



Phoro v Eldoret Technical Training Institute (Constitutional Petition E006 of 2023) [2024] KEHC 10974 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E006 OF 2023
JRA WANANDA, J
SEPTEMBER 20, 2024**

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 28, 31 AND 40 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

CATHERINE PHORO PETITIONER

AND

ELDORET TECHNICAL TRAINING INSTITUTE RESPONDENT

RULING

1. This is a Ruling on a Preliminary Objection raised on the issue of jurisdiction
2. The Preliminary Objection was filed in response to the Petition dated 5/06/2023 and filed herein through Messrs Solonka & Co. Advocates, and which seeks orders as follows:
 - i. A Declaration that the Respondent violated the Petitioner's fundamental rights to privacy under Article 31 of *the Constitution* by publishing her image for purposes of commercial advertisement without the Petitioner's express consent.
 - ii. A Declaration that the Respondent violated the Petitioner's fundamental rights to dignity under Article 28 of *the Constitution* by publishing her image for purposes of commercial advertisement without the Petitioner's express consent.
 - iii. A Declaration that the Petitioner's intellectual property rights, right of publicity and personality rights was infringed when the Respondent published the Petitioner's image in advertising and marketing to solicit for students without seeking authority from the Petitioner.
 - iv. A Permanent Injunction be issued restraining the Respondent from publishing and/or using the Petitioner's image or likeness in its advertisement without express consent from the Petitioner.



- v. General damages
 - vi. Costs of this Petition.
 - vii. Any other or further relief as this Honourable Court may deem fit to grant
3. The Petition is supported by the Affidavit sworn by the Petitioner, Catherine Phoro.
 4. The Petitioner pleaded that in or about the month of October 2021 to February 2023, the Respondent published her image on its website and social media pages whereby it was advertising its courses and inviting prospective applicants to join its institution for various courses, and that the advertising and marketing using her images has gone on for more than a year and has received thousands of views and social media interaction thereby giving the Respondent immense financial benefit and advantage. She pleaded further that in or about February 2023, she received calls from friends inquiring whether she was a student of the Respondent and why she decided to pursue technical training in Eldoret since they had seen her on the social media pages of the Respondent, that as a result of the calls, she logged into the social media pages of the Respondent and saw her images published without her consent whatsoever and that the publication had attracted thousands of views. She deponed further that on 8/02/2023, she wrote an email to the Respondent asking why they had published her images without her consent and advised that she would be consulting her lawyer to pursue legal action, that on the same date, the Respondent replied apologizing to her and advised that it was launching an investigation but however, the Respondent remained silent on the issue of compensating her. She contended further that to date, the Respondent has never gotten back to her and that this prompted her to instruct her Advocates to write a demand notice to the Respondent.
 5. The Petitioner deponed further that the Respondent has exploited her image to gain commercially and in tandem, has violated her right to privacy and right to control and make money from the commercial use of her identity, and that the said actions have subjected her to psychological anguish because the society, peers, associates, family, business partners and affiliates perceive her to have studied and/or graduated from the Respondent Institute having featured on the Respondent's website and social media pages. Further, she contended that people perceive her to have been untruthful of her alma mater and therefore damaging her reputation. As particulars of injuries, she listed emotional distress, anxiety and a sense of violation, damage to reputation that has affected her personal and professional relationships, and economic loss which has occasioned her financial gain due to the use of her image

Preliminary Objection

6. The Respondent, in opposing the Petition, filed a Notice of Preliminary Objection on 30/01/2024 through Messrs Litoro & Omwebu Advocates. It was averred that Section 56 and 57 of the [*Data Protection Act, 2019*](#) provides that any party aggrieved with any decision or actions of a person under the said Act should first make a complaint to the Commissioner either orally or in writing, that the Petitioner failed to make any such complaint and hence has not exhausted all the available alternative dispute resolution mechanism provided under the said Act, read together with Article 159(2)(c) of [*the Constitution*](#) as held in the case of *William Odhiambo Ramogi & 3 Others v AG and 4 Others, Muslim Human Rights & 2 Others* [2020] eKLR. It was further contended that this Court ought in the circumstances, to exercise restraint to hear and determine this matter since there is a clear procedure of redress on the grievances raised by the Petitioner as held in the case of *Kibos Distillers Limited & 4 Others v Benson Ambuti Adega & 3 Others* [2020] eKLR. According to the Respondent therefore, the Petition is incompetent.



Petitioner's Supplementary Affidavit

7. In response to the Preliminary Objection, the Petitioner swore the Supplementary Affidavit filed on 15/02/2024. She deponed that she did lodge a complaint with the office of the Data Protection Commissioner and that upon being requested, through her Advocates, she supplied supporting documentation to the office through the link given and that she is now awaiting the decision of the Data Commissioner. She deponed further that her claim revolves not only on her data privacy rights but also her right to human dignity under Article 28 of [the Constitution](#) in respect to which this Court has the sole and original jurisdiction.

Hearing of the Preliminary Objection

8. The Preliminary Objection was then canvassed by way of written Submissions. The Petitioner filed her Submissions on 15/02/2024 while the Respondent filed on 1/03/2024.

Petitioner's Submissions

9. Counsel for the Petitioner submitted that there has been a jurisprudential shift in the recent past year with regard to privacy rights under Article 31 of [the Constitution](#), and that even before filing of this suit, claims around breach of Article 31 aforesaid used to be settled vide the unlimited original jurisdiction of the High Court under Article 165. He cited cases, which he submitted, were decided subsequent to the enactment of the Data Protection Act in 2019, namely, *Joel Mutuma Kirimi & Another v National Hospital Insurance Fund (NHIF)* [2020] eKLR and also *Wanjiru v Machakos University (Petition E021 of 2021)* [2022] KEHC 10599 (KLR) 3 August 2022). He submitted further that since the enactment of the Data Protection [Act, No. 24 of 2019](#) and since the year 2023, the High Court has shifted its position and, has on several occasions, insisted that parties exhaust local remedies first to wit the Office of the Data Commissioner before lodging a claim in the High Court.
10. Counsel therefore submitted that in aiding justice, he accedes to the legal position but that however, the Court ought to stay these proceedings pending the outcome of the determination by the Data Protection Commissioner of the claim on breach of privacy of Article 31 of [the Constitution](#), that the Court can thereafter determine substantively the issues raised in the Petition which not only involve breach of Article 31, but also Article 28 on the right to human dignity and constitutional defamation. He submitted that this was the position adopted by Hon. Mrima J in the case of *Kweri v Beehive Media Limited; Capwel Industries Limited (Interested Party) (Constitutional and Human Rights)* (31 March 2023) (Judgment) whose facts, he submitted, were similar to the instant case. According to him, the prayer that the suit be struck out is wholly without basis and is merely aimed at frustrating the Petitioner's claim and that it is crucial to note that this Court has the moral and obligation to let substantive justice prevail. He submitted further that the Petition is competent and that it raises multi-faceted issues that cannot be determined by the Office of the Data Protection Commissioner to wit issues surrounding Article 28 of [the Constitution](#). In conclusion, he prayed that this Court exercises restraint and postpones its consideration of the matters in the Petition so as to accord the dispute to be dealt with, in the first instance, under the Data Protection Act.

Respondent's Submissions

11. On his part, Counsel for the Respondent referred to the oft-cited case of *Mukisa Biscuit v West End* [1969] EA 696 and submitted that the Preliminary Objection herein raises a pure point of law on the issue of jurisdiction. He reiterated that the forum within which this matter ought to have been lodged is before the Commissioner as prescribed under Section 56 and 57 of the [Data Protection Act](#),



2019. On the issue of jurisdiction, he cited the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & Another [2012] eKLR and on the requirement to exhaust alternative dispute resolution mechanism, he cited the case of William Odhiambo Ramogi (supra). He pointed out that although the Petitioner alleged that her Advocate, upon her instructions, lodged a complaint with the Data Protection Commissioner, the email printout exhibited does not bear the date of the complaint and that no documentation to prove existence of the alleged complaint has been produced.

12. Counsel submitted further that, be that as it may, the Petitioner cannot purport to have both matters proceed concurrently, one before the Data Protection Act and another before this Court. He cited the case of Kibos Distillers Limited & 4 Others v Benson Ambuti Adega & 3 Others [2020]. He contended further that the jurisdiction of this Court is appellate as opposed to original, that the matter cannot proceed as is since all the available statutory forum has not been exhausted, and that pleadings cannot be crafted to fit jurisdiction which is essentially the case when the Petitioner argues that some issues need determination by this Court whilst others before the Data Protection Commissioner. He cited the case of Nairobi ELCLC Case No. E011 of 2023, Shamin Akter Hosein & 2 Others vs Taroq Nazir Ahmed & 9 Others and argued further that the Petitioner has admitted that the matter should first be determined by the Commissioner and that since it has been demonstrated that this Court does not have jurisdiction to determine the matter at this stage, then the only way is to down its tools. He cited the case of Geoffrey Muthiga Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR.

Determination

13. The issue for determination herein is “whether this Court should strike out this Petition on the ground that the prescribed dispute resolution mechanism has not been exhausted”.
14. The law pertaining to Preliminary Objections was well set out in the locus classicus case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969 EA 696, in which the Court of Appeal for Eastern Africa, (Law JA) stated 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. Examples are an objection to the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
15. In the same case, Sir Charles Newbold, President of the Court added as follows:
“a Preliminary Objection cannot be said to be such if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
16. In this matter, the objection raised is in respect to jurisdiction and, correctly in my view, no challenge has been raised on the suitability of the same having been brought as a Preliminary Objection.
17. The Petition herein is brought basically on the grounds of (i) breach of the right to privacy as provided under Article 31 of *the Constitution*, and (ii) breach of the right to human dignity as provided under Article 28.
18. Regarding the limb of the claim based on breach of the right to privacy, the *Data Protection Act, 2019* was enacted to give effect to Article 31 above which provides as follows
“31. Every person has the right to privacy, which includes the right not to have—
(a) their person, home or property searched;



- (b) their possessions seized;
- (c) information relating to their family or private affairs unnecessarily required or revealed; or
- (d) the privacy of their communications infringed.

19. The Petitioner has conceded that indeed there exists an alternative remedy under Sections 56, 64 and 65 of the [Data Protection Act, 2019](#). The same provide as follows:



“56.

Complaints to the Data Commissioner

(1)	A data subject who is aggrieved by a decision of any person under this Act may lodge a complaint with the Data Commissioner in accordance with this Act.
(2)	A person who intends to lodge a complaint under this Act shall do so orally or in writing.
(3)	Where a complaint made under subclause (1) is made orally, the Data Commissioner shall cause the complaint to be recorded in writing and the complaint shall be dealt with in accordance with such procedures as the Data Commissioner may prescribe.
(4)	A complaint lodged under subclause (1) shall contain such particulars as the Data Commissioner may prescribe.
(5)	A complaint made to the Data Commissioner shall be investigated and



	concluded within ninety days.”
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(4)	A complaint lodged under subclause (1) shall contain such particulars as the Data Commissioner may prescribe.
(5)	A complaint made to the Data Commissioner shall be investigated and concluded within ninety days.”
“64.	<p>Right of appeal</p> <p>“A person against whom any administrative action is taken by the Data Commissioner, including in enforcement and penalty notices, may appeal to the High Court.”</p> <p>65(1). A person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or data processor”</p>

20. There is also Regulation 23 of the Data Protection (Civil Registration) Regulations, 2020 which provides as follows:

“23. Internal complaints handling procedure.



(1)	Where a data subject is aggrieved by the processing of their personal data, the data subject may lodge a complaint with the civil registration entity.
(2)	A complaint made under paragraph (1) may be made orally or in writing.



(3)	A civil registration entity shall reduce an oral complaint into writing and shall be executed by the complainant.										
(4)	<p>A complaint by a data subject may provide—</p> <table border="1" data-bbox="603 533 842 2002"> <tr> <td data-bbox="603 533 683 947">(a)</td> <td data-bbox="683 533 842 947">the full name of the data subject lodging the complaint;</td> </tr> <tr> <td data-bbox="603 947 683 1211">(b)</td> <td data-bbox="683 947 842 1211">contact details of the data subject;</td> </tr> <tr> <td data-bbox="603 1211 683 1429">(c)</td> <td data-bbox="683 1211 842 1429">details of the complaint;</td> </tr> <tr> <td data-bbox="603 1429 683 1771">(d)</td> <td data-bbox="683 1429 842 1771">period over which the suspected wrongdoing occurred; or</td> </tr> <tr> <td data-bbox="603 1771 683 2002">(e)</td> <td data-bbox="683 1771 842 2002">documentary evidence in support of</td> </tr> </table>	(a)	the full name of the data subject lodging the complaint;	(b)	contact details of the data subject;	(c)	details of the complaint;	(d)	period over which the suspected wrongdoing occurred; or	(e)	documentary evidence in support of
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(d)		period over which the suspected wrongdoing occurred; or
(e)	documentary evidence in support of the complaint where available.	
(5)	The civil registration entity shall investigate the complaint and notify the data subject of the investigation outcome in writing within seven days from the date of completion of the investigation and any action taken where the complaint has been upheld.	
(6)	The civil registration entity shall inform the data subject of the right to appeal to the Data Commissioner, where the data subject is dissatisfied with the decision of the civil registration entity.”	

21. The requirement for exhaustion of available dispute resolutions before invoking the Court process was restated in the case of *William Odhiambo Ramogi & 3 Others vs AG and 4 Others, Muslim Human Rights & 2 Others* [2020] eKLR by a 5- judge bench as follows:

“ 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of



judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court opined thus:

42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

43. While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR, where the Court of Appeal stated that:

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

22. In this case, since clearly the Data Protection Act and the Regulations made thereunder not only provide for mechanisms for resolution of disputes but also prescribe remedies to address any violation of the Act or threat thereof, the jurisdiction of this Court cannot be invoked as the first port of call. Its jurisdiction only arises at the appellate stage. The Petitioner has not alleged that she sought the Court’s leave for exemption from exhausting the dispute resolution mechanisms available or that the prescribed mechanism is not efficacious or that there are any “exceptional circumstances” that would entitle her to sidestep such prescribed resolution mechanisms. Consequently, I do not hesitate to find that the limb of the claim herein based on breach of the right to privacy under Article 31 of *the Constitution* contravenes the principle of exhaustion of alternative or available dispute resolution mechanisms prescribed by law.
23. As aforesaid, the Petitioner’s Counsel has conceded to the above legal position. He has however urged the Court to, rather than strike out this Petition, stay these proceedings pending the outcome of the determination by the Data Protection Commissioner of the claim for breach of the right to privacy under Article 31 of *the Constitution* and that the Court can still proceed to determine the claim brought



under Article 28 on breach of the Petitioner’s right to human dignity. He submitted that the Petition raises multi-faceted issues that cannot be determined by the Data Protection Commissioner, namely, issues surrounding Article 28. He submitted that this was the position adopted by Hon. Mrima J in the case of *Kweri v Beehive Media Limited; Capwel Industries Limited (Interested Party) (Constitutional and Human Rights)* (31 March 2023) (Judgment) and urged this Court to follow the same reasoning.

24. In determining whether to sever the claim herein and stay the proceedings of one limb of the claim while allowing another limb to proceed for hearing, I must state that I am aware that even where there are alternative avenues prescribed for in dispute resolutions, the Court has the power, where good grounds exist, to postpone judicial consideration of such disputes until after the available avenues are fully exhausted or adhered to. In this case however, it is clear that although two alleged distinct grounds have been presented, namely, violation of the right of privacy under Article 31 and violation of the right to human dignity under Article 28, looked at closely, it is evident that the facts pleaded in support of both alleged grounds and the legal arguments in support of both and even the prayers sought are exactly the same and common to both. Severing the two claims and purporting to separate hearing and determinations thereof would therefore clearly mean that the one and same claim will be handled concurrently before two different fora. It is clear that once the claim citing breach of the privacy rights under Article 31 is isolated, heard and determined, nothing substantively different will remain for determination under the claim for violation of the right to human dignity under Article 28, but exactly the same claim as originally. I am therefore satisfied that although the claim for breach of the right to human dignity has been raised, all issues in connection thereto can be adequately and conclusively dealt with and remedied under the claim of breach of violation of the Petitioner’s right to privacy by the office of the Data Protection Commissioner.
25. In reaching the above finding, I am fortified by the statement made by A-Makhandia JA in the Court of Appeal case of *Kibos Distillers Limited & 4 others v Benson Ambuti Adegwa & 3 Others* [2020] eKLR in which he pronounced himself as follows:

“To this extent, I find that the learned judge erred in law in finding that the ELC had jurisdiction simply because some of the prayers in the petition were outside the jurisdiction of the Tribunal or National Environmental Complaints Committee. A party or litigant cannot be allowed to confer jurisdiction on a court or to oust jurisdiction of a competent organ through the art and craft of drafting of pleadings. Even if a court has original jurisdiction, the concept of original jurisdiction does not operate to oust the jurisdiction of other competent organs that have legislatively been mandated to hear and determine a dispute. Original jurisdiction is not an ouster clause that ousts the jurisdiction of other competent organs. Neither is original jurisdiction an inclusive clause that confers jurisdiction on a court or body to hear and determine all and sundry disputes. Original jurisdiction simply means the jurisdiction to hear specifically constitutional or legislatively delineated disputes of law and fact at first instance. To this end, I reiterate and affirm the dicta that in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR where it was stated that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.

Further, I observe that the jurisdiction of the ELC is appellate under Section 130 of EMCA. The ELC also has appellate jurisdiction under Sections 15, 19 and 38 of the Physical Planning Act. An original jurisdiction is not an appellate jurisdiction. A court with original jurisdiction in some matters and appellate jurisdiction in others cannot by virtue of its



appellate jurisdiction usurp original jurisdiction of other competent organs. I note that original jurisdiction is not the same thing as unlimited jurisdiction.

A court cannot arrogate itself an original jurisdiction simply because claims and prayers in a petition are multifaceted. The concept of multifaceted claim is not a legally recognized mode for conferment of jurisdiction to any court or statutory body.

In addition, Section 129 (3) of EMCA confers power upon the NET to inter alia exercise any power which could have been exercised by NEMA or make such other order as it may deem fit. The provisions of Section 129 (3) of EMCA is an all-encompassing provision that confers at first instance jurisdiction upon the Tribunal to consider the prayer Nos. 1, 7, 8, 9 and 10 in the petition. It was never the intention of *the Constitution* makers or legislature that simply because a party has alleged violation of a constitutional right, the jurisdiction of any and all Tribunals must be ousted thereby conferring jurisdiction at first instance to the ELC or High Court. [Emphasis mine]

26. Granted, each case is to be determined on the basis of its unique facts. However, on the unique facts and circumstances of this case, it is my conclusion that accepting the Petitioner's plea to stay one limb of the claim herein on the ground of lack of jurisdiction and refer it to the Data Commissioner and, on the other hand, retaining the second limb of the claim for hearing before this Court, will be tantamount to allowing the Petitioner to confer jurisdiction on this Court or to oust jurisdiction of a competent organ, through "the art and craft of drafting of pleadings".
27. Also notable is the decision of Hon. Ngenye-Kariuki J in the case of *Mwangi & another v Naivasha County Hotel t/a Sawela Lodges (Petition E003 of 2021)* (the Petition) in which she declined to entertain a Constitutional Petition which, like herein, alleged violation of the right to privacy. The Judge ruled that the Petition could not be admitted before exhaustion of the dispute resolution mechanism prescribed under the Data Protection Act.
28. I also cite the case of *CNM v WMG [2018] eKLR* where Mativo J (as he then was) held that:

"Courts abhor the practice of parties converting every issue into a constitutional question and filing suits disguised as constitutional Petitions when in fact they do not fall anywhere close to violation to constitutional Rights."
29. Similarly, in the case of *Uhuru Muigai Kenyatta v Nairobi Star Publications Limited [2013] eKLR*, Lenaola J (as he then was) held as follows:

"I need say no more. Where there is a remedy in Civil Law, a party should pursue that remedy and I say so well aware of the decision in *Haco Industries* (supra) where the converse may have been expressed as the position. My mind is clear however that not every ill in society should attract a constitutional sanction and as stated in *AG vs S.K. Dutambala Cr. Appeal No.37 of 1991* (Tanzanian Court of Appeal), such sanctions should be reserved for appropriate and really serious occasions."
30. Further, I agree with the Respondent's Counsel that although the Petitioner has alleged that she lodged a complaint with the Data Protection Commissioner and that she has thus initiated or invoked the prescribed dispute resolution mechanism, the email printout exhibited does not even bear the date that it was purportedly sent. There is also no documentation of any kind presented to demonstrate the existence of the complaint lodged nor has even the case or complaint number been disclosed. The alleged email from the Data Protection Commissioner said to have been received in response to the complaint lodged has also not been exhibited. There is therefore no proof at all that any complaint has



been lodged with the Data Protection Commissioner. If such case exists, there is also no disclosure on how far it has gone or the status thereof. For this Court to determine and make an informed decision on whether to sever the two claims and/or stay one in favour of the other, all the above facts would be relevant and would need to be taken into account. It was therefore incumbent upon the Petitioner to disclose and/or supply all such information. The Petitioner, by failing to supply such information, has denied this Court material facts and her prayers for severing of the claims cannot therefore succeed.

31. To the above extent, I find the facts and circumstances before Hon. Mrima J in the case of Kweri v Beehive Media Limited to be easily distinguishable from the facts herein.
32. In any event, I find it strange that the Petitioner would commence a case before the Data Protection Commissioner and before such case could be heard and determined, also separately proceed to concurrently commence another action before the High Court on the very same facts and seeking, basically, the same prayers. This, in my view, amounts to forum shopping and by extension, an abuse of the judicial process which conduct cannot be countenanced or condoned by the Court.

Final Orders

33. In the premises, I order as follows:
 - i. The Respondent's Preliminary Objection dated 29/01/2024 is allowed. Consequently, the Petition herein dated 5/06/2023 is hereby struck out.
 - ii. The Petitioner is at liberty to pursue or proceed with her complaint before the office of the Data Protection Commissioner as prescribed under the [Data Protection Act, 2019](#)
 - iii. Since the Respondent has not, at least as yet, denied that it used the Petitioner's image without her consent, each party shall bear own costs of this matter.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF SEPTEMBER 2024

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Chacha h/b for Pareno for Petitioner

Litoro for Respondent

Court Assistant: Brian Kimathi

