Section 1.2 under the Preamble of *the Constitution* of the Luo Council of Elders, 2001. Section 6.14 provides for “all decisions” arising from *the Constitution* are to be resolved through an arbitration process set up by the Supreme Council of Elders from among members of the Community. The proviso excludes the courts.
29. The Court of Appeal in *Mutanga Tea & Coffee Company Ltd vs. Shikara Limited & Another* [2015] eKLR cited with approval the case of *Speaker of the National Assembly vs. Karume* [2008] 1 KLR 425, where the court stated:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
30. The Respondents contend that the doctrine of exhaustion has been flouted by filing the Petition in Court. The Petitioners are seeking orders that the Respondents be cited for contempt for disobeying the Court orders. The validity of the court orders has not been disputed. According to the Petitioners, the Respondents, who had personal knowledge of the Court orders of 4th July 2023, attended and



made public utterances at the coronation ceremony, a demonstration of an outright disobedience of the court orders whose terms were plain, obvious, unambiguous, unequivocal, and had neither been varied nor vacated. The 1st Respondent is being accused of publicly announcing through his Facebook account that the coronation event would take place on 22nd December 2023, despite Ogembo J.'s court order of 4th July 2023.

31. The Court of Appeal in *Nyaoga v Chairman Kisii County Assembly & 3 others* (Civil Appeal E034 of 2023) [2023] KECA 1540 (KLR) (8 December 2023) (Judgment) stated that:

“The doctrine of exhaustion of remedies was created by courts in order to promote an efficient justice system and an autonomous administrative state. It is a principle that requires parties to exhaust all available local administrative remedies before seeking redress in a court of law on a constitutional issue. An aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand. The reason for this is to allow administrative agencies to address, and to potentially resolve the issue before escalating the same to the courts.”

32. The same Court in *William Odhiambo Ramogi & 3 Others vs. Attorney General & 4 Others; Muslims for Human Rights & 2 Others* (interested parties) (2020) eKLR stated that:

“the question of exhaustion of administrative remedies arises when a litigant aggrieved by an agency’s action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts.”

33. In *Malusha v Swaleh & Another* (Civil Appeal E051 of 2022) [2025] KECA 761 (KLR) (9 May 2025) (Judgment), the Court of Appeal held that:

“The golden thread that runs through the afore-cited judicial authorities is that failure to exhaust alternative remedies provided under statute law in breach of the exhaustion doctrine renders court proceedings futile in the absence of any exceptional circumstances to warrant departure from the mandatory requirement to exhaust such alternative remedies.”

34. I find no need at this juncture to render myself on the merits of the applications seeking to cite the Respondents for contempt having found that Section 6.14 of *the Constitution* of the Luo Council of Elders provides for an internal mechanism for resolutions of all decisions arising from *the Constitution* of the Luo Council of Elders. The dispute between the parties herein involves the Petitioners, who claim to be office bearers of the Luo Council of Elders, and the Respondents, who are said to be members of the Luo Community. The Petitioners have not shown any exceptional circumstances to warrant ousting the internal mechanism provided for under *the Constitution*. The proviso ousts the jurisdiction of this Court from resolving the dispute between the parties herein. The Petitioners were thus under obligation to resort to the arbitration procedure provided by the Luo Council of Elders constitution vide section 6.14 thereof.

35. The sum total of the foregoing analysis is that the Petition dated 29th June 2023 and amended on 3rd July 2023, the Notice of Motion dated 20th December 2023 and the notice of motion dated 20th January 2024 are premature and lack merit and are dismissed with no order as to costs for lack of Court’s jurisdiction and offending the doctrine of exhaustion of remedies. Further, the 3rd and 7th Respondents’



Notice of Preliminary Objection dated 10th February 2024 and the 1st and 5th Respondents' Notice of Motion dated 7th May 2024 have merit and are allowed with no order as to costs.

36. The upshot of the foregoing observations is that the Petition in its entirety is accordingly dismissed. Each party shall bear their own costs of this suit.

Orders accordingly.

DATED, SIGNED, AND DELIVERED AT SIAYA THIS 19TH DAY OF SEPTEMBER 2025.

D. K. KEMEI

Judge

In the presence of:

M/s Nyaga for Okatch.....for 1st to 9th Petitioners

N/A Okanda.....for 1st & 5th Respondents

N/A Njoga.....for 2nd & 6th Respondents

Odongo for Akello...for 3rd & 7th Respondents

N/A Okogo....for 4th & 8th Respondents

N/A.....for Interested Party

Okumu.....Court Assistant

