Mokua v Nyasani & 4 others (Petition 001 of 2024)
[2024] KEHC 3213 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3213 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAMIRA

PETITION 001 OF 2024

WA OKWANY, J

MARCH 14, 2024

BETWEEN

LUTHERS MOKUA ..... PETITIONER

AND

VINCENT NYASANI ..... 1ST RESPONDENT

DAVID KIREKI ONDIEKI ..... 2ND RESPONDENT

ROBERT ONYEO ONYINGE ..... 3RD RESPONDENT

DAVID NYANG'AU ..... 4TH RESPONDENT

FOOTBALL KENYA FEDERATION ..... 5TH RESPONDENT

RULING

1. The Petitioner herein filed the Petition dated 14th February 2014 seeking the following orders: -

    a. A declaration be and is hereby issued that the Respondents' resolutions and decisions dated 30th November, 2023, 17th January, 2024 and 20th January, 2024 are in violation of Articles 10, 47, and 50 of the *Constitution* of Kenya, 2010 and section 4 of the *Fair Administrative Action Act*.

    b. An order of certiorari be and is hereby issued to remove into this court and quash the unlawful proceedings against the Petitioner by the Respondents through the decision dated 30th November, 2923 and that issued by FKF on 17th January 2024.

    c. A declaration that the adverse actions taken against the Petitioner by the Respondents in replacing him as the branch representative and the acknowledgement by FKF on 17th January 2024 are unconstitutional and therefore null and void ab initio.

d. An order of permanent injunction restraining the Respondents and the FKF by themselves, their servants, agents and/or employees from preventing and/or obstructing the Petitioner from execution of the lawful duties as the Chairman of FKF Nyamira Branch.

e. General damages for breach of constitutional rights and freedoms.

f. Costs of this Petition and interest thereon on (c) above at court rates.

g. Any other relief that this Honourable Court may deem fit and just to grant.

2. Concurrently with the Petition, the Petitioner filed an application dated 14th February 2024 seeking, inter alia, orders for temporary order suspending the Respondents' resolutions dated 30th November 2023 and 20th January 2024 pending the hearing of the Application and Petition, a temporary order suspending the implementation of the 5th Respondent's decision dated 17th January 2024 pending the hearing and determination of the Application and Petition and that the Applicant be included in the register of delegates of FKF in the forthcoming AGM slated for 16th March 2024 pending the hearing of the Application.

3. The Respondents filed a Notice of Preliminary Objection dated 20th February 2024 in response to both the Petition and Application wherein they seek the dismissal of the Petition and Application on the following grounds: -

1. The Petition and the Notice of Motion Application are an abuse of the Court process since the Petitioner had access to internal judicial forum to ventilate its claim as per Article 59 and 69 as read together with Article 70 of the FKF Constitution and which dispute resolution forums the Petitioner chose to by-pass and/or elected not to invoke.

2. The Petition and Notice of Motion Application offend Article 67 (2) of the FKF Constitution.

3. The honourable Court lacks jurisdiction to hear and determine the Petition and Notice of Motion application herein by virtue of Section 58 (a) of the *Sports Act*, No. 25 of 2013.

4. The Petition and Notice of Motion application seek to by-pass the jurisdiction of the specialized court dealing with sports matters, the Sports Dispute Tribunal established under Section 55 of the *Sports Act* No. 25 of 2013 which Act deals with administration and management of sports in the country.

5. The Petition and Notice of Motion application herein have been drafted to couch and convert a purely sports matter into a constitutional issue.

6. The Petition and Notice of Motion application offend the doctrine of constitutional avoidance.

7. The Petition and Notice of Motion Application offend the doctrine of exhaustion of internal remedies.

4. The Petitioner filed a Replying Affidavit dated 29th February 2024 in response to the Notice of Preliminary Objection (PO) wherein he averred that the Petition was founded on breach of his constitutional rights and further, that the reliefs sought in the Petition can only be granted by the constitutional court and not a tribunal. He also averred that courts retain residual jurisdiction to intervene in exceptional circumstances despite the existence of alternative remedies and the doctrine of exhaustion where the complaint is about illegalities and procedural irregularities. He contended that Article 50 of the *Constitution* of Kenya, entitles him to fair hearing before an impartial court thus forming the basis for the court action.

5. The PO was canvassed by written submissions.

The Respondents' Submissions

6. The Respondents cited the decision in *Mukhisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd* (1969) EA 696 where the court expressed itself on what constitutes a preliminary objection and the case of *Owners of Motor Vessel 'Lillian S' vs. Caltex Oil (Kenya) Limited* (1989) KLR 1 where the issue of jurisdiction was discussed. It was submitted that this Court lacks the jurisdiction to entertain the Petition and application because the Petitioner had not exhausted all the available internal dispute resolution mechanisms spelt out under the Football Kenya Federation (FKF) Constitution and the Sports Dispute Tribunal where appeals lay in accordance with the *Sports Act* No. 13 of 2015.

7. The Respondents submitted that Article 59 of the FKF Constitution provides for an Arbitration Committee which resolves conflicts between members. The Respondents argued that the Petitioner should have channelled his grievances to the Arbitration Committee or, in the alternative, referred the matter to disciplinary action under Article 65 of FKF constitution. It was submitted that the decisions made by the two internal dispute resolution avenues could still be challenged before the FKF Appeals Committee in the event that the Petitioner was dissatisfied with them. Reference was made to the decision in SDTSC Petition No. E016 of 2023, *Samson Cherop vs. Nick Mwendwa and 3 Others* where the Tribunal placed emphasis on the doctrine of exhaustion and the case of *Migori Youth Football Club and 8 Others vs. FKF Transition Committee: Leagues and Competitions Committee and 5 Others (Interested Party)* (Petition No. E021 of 2021) 2022 KESDT 678 KLR where the powers of the Appeals Committee to hear any complaints by aggrieved members of FKF was discussed.

8. The Respondents took issue with the Petitioner's Replying Affidavit to the PO while arguing that the Petitioner could only respond to the PO by way of submissions and not through a Replying Affidavit. The Respondents observed that the Petitioner introduced new facts through the Replying Affidavit thus opening a Pandora's box that had the effect of undermining the whole essence of a PO. The Respondents urged this Court to strike out the Replying Affidavit and the corresponding paragraphs in the Petitioner's submissions which are based on the new facts contained in the Replying Affidavit.

9. It was submitted that the matter at hand was purely a sports issue that had been crafted to look like a constitutional matter. The Respondents' case was that the Petition and Application should be dismissed for want of jurisdiction as allowing it would create an avenue for litigants to avoid the dispute resolution mechanisms provided for within the FKF.

The Petitioner's Submissions

10. The Petitioner submitted that he moved the Court under Rule 4 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* 2013 because the Respondents made decisions without affording him a fair hearing and fair administrative action contrary to the provisions of Article 47 and 50 of the *Constitution*. It was submitted that the doctrine of exhaustion is not applicable to this case because it falls within the exceptions under Section 9 (4) of the *Fair Administrative Actions Act* which exempts parties from the doctrine of exhaustion if exceptional circumstances exist to warrant the court to exercise its discretion in the furtherance of justice. The Petitioner cited the decisions in *Republic vs. National Environment Management Authority ex parte Sound Equipment Ltd* (2011) eKLR, *Republic vs. Independent Electoral and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya and 6 Others* (2017) eKLR, *Fleur Investments Limited vs. Commissioner of Domestic Taxes and Another* (2018) eKLR and the *Chief Justice and President of the Supreme Court of Kenya and Another vs. Bryan Mandila Khaemba* (2021) eKLR

for the argument that courts have a duty to intervene even where the litigant had not exhausted the preliminary processes where rules of natural justice would manifestly be disregarded

11. It was submitted that the issues raised in the Petition do not fall within the ambit of the internal dispute resolution mechanisms and that it was not a mandatory requirement under Section 58(b) of the *Sports Act* for all disputes to be referred to the Sports tribunal. The Petitioner maintained that for a matter to be referred to the tribunal, it not only had to be a sports issue but the parties had to agree on referring the matter to the Tribunal and that the Tribunal had to agree to hear the matter.

12. Reference was made to the decision in SDT Petition No. 22 of 2023 as consolidated with SDT Petition No. 28 of 2023, where it was held that only the High Court has jurisdiction to determine claims of a constitutional nature relating to a violation of fundamental rights and freedoms. The Petitioner urged the Court to take cognizance of the fact that he filed an appeal at the Independent Disputes Arbitration Committee which committee refused to admit his appeal on grounds that the officer responsible for receiving the same was attending AFCON in Ivory Coast. It was submitted that in the event that the Petitioner's conduct amounted to a disciplinary hearing, Article 68 of the FKF Constitution provides for the necessary disciplinary measures and that the prayers sought in the Petition could not be granted by the disciplinary committee or any other committee. He urged the Court to dismiss the Preliminary Objection.

13. I have carefully considered the pleadings filed herein, the submissions by counsel together with the grounds set out in the Notice of Preliminary Objection. The issues for determination are: -

    i. Whether Petitioner's Replying Affidavit should be expunged from the record.

    ii. Whether the Preliminary Objection is merited.

i. Whether the Petitioner's Replying Affidavit ought to be expunged.

14. The Respondents argued that the Petitioner's Replying Affidavit sworn in response to the PO should be expunged from the record as a PO can only be answered through submissions. They also contended that the Replying Affidavit contained new facts that did not exist at the time of filing the Preliminary Objection.

15. The question which arises is whether a party can file a replying affidavit in response to a PO. The answer to this question is to the positive. Indeed, there are no hard, fast rules limiting a party on how to respond to a PO. In this regard, a party may file a replying affidavit in response to a PO as the affidavit allows such a party to address any legal arguments or points raised in the PO and to present their counter-arguments or evidence in support of their position. In *Omondi vs. National Bank of Kenya Ltd & Others* [2001] KLR 579; [2001] 1 EA 177, the court addressed the matters to be considered in determining the validity of preliminary objection and held that: -

> " ... In determining (Preliminary Objections) the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion...."

16. My understanding of the above decision is that it is not necessary to file affidavit evidence in respect to POs. To my mind, there is no bar or prejudice in such filing as the PO will ultimately be determined based on pure points of law and uncontested facts. My further finding is that the Replying Affidavit forms part of the Petitioner's pleadings which this Court cannot expunge from the Record at this stage.

ii. Whether the Preliminary Objection is merited.

17. Turning to the merits of the PO, I note that the law is now settled on what constitutes a PO. In *Mukisa Biscuit Manufacturing Co Ltd vs. West End Distributors Ltd* (1969) EA 696 the court rendered itself as follows:-

> " So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit."

18. Sir Charles Newbold in the same case went on to state: -

> " The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop."

19. It is trite that a preliminary objection is only limited to points of law where facts are not contested. I will therefore limit myself to the law and uncontested facts in determining the PO. The gist of the PO is the challenge on the jurisdiction of this court to entertain the Petition and Application. According the Respondents, the FKF constitution and the *Sports Act* provide for dispute resolution mechanisms which their members have to comply with and exhaust before invoking this court's jurisdiction.

20. The Petitioner, on his part, maintained that his case is founded on the violation of his fundamental rights to fair administrative action and fair hearing under Articles 47 and 50 of the *Constitution*. According to the Petitioner, this case is a constitutional petition that can only be handled by the High Court as envisaged under Articles 22, 23 and 165 of the *Constitution*.

21. The centrality of jurisdiction was discussed in the oft cited case of *Owners of Motor Vessel 'Lillian S' vs. Caltex Oil (Kenya) Limited* (1989) KLR 1 wherein it was held thus: -

> " 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....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

22. From the undisputed facts of this case, it is clear that this case arises from a leadership dispute between the Petitioner and the 1st to 4th Respondents. The main issue for consideration is whether the dispute is one that can be ventilated before this court as a constitutional issue or before the Sports Tribunal.

23. The Respondents' position was that since the dispute revolved around the leadership and management of FKF Nyamira Branch, the Petitioner was required to exhaust all the internal dispute resolution mechanisms provided under the Football Kenya Federation (FKF) Constitution and the Sports Dispute Tribunal where appeals lie in accordance with the *Sports Act*. The Respondents faulted the Petitioner for non-compliance with the doctrines of exhaustion and constitutional avoidance.

24. *Black's Law Dictionary* 10th Edition, defines the doctrine of exhaustion as follows: –

> " Exhaustion of remedies: The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary."

(See also *Eperiam v FSM*, 20 FSM R. 351, 355 [Pon. 2016])

25. In *Secretary, County Public Service Board & another vs. Hulbhai Gedi Abdille* [2017] eKLR the Court of Appeal pronounced itself on the doctrine of exhaustion and held that: -

> " There is no doubt that the respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The section provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent's. In our view, the most suitable and appropriate recourse for the respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance. In terms of *Republic vs. National Environment Management Authority* (supra), we discern no exceptional circumstances in this appeal that would have warranted the bypassing of the statutory appellate process by the respondent. Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission. There is no requirement for instance that reasons for the decision be availed to an aggrieved party before he can prosecute an appeal before it."

26. Similarly, in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR the Court held as follows:-

> " 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."

27. The above precedents posit that the doctrine of exhaustion ensures the efficient administration of justice by giving prominence and room to an autonomous administrative process that cannot be overlooked or interfered with by the courts. For this reason, I find that parties cannot veer off, waive or forfeit these dispute resolution mechanisms as they do not exist in vain.

28. Article 59 of the FKF Constitution provides for the Arbitration Committee empowered to determine disputes amongst FKF members as follows:

> 1. The Arbitration Committee shall arbitrate on conflicts arising between FKF members. Where members are unable to reach amicable decisions, the committee shall determine the matter.

29. Article 65 of the FKF Constitution, on the other hand, provides for the Disciplinary Committee and its functions as follows: -

1. The function of the Disciplinary Committee shall be governed by the Disciplinary Code of FKF. The Disciplinary Committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.

2. The Disciplinary Committee may pronounce the sanctions described in this constitution and the Disciplinary Code of FKF on members, officials, player, clubs and match and players' agents.

30. Article 67 provides for the Appeals Committee as follows:-

1. The functions of the Appeal Committee shall be governed by the Disciplinary Code of FKF and the Code of Ethics of FKF. The Appeals Committee shall pass decisions only when at least three members are present. In certain cases, as specified in the relevant regulations, the chairman may rule alone.

2. The Appeals Committee is responsible for hearing appeals against all decisions determined by all committees.

31. Article 70 provides for jurisdiction of FKF with respect to its internal national disputes and states:-

1. Recourse may only be made to an Arbitration Tribunal in accordance with Article 68 once all internal channels of FKF have been exhausted.

2. FKF shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to FKF.

32. The *Sports Act* No. 25 of 2013 establishes a Sports Tribunal under Section 55 thereof and outlines the jurisdiction of the said tribunal under Section 58 as follows: -

55. Establishment of Tribunal

1. There is established a tribunal to be known as the Sports Disputes Tribunal.

2. The Tribunal shall consist of the following members appointed by the Judicial Service Commission in consultation with the national sports organizations —

a. a Chairperson who shall be a person who is qualified to be appointed as a Judge of the High Court;

b. at least two members who shall—

i. be advocates of the High Court of Kenya with at least seven years experience; and

ii. have experience in legal matters relating to sports or have been involved in sport in any capacity; and

c. at least two and not more than six other persons who have experience in sport, in any capacity, of at least ten years.

3. The Judicial Service Commission shall, in consultation with the national sports organizations, appoint a deputy Chairperson from the members of the Tribunal appointed under subsection 2(b).

58. Jurisdiction of the Tribunal

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.

33. In the instant case, it was not disputed that the Petitioner did not subject his grievance to the mechanism provided for under the FKF constitution and the *Sports Act*. The Petitioner explained that his attempts to file an appeal at the appeals committee were unsuccessful. He also stated that he filed his case before the Sports Disputes Tribunal but withdrew it upon realizing that the said tribunal did not jurisdiction to determine the matters at hand which, according to him, were constitutional violations in nature.

34. My finding is that the Petitioner's contention is that his fundamental rights under the *Constitution* were violated when certain decisions were made by the FKF Nyamira Branch does not grant him an automatic right to file his matter before the constitutional court. I find that, in the circumstances of this case, the Court cannot close its 'eye' and overlook the undisputed fact that the dispute should have been heard and determined, on a preliminary basis and in the first instance, in accordance with the laid down dispute resolution mechanisms within the Petitioner's organization. It is the firm position of this Court that it cannot dilute the principles governing its jurisdiction on the basis that the Petitioner will suffer an injustice when the Petitioner himself did not seek redress before the elaborate and clearly spelt out internal dispute resolution avenues set by the FKF constitution.

35. I find guidance in the decision by the Court of Appeal decision in *Geoffrey Muthinja & Another vs. Samuel Muguna Henry & 1756 others* (2015) eKLR, where the learned judges observed as follows:-

> "It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution."

36. Taking a cue from the above decision, I find that the Petitioner had ample time between 30th November 2023 when the impugned decision was made by the FKF Nyamira Branch and 14th February 2024 when he filed this suit, to pursue a resolution of the dispute before the forum provided for under the FKF constitution and the *Sports Act* before resorting to court action as a last resort.

37. The doctrine of constitutional avoidance requires parties to a suit to, as much as possible, avoid framing their issues as constitutional violations and to consider other avenues for redress other than the Court. The doctrine is premised on the reality that every matter that is filed in court will, more often than not, have some element of a constitutional issue such that it will be impossible to manage all the constitutional violation disputes if all the cases were to be coined as constitutional petitions.

38. *Black's Law Dictionary*, 10th Edition at page 377 defines the doctrine of constitutional avoidance as follows: -

> "The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion."

39. The doctrine was expounded by the Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others* Pet. 14A, 14B & 14C of 2014 of [2014] eKLR thus: -

> [105]. We shall now turn to the Constitutional-Avoidance Doctrine. The doctrine is at times referred to as the Constitutional-Avoidance Rule. .....
>
> [106]. The doctrine interrogates whether there are other ways of resolving a dispute outside a constitutional petition. The Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others* Pet. 14A, 14B & 14C of 2014 of [2014] eKLR held:-
>
> > [256]. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis.

40. Similarly, the South African Constitutional Court in *S vs. Mhlungu* (1995) (3) SA 867 (CC) held that he would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.

41. A perusal of the pleadings reveal that the Petitioner filed Petition of appeal marked 'LM1' before the Sports Dispute Tribunal on 6th February 2024 but withdrew it and filed a Notice of appeal before the Independent Disputes Arbitration Committee on 8th February 2024 marked 'LM3'. My finding is that the Petitioner was aware and fully appreciated the set down dispute resolution mechanisms. This means that he cannot turn back and resort to court action when the issues of his alleged wrongful removal from office as FKF Chairman Nyamira branch can properly be heard and determined by the said tribunals. By attempting to file his case before the tribunals and withdrawing the same prematurely only to belatedly come to court almost 4 months after the action he complains about happened, one gets the irresistible feeling that the Petitioner clothed his case as a constitutional petition to hoodwink the court into granting him quick orders.

42. This Court cannot participate in or facilitate the Petitioner's quest for a favourable tribunal to advance his interests. I rely on the decision in *Attorney General of Trinidad and Tobago vs. Ramanoop* (2006) 1 AC 328 where it was held thus: -

> "The explanation for the continuing misuse of this jurisdiction seems to be that the proceedings brought by way of originating motion for constitutional reliefs are less costly and lead to a speedier hearing than proceedings brought by way of writ. From an Applicant's point of view, this reason for seeking constitutional relief is eminently understandable. But this reason does not in itself furnish a sufficient ground for invoking the constitutional jurisdiction. In the ordinary course, it does not constitute a reason why the parallel remedy at law is to be regarded as inadequate. Proceedings brought by way of constitutional motion solely for this reason are a misuse of the section 14 jurisdiction.

43. Having found that the dispute herein relates to the Federation's leadership wrangles which fall within the purview of the Federation's internal dispute resolution mechanisms and tribunals, I find that the Petitioner cannot take advantage of the High Court's constitutional jurisdiction over matters by

converting purely FKF leadership wrangles into constitutional matters. I reiterate that the Petitioner should have applied the doctrine of exhaustion and adhered to the principles governing the doctrine of constitutional avoidance before approaching this Court.

44. In conclusion, I find that this Court finds that it lacks the jurisdiction to entertain the Petition and the Notice of Motion Application filed by the Petitioner as there exists other dispute resolution mechanism provided for under the FKF constitution and the *Sports Act*. I therefore find that the Preliminary Objection filed on 20th February 2024 is merited and I therefore allow it. Consequently, I strike out both the Petition and Application. I make no orders as to costs as the protagonists herein are members of the same organization.

45. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 14TH DAY OF MARCH 2024.

W. A. OKWANY

JUDGE