



REPUBLIC OF KENYA



**Kariu v Kangaita Tea Factory Ltd & 4 others (Civil Suit 4A of 2024)
[2024] KEHC 11183 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL SUIT 4A OF 2024
RM MWONGO, J
SEPTEMBER 23, 2024**

BETWEEN

GEORGE M. KARIU PLAINTIFF

AND

KANGAITA TEA FACTORY LTD 1ST DEFENDANT

KENYA TEA DEVELOPMENT AGENCY LTD 2ND DEFENDANT

TEA BOARD OF KENYA 3RD DEFENDANT

RETURNING OFFICER KANGATA TEA FACTORY LTD 4TH DEFENDANT

EZEKIEL GITHINJI MUGERA 5TH DEFENDANT

RULING

Application and Responses

1. The applicant was an unsuccessful contestant for the directorship of the 1st Respondent in the elections carried out by the 4th Defendant on 29th June 2024.
2. Dissatisfied with the result, he filed a plaint in which he alleges mismanagement of the elections, breaches of the Elections Code of Conduct, rigging and unfair and not free elections. In his plaint, he seeks, inter alia, temporary and permanent injunctions restraining the defendants from confirming the 5th respondent as a director of the 1st respondent, Kangaita Tea Factory Ltd, and an order quashing the said election results.
3. Simultaneously with the plaint, he filed the present notice of motion dated 9th July, 2024, which the subject of this ruling. In the motion, he seeks the following orders:
 1. Spent.



2. Spent.
 3. That an urgent temporary injunction order restraining the Defendants by themselves, their agents, servants, employees, proxies and/or any persons claiming under them from debating, confirming, admitting, swearing in and/or passing the 5th Defendant/Respondent as the duly elected director of Kangaita Tea Factory Ltd in Kabare Electoral area of the 1st Defendant and/or restraining the 5th Defendant from taking over or acting in any capacity of the directorship of the 1st Defendant/Respondent pending the inter parties hearing and determination of the Plaintiff/Applicant.
 4. That an order do issue for the removal of the 5th Defendants' names from the Register of person listed as for conferment as directors of the 2nd Defendant and that a declaration be issued that the 5th Defendant was not legally elected as a director in the election held on the 29th June, 2024 or in the alternative the court does direct either the 1st 2nd and 3rd Defendant or a person appointed by the court to supervise a fresh election of 1st and 2nd Defendant Director.
 5. That this Court be pleased to order an investigations and scrutiny of the ballots casted in the 5th Defendants elections and report to court within a period to be specified.
 6. That an order of temporary injunction do issue restraining the 5th Defendant from accessing and transacting any business with the 1st Defendant, either in his personal or official capacity pending the hearing and determination of this suit.
 7. That the 5th Defendants/Respondent be authorized to produce before this court all the ballot boxes of the elections held on the 29th June, 2024 for the elections of the director of Kangaita Tea factory Co.Ltd to represent Kabare electoral area.
 8. That such other and/or further orders be made and issued by this honourable Court as it may be deemed fit and just in the interest of justice.
 9. That the costs of this suit be provided for.
4. The application is based on the grounds on the face of the application and the supporting affidavit of George M. Kairu. The applicant deposed to a supporting affidavit with the following major averments:
- i. That on the 29th day of July 2024, I was among the only Two (2) candidates who were contesting for the position of directorship of the 1st Defendant herein, Kangaita Tea Factory Ltd in Kabare Electoral area.
 - ii. That during the aforesaid election the 2nd ,3rd and 4th Defendants colluded so as to conduct a flawed and sham elections so as to rig and did rig the elections in favour of the 5th Defendant.
 - iii. That the election conducted on the 29th of June 2024 were not free and fair since the same were marred by irregularities not limited to voter intimidation, bribery and rigging of elections.
 - iv. That the net effect of the flawed and rigged elections was that the 5th Defendant was declared to have won the election and he therefore subject for confirmation and eligible to be sworn in as the 5th Defendant's director of Kangaita Tea Factory Ltd in Kabare Electoral area on the 16th day of July, 2024.
 - v. That I believe that I was the one who was duly elected director if the election were free and fair of Kangaita Tea Factory Ltd in Kabare Electoral area in the aforesaid elections and if the 5th



Defendant is sworn in to office, this will be against the voters and the voters of Kabare Electoral area.

- vi. That I raised my complaint to the 5th Defendant who did not act on them and therefore I believe the returning officer presided on an election and conducted election which were not free and fair manner as demanded by the "code of conduct of the elections for smallholder tea factory companies" of 24th of June, 2024 as provided for by the 1st 2nd and 3rd Defendant failed to act on my complaint.
 - vii. That the elections conducted by the 5th Defendant breached all the election laws and regulations as demanded by the "code of conduct of the elections for small holder tea factory companies" of 24th of June 2024 as provided for by the 1st 2nd and 3rd Defendant.
 - viii. That as a result of the aforesaid rigged elections, the 5th Defendant was declared to have won the election and he is subsequently due to be sworn in as the 1st Defendant's director under Kabare Electoral area on the 16 of July 2024 to my detriment and the voters of Kabare Electoral area.
 - ix. That I'm a tea grower number KN1713 of Kabare Tea Buying centre in Kabare electoral area of Kangaita Tea Factory Co. Ltd as evidenced in annexure.
 - x. That as per the procedure, I raised a formal complaint which was received on 29th of June, 2024, but there was no reply to the same.
 - xi. That I verily belief that due process was not followed; hence the elections were not transparent, free and fair.
5. The 1st defendant/ respondent filed a Replying Affidavit on 19th July, 2024 through Wachira Kibanya its Company Secretary, with the following major averments:
1. That the application is opposed and concomitantly the jurisdiction of the court is barred by the doctrine of exhaustion.
 2. That the 2nd Defendant/Respondent called for elections for directors of small holder tea factories among them Kangaita Tea Factory and which elections were held on 29 June, 2024.
 3. That the 2nd Defendant nominated the 4th Defendant to carry out the elections for the Directors of Small Holders Tea Factories as per Section 4 of the Manual for Elections of Directors of Small Holder Tea Factories 2nd Edition June, 2024.
 4. That the 1st Defendant's/Respondent's role in the elections was only limited to declaring the position for directors vacant and they do not at any point participate in the nomination, vetting, shortlisting and Election process. The Nomination, vetting and election process is a reserve of the 4th Defendant.
 5. That the 1st Defendant role comes in after the elections having been concluded to issue a notice of a special general meeting aimed at receiving the results of directors' nominations held on the 29th June, 2024 and to confirm and admit the newly elected Directors.
 6. That the elections of the 1st Defendant's board of directors are governed by the provisions in the Memorandum and Articles of Association and subsequently the Manual for election of Directors of Small Holders Tea Factories.
 7. That since the 1st Defendant did not actively participate in the conduct of the elections of 29th June, 2024, it is a stranger to all the allegations of electoral malpractices, irregularities and or the breach of the election code of conduct as pleaded in the Plaintiff's Application and suit.



8. That the gist of the Plaintiffs Application is that the election of the 5th Defendant on 29th June 2024 was flawed and marred with irregularities and the 4th Defendant/Respondent unprocedurally declared the 5th Defendant/Respondent as the winner of the Election which is a post-election issue.
 9. That the Plaintiff has not utilized the remedies available under the Manual for Election of Directors of Small Holder Tea Factories or the Election Code of Conduct he has annexed
 10. That Section 6 of the Manual for Election of Directors of Small Holders Tea Factories establishes a dispute resolution committee to consider and determine disputes arising shortlisting of candidates, elections of directors of the tea factory and enforcement of the electoral code of conduct.
 11. That the Plaintiff's application is brought post elections and disputes arising from elections is governed by Section 8 of the Manual for Election of Directors of Small Holders Tea Factories 2nd Edition June, 2024.
 12. That this Honourable Court does not have original jurisdiction to hear this matter but rather has appellate jurisdiction of the decision of the Election Dispute Resolution Committee.
 13. That 4th Defendant declared the 5th Defendant the winner of the elections of Kabare electoral area on the 29th June, 2024. As per section 8(1) of the Election Manual the Plaintiff was required to bring a dispute to the Chairman of the Election Dispute Resolution Committee within 48 hours, he had the 1st and 2nd of July, 2024 to do so but none has been brought to my attention. He did not utilize this avenue.
 14. That the Plaintiff has not submitted to the internal dispute resolution mechanism laid out in the Election Manual 2nd Edition June 2024 after the elections and only sought to file this application in court.
6. The 5th defendant/ respondent filed a Replying Affidavit on 22nd July, 2024 with the following major averments:
1. That on 15th July, 2024 while preparing for confirmation as a director of the 1st Defendant after being duly elected on 29th June, 2024, the Order of this honourable Court was brought to my attention and I note that the Court has stopped my confirmation on the basis that the elections were conducted un-procedurally and were flawed.
 2. That in 2021, elections were held for the Tea Factory Companies as well as the KTDA Holdings Ltd throughout the country whose results essentially substantially replaced the then incumbent Directors and ushered in a new crop of directors.
 3. That the Plaintiff/Applicant was one of those voted out and replaced by the current board of directors to which I was the chairperson.
 4. That the previous regime of directors, the Petitioners herein included were however opposed to the reforms being carried out as well as the elections that took place culminating in the filing of multiple cases all of which were consolidated into Nairobi High Court Petitions No. E254 of 2020 and No. E016 of 2016.
 5. That by a Consent Decree issued by a 3-judge bench of the High Court in Nairobi Consolidated Petitions E254 of 2020 and E016 of 2021, it was decreed that small holder tea factory elections were to be held on or before the end of June 2024 to be conducted in



accordance with the respective Memorandum & Articles of Association that were in existence in October 2020 and to be overseen by the 1st Respondent.

6. That the Court's Decree forms the basis and the frame work for the elections of the 1st Respondent and all the Tea Factories in the Country.
 7. That the election of the 1st Respondent of 29th June, 2024 were conducted pursuant to the Memorandum & Articles of Association that was in place in October 2020.
 8. That I and the Plaintiff were shortlisted to vie for the position of a director to represent the Kabare area of the Kangaita Tea Factory in Kirinyaga County in the elections that were held on 29th June, 2024.
 9. That after the elections then I received the most votes for the Kabare Electoral Area and I was issued with a certificate.
 10. That as at the time I received that Court Order of 15th July, 2024 I was not aware of any dispute of the elections of 29th June, 2024 and had I received any complaint by the Plaintiff or any other person of any violation of the provisions of the Elections Code of Conduct.
 11. That Section 6 of the Manual for Election of Directors of Small Holders Tea Factories establishes a dispute resolution committee to consider and determine disputes arising from shortlisting of candidates, elections of directors of the tea factory and enforcement of the electoral code of conduct.
7. The 1st & 2nd Defendants/Respondents filed grounds of opposition dated 23rd July, 2014 and opposed the notice of motion on the following grounds:
1. That the Plaintiff has not demonstrated a prima facie case to warrant being granted the orders for injunction being sought, nor has he furnished an undertaking as to damages and the applicant can be compensated in damages.
 2. That if the orders sought are granted it will create more hardships to the 1st & 2nd Defendant than create an advantage to the Plaintiff.
 3. That an injunction should not be granted as the same would paralyze the operation of the 1st & 2nd Defendant for lack of quorum and deny the Kabare electoral area Farmers representation in the board.
8. The 3rd defendant/respondent filed a Replying Affidavit on 25th July, 2024 with the following major averments:
1. That from 2020, there were protracted disputes in the tea sector which led to litigation in the High Court in, inter alia, Nairobi High Court Petition (as Consolidated with Petition No. E243 of 2020 and Petition No. E083 of 2020) and Nairobi High Court Petition E016 of 2021 Kenya Tea Growers Association & 55 others versus the Attorney General & 24 others. The dispute in these matters concerned the ownership of Kenya Tea Development Agency (KTDA) and its subsidiaries, a challenge to the constitutionality of some of the sections of the [Tea Act](#) and the Crops (Tea Industry) Regulations, 2020, and the election of directors of the small holder tea factories.
 2. That the parties to the consolidated petitions, which included the Attorney General, the Agriculture and Food Authority (now Tea Board of Kenya), the Kenya Tea Development Agency Holdings Limited, and the smallholder tea factories resorted to mediation and reached



a consent to settle the consolidated petitions. The mediation agreement dated 2nd April, 2024 was recorded as a consent judgment/decree of the High Court on 11th April 2024.

3. That It was agreed under the Consent Order that:
 - a. Smallholder tea factories' directors' elections would be held by the end of June 2024.
 - b. The elections would be conducted as per the respective smallholder tea factories' Memorandum and Articles of Association.
 - c. The Tea Board of Kenya would oversee the elections and nominate an independent electoral management body to conduct the elections.
4. That the Court's Decree forms the basis and the framework for the elections of the 1st Defendant's directors and all the Tea Factories in the Country.
5. That Regulation 8(1) of the [Manual for Election of Directors, 2024](#) provides that an aggrieved party make a complaint concerning a dispute to the conduct of the elections in writing to the Chairman of the Election Dispute Resolution Committee within Forty-Eight (48) hours of filing the dispute.
6. That there is no evidence before this Honourable Court that such a complaint was made to the Chairman of the Election Dispute Resolution Committee by the Plaintiff.
7. That the alleged formal complaint that the Plaintiff states was received on 29th June, 2024 and marked as GKM 4 in his Supporting Affidavit has not been annexed to the application.
8. That without prejudice to the foregoing the role of the 3rd Intended Respondent was minimal as demonstrated by a copy of the [Manual for Election of Directors](#) annexed and marked "WKM2".
9. The 2nd defendant/ respondent deposed a Replying Affidavit on 25th July, 2024 with the following major averments:
 1. That I am the 4th Respondent herein, well versed with the facts of this case and duly authorized by the 2nd Defendant and hence competent to swear this affidavit.
 2. That the Independent Electoral & Boundaries Commission (IEBC) was delegated by the 1st & 2nd Defendant herein, the role of overseeing the conduct of election of directors of Kangaita Tea Factory, in Kirinyaga County.
 3. That I was nominated by IEBC and appointed by the 1st defendant to conduct and supervise the elections of the directors of Kangaita Tea Factory, which mandate I undertook successfully.
 4. That further to my Replying Affidavit sworn on 22 July 2024, I wish to state that, Contrary to the Plaintiff's allegation contained in paragraph 8 of the supporting affidavit;
 - a. The polling did commence in the presence of the appointed agents of the Plaintiff, Stanley Migwi Karubiu, who entered his names and time, at the Polling Station Diary (PSD).
 - b. The said Plaintiff's agents, Stanley Migwi, duly confirmed the polling station was opened well in time and witnessed, the sealing of the ballot boxes prior to the commencement of the polling.



- c. As was recorded by our presiding officer, Patricia Wangeci Lucy, which I verily believe to be true, there were no incidents of violence or other challenges, which were experienced in the polling stations. It is then not surprising that the Plaintiff has not substantiated nor furnished evidence of any violence committed.
5. That the Applicant has not come to court with clean hands and he is not acting in good faith, as he has conveniently failed to disclose to the court, that the plaintiff was duly represented in all the polling stations by his able agent. The Plaintiff therefore does not deserve the equitable orders sought. He who comes to court of equity must come with clean hands.
6. That by filing this suit the Plaintiff's intend maliciously to delay the 5th Defendant's confirmation despite his overwhelming success.
7. That if the orders sought are granted, it will create more hardship to the 1st & 2nd Respondent than create an advantage to the Plaintiff, in the sense that, the same would paralyze the operation of the 1st & 2nd Defendant for lack of quorum and deny, the Kabare electoral area Farmers, the crucial representation in the board.

Preliminary Objection

10. The 3rd respondent/defendant also filed a Preliminary Objection seeking to have the motion struck out or dismissed on the following grounds:
 1. The plaintiff being an aggrieved party should have made a complaint concerning a dispute on the conduct of the elections in writing to the Chairman of the Election Dispute Resolution Committee within forty-eight (48) hours of the elections carried out on 29th June 2024 as a first resort before filing the instant suit as per the provisions of Regulation 8(1) of the Manual for Election of Directors, June 2024.
 2. The application as filed is an abuse of the process of this honourable court and cannot be sustained.
11. Parties were directed to file written submissions.
12. The plaintiff did not file any submissions whatsoever, either on the preliminary objection or on the motion.

Analysis and Determination of Preliminary Objection

13. This being a preliminary objection on the failure of the applicant to exhaust established remedies, this issue must be the first issue for determination herein for the reason that, if successful, it has the potential to dispose of the entire application and or suit.
14. It is settled law that a preliminary objection ought to raise a pure point of law, it should be argued on the assumption that all the facts pleaded by the other side are correct, and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
15. This was held in the case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors* [1969] EA 696 where the Court of Appeal set out what constitutes a Preliminary Objection as follows:

“So far as I am 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. Examples are an objection to the jurisdiction of



the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

16. In the said case, Sir Charles Newbold P., stated that:

“.....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 facts pleaded by the other side are correct. It cannot be raised if any fact has 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 issues”

17. Submissions touching on the preliminary objection were as follows.

18. The 3rd defendant/respondent submitted that Regulation 13 of the Election Manual clearly provides that any complaints on the conduct of the elections ought to be made to the Returning or Presiding Officer on the same date of the elections. It was thus curious that the Plaintiff never raised any complaints on the election date only to write to the Returning Officer the following day after the elections.

19. The 2nd defendant/respondent submitted that it is not in dispute that the election was conducted on 29 June 2024. Similarly, they submit that under Regulation 13 of the Election Manuals, any complaint on the conduct of the elections ought to be made to the Returning or Presiding Officer of the polling station, on the same day of election. But in this case, the Plaintiff purports to have raised a complaint through a letter dated 30th June, 2024 addressed to the Returning Officer, the 4th Defendant.

20. Moreover, the 2nd defendant/respondent submitted that if the Plaintiff was at all aggrieved, he could have raised or referred a dispute on the conduct of election, with the chairman of the Election Dispute Resolution Committee, as provided in Regulation 8(1), of the Manual For Election of Directors 2024, which he also failed to do, within 48 hours.

21. I have carefully considered the representations on the preliminary objection.

22. In the present case it is not disputed that the contested elections were conducted on 29th June 2024; that they were overseen by the Returning Officer, the 4th Defendant/Respondent; and that the said elections were conducted under the Code of Conduct and Manual for Elections of Directors of Smallholders Tea Factories 2nd Edition June 2024.

23. The applicant in his supporting affidavit asserts at paragraph 9 that he raised a complaint on the elections with the 5th defendant/respondent who did not act thereon:

“...as demanded by the Code of Conduct of the elections for smallholder tea factories”.

24. He further asserts that he exhibited his handwritten letter of complaint which is annexed to the affidavit. It alleges that the elections were irregular and that certain actions taken during the elections rendered the exercise a police case.

25. At paragraph 10 of his affidavit he exhibited the Code of Conduct for elections, and signed the form thereof. The form is indicated at paragraph 1 to be “an annexure to the Manual for Election of Directors of smallholder tea factory companies”. Paragraphs 2 and 10 of the Code provide as follows:

“2. Tea Farmers and candidates must:



Accept the results of the election OR petition the result using the established mediation/dispute resolution committee/judicial process

.....

10. What should you do if you suspect a candidate has breached the Electoral Code of Conduct?

Notify the Returning officer of the Election Dispute Resolution Committee which has the authority to consider and determine disputes arising from the shortlisting of candidates and elections of directors of the tea factory and complaints about the infringement of this Electoral Code of Conduct”

26. Clearly, the applicant was fully aware of the fact that where a dispute arose concerning the election, the first port of call was the Election Dispute Resolution Committee. He demonstrated this awareness by writing a letter to the Returning Officer. However, he did not follow up the letter with a petition to the Election Dispute Resolution Committee despite asserting that he had the necessary evidence.

27. A perusal of the Dispute resolution Mechanism procedure contained in the Manual for Election of Directors of Smallholder Tea Factory Companies 2nd Edition 2024 discloses as follows:

“6.

- (1) There is hereby established a Dispute Resolution Committee to consider and determine disputes arising from shortlisting of candidates, elections of directors of the tea factory and enforcement of the electoral code of conduct.
- (2) The Election Dispute Resolution Committee shall comprise of three members appointed by the electoral body.
- (3) The quorum for conducting the business of the Election Dispute Resolution Committee shall be three members.
- (4) Unless a unanimous decision is reached, a decision on any matter before the committee shall be by a majority votes of the members present and voting and in the case of an equality of votes, the chairperson or person presiding over the meeting shall have a casting vote.
- (5) The Election Dispute Resolution Committee shall be appointed by the electoral body at least twenty-one (21) days prior to the date of elections.
- (6) In performance of its functions and subject to the provisions of this manual, the Election Dispute Resolution Committee shall regulate its own procedures.
- (7) The term of the Election Dispute Resolution Committee shall commence from the date of appointment up to the date of the General Meeting.

7.



- (1) A dispute arising from the shortlisting of candidates in an electoral area shall be made in writing to the Chairman of the Election Dispute Resolution Committee within twenty-four (24) hours from the date of publishing the shortlisted candidates.
- (2) The aggrieved party shall file the grounds of the dispute arising from the shortlisting together with copies of relevant documents with the Election Dispute Resolution Committee, and pay to the factory account a non-refundable fee of Kshs.5,000/= (Five Thousand).
- (3) The aggrieved party shall serve the other party (ies) and the electoral body with the particulars of the dispute arising from the shortlisting within twenty-four (24) hours of filing the dispute. Service shall be effected by hand delivery or email address or WhatsApp or to the last known postal address by prepaid recorded delivery or registered post.
- (4) The Election Dispute Resolution Committee shall within twenty -four (24) hours of receiving a dispute arising from shortlisting, give notice to the parties concerned of the date and place of hearing of the application dispute.
- (5) The Election Dispute Resolution Committee shall consider and determine the dispute arising from the shortlisting and communicate the final decision in writing to the affected parties within four (4) days of receiving the dispute arising from the shortlisting.

8.

- (1) A dispute arising from the elections held in an electoral area shall be made in writing to the Chairman of Election Dispute Resolution Committee within forty-eight (48) hours from the date of declaration of the election results.
- (2) The aggrieved party shall file the grounds of the election dispute together with copies of relevant documents with the Election Dispute Resolution Committee, and pay to the factory account a non-refundable fee of Kshs.10,000/= (Ten Thousand only).
- (3) The aggrieved party shall serve the other party (ies) and the electoral body with the particulars of the election dispute within twenty-four (24) hours of filing the dispute. Service shall be effected by hand delivery or email or WhatsApp or to the last known postal address by prepaid delivery or registered post.
- (4) The Election Dispute Resolution Committee shall within twenty-four (24) hours of receiving an election dispute give notice to the parties concerned of the date of hearing of the election dispute.



- (5) The Election Dispute Resolution Committee shall consider and determine the election dispute and communicate the final decision in writing to the affected parties within seven (7) days of receiving the electoral dispute.
- (6) Meetings of the Election Dispute Resolution Committee shall be held at the tea factory.
- (7) The tea factory shall bear the costs of the Election Dispute Resolution Committee.
- (8) The filing of an election dispute pursuant to Clause 8(1) shall not operate as a stay of the election unless the Election Dispute Resolution Committee so orders.
- (9) Any dispute arising from the election shall in the first instance be referred to the Election Dispute Resolution Committee.
- (10) Any person who is not satisfied with the decision of the Election Dispute Resolution Committee may refer the matter to the court.

28. From the above provisions, all disputes arising from pre-election shortlisting and the actual election of directors are required to be submitted to the Dispute Resolution Committee. The word used for referral of disputes is in Clauses 7 and 8 is the mandatory “shall”.

29. Indeed, Clauses 8 (9) and (10) specifically provide that dispute arising from the election shall in the first instance be referred to the Election Dispute Resolution Committee; and that, it is only a person who is not satisfied with the decision of the Election Dispute Resolution Committee that may refer the matter to court.

30. The question herein is whether, notwithstanding the provisions in the Manual, this Court can take up jurisdiction over the dispute when the same was not processed through the Dispute Resolution Committee as obligated by Clauses 6-8 of the Manual. This brings to the fore the Doctrine of exhaustion and thus whether this court has jurisdiction to determine the matter.

31. The question of jurisdiction has been held to be so central in judicial proceedings, that where a court finds it has no jurisdiction it must down its tools. There is no paucity to any authorities in this regard, although parties did not make reference to any cases. The locus classicus on jurisdiction is the case of *The owners of Motor Vessel Lilian S v Caltex Oil Kenya Ltd* (1989) KLR 1 where it was stated by Nyarangi JA:

“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.....

It is for that reason that the question of jurisdiction once raised by a party or by the court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.”



32. In Mombasa Constitutional Petition No. 159 *William Odhiambo Ramogi & 3 Ors v AG & 4 Ors, Muslim for Human Rights & 2 Ors (Interested Parties)* [2020] eKLR the High Court well explained the issue of exhaustion of administrations remedies as follows:

“ 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the *Constitution* .”

33. There are numerous authorities on the doctrine of exhaustion. See for example *Geoffrey Muthiga Kabiru & 2 Ors v Samuel Munga Henry & 1756 Ors* [2015] where the Court of Appeal stated in respect of a church dispute that:

“It is plain to see, that the Church did have [in] place a rather elaborate system for dispute resolution which the plaintiffs in the various suits ought to have had recourse to, and exhausted, before litigating in court. We concur with the learned Judge’s categorical finding in paragraph 75 of his judgment thus:

“That though the court has jurisdiction to deal with the plaintiff’s complaints it is premature as they did not strictly follow the Church Constitution providing for dispute resolution mechanisms.”

34. In Muthiga, the Court of Appeal then held:

“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 the last resort and not the part of call the moment a storm covers within churches, as is bound to happen. The exhaustion doctrine is a round one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This accords with Article 159 of the *Constitution* which commands courts to encourage alternative means of dispute resolution.”

35. In a case similar to the present case in HCCC No E002 of 2024 *James Bundi Muchiri v IEBC and Others* the applicant sought to stop the election of directors at Kimunye Tea Factory. The same question on the absence of jurisdiction due to the doctrine of exhaustion of existing remedies, arose. There, this court held as follows:

“ 42. 42. The doctrine of exhaustion applies in any scenario where either a statute or subsidiary legislation require that an internal dispute mechanism be employed; or where parties have subjected themselves by rules or by contract, or voluntarily ad hoc, to submit their disputes at the first instance to alternative mechanisms of dispute resolution, rather than to invoke litigation in courts.

43. In this regard disputes such as election related disputes required by statute to be resolved through a dispute resolution panel; or disputes such as those under



membership and church constitutions, or those under a commercial or such-like contract for mediation, arbitration or other first-instance adjudication, must first undergo resolution through the selected mechanisms before being litigated in court. This is what Article 159 of the *Constitution* envisages when it commands the courts to exercise judicial authority in compliance with the principle of promoting the use of alternative dispute resolution mechanisms”

36. In the *James Bundi Muchiri case*, (*supra*) this court concluded:

- “45. In this case, there is nothing in the evidence on record, to suggest that the exhaustion principle would not serve the values enshrined in the *Constitution*. Similarly, there is nothing on record to suggest that the applicant would lack adequate or quality audience before the forum created under the Elections Manual. Indeed, the Dispute Resolution Committee designed under the Manual would have firsthand access to all election materials and other direct relevant information to enable it discharge its determinative first instant duty extremely effectively.
46. I think I have said enough on the issue of jurisdiction and the doctrine of exhaustion. In light of all the foregoing, I find and hold that the applicant failed to utilise the Dispute Resolution Mechanism at the first instance. Accordingly, he is not entitled to litigate the dispute here, that ought to have been determined in the Dispute Resolution Committee under the Election’s Manual. In short, this court is not the correct forum with first instance jurisdiction to deal with the applicant’s dispute.
47. Having found that the court lacks jurisdiction, it must lay down its tools. Accordingly, there is no necessity to determine the second issue on whether the orders of temporary injunction lie.”

Conclusion and Disposition

37. In my view the present case must be decided on the same principles as in the Bundi case. The applicant, well aware that there was a dispute resolution mechanism for his complaint, started the process by writing a letter, but did not follow through. He failed to file a petition before the Elections Dispute Resolution Committee. Instead, he approached this court through the present suit and application
38. He is not entitled to be heard in this court as it has no jurisdiction due to the doctrine of exhaustion. Similarly, the suit cannot proceed. The court must lay down its tools.
39. The application is therefore dismissed, and the suit is rendered as a non-starter. Both are dismissed with costs.
40. Orders accordingly.

DATED AT KERUGOYA THIS 23RD DAY OF SEPTEMBER, 2024

.....

R. MWONGO

JUDGE

Delivered in the present of:



1. No representation - P.K Njiiri for Applicant/Plaintiff
2. Wahome - for 1st 4th & 5th Defendants/Respondents
3. Mahinda - for the 2nd Defendant/Respondent
4. Kabalika - holding brief for the 3rd Defendant/Respondent
5. Court Assistant, Murage

