



**Araka v Chief Magistrates' Court at Keroka & another; Nyasani & 4 others (Interested Parties)
(Judicial Review E008 of 2024) [2025] KEHC 13330 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
JUDICIAL REVIEW E008 OF 2024
WA OKWANY, J
SEPTEMBER 18, 2025**

BETWEEN

THOMASMONG'ARE ARAKA EX PARTE APPLICANT

AND

THE CHIEF MAGISTRATES' COURT AT KEROKA 1ST RESPONDENT

FOOTBALL KENYA FEDERATION, ELECTORAL BOARD . 2ND RESPONDENT

AND

VINCENT MEROKA NYASANI INTERESTED PARTY

INNOCENT NYAMBANE MAYAKA INTERESTED PARTY

RICHARD MABUKA OBERO INTERESTED PARTY

JOSEPHAT MOMANYI GICHANA INTERESTED PARTY

YVONNE REMA KERUBO INTERESTED PARTY

JUDGMENT

1. Thomas Mong'are Araka, the ex-parte applicant herein filed the instant Judicial Review application seeking several orders against the Chief Magistrate Court at Keroka and the Football Kenya Federation (FKF) Electoral Board over the annulment of FKF Nyamira County elections held on 14th November 2024. He seeks declarations that the 1st Respondent's ex-parte order, cancelling the elections, was issued without jurisdiction and in violation of constitutional provisions on fair administrative action, natural justice, and the rule of law. He also seeks declarations that the 2nd Respondent acted illegally and unfairly by excluding Nyamira County results from the national election record. He further applies for orders of certiorari to quash the impugned orders and related circulars, orders of prohibition to stop the enforcement of those decisions, and orders of mandamus to compel the release of Nyamira County's election results and inclusion of its chairman in the list of National Delegates.



2. The 1st Respondent did not enter appearance or oppose the application while the 2nd Respondent opposed the Application through the Replying Affidavit dated 18th February 2025 sworn by Dr. Hesbon Owila. The said Replying Affidavit was however expunged from the court record in a ruling delivered on 19th June 2025 wherein the 2nd Respondent was granted leave to file and serve a fresh Replying Affidavit sworn by Mr. Harold Ndege, the CEO/General Secretary of the Football Kenya Federation.
3. Mr. Ndege asserts that no elections were conducted in Nyamira County on 14th November 2024 under the 2nd Respondent's authority, and that if any occurred, they were irregular, lacking sanction, oversight, or approval. He explains that although the FKF did not agree with the Chief Magistrate's Court order of 8th November 2024 suspending the elections, it was legally bound to comply and subsequently filed a Preliminary Objection challenging jurisdiction. He maintains the 2nd Respondent acted lawfully and within its mandate by declining to recognize results from an unsanctioned process, and did not exclude Nyamira County from the National Delegate List. Ndege concludes that the application is baseless as no valid election occurred, noting that Dr. Hesbon Owila, former FKF Electoral Board Chair, resigned on 27th December 2024 and no longer represents the 2nd Respondent. He urges the court to dismiss the application with costs.
4. The Application was canvassed by way of written submissions, which I have considered.
5. A summary of the Ex-Parte Applicant's submissions were that that the 1st Respondent unlawfully and without jurisdiction called off elections scheduled for 9th November 2024 through an ex-parte order, contrary to the FKF Constitution and principles of natural justice, fair hearing, and procedural fairness. It was submitted that the Keroka Magistrate's Court lacked jurisdiction since electoral disputes should first be resolved through FKF's internal dispute resolution mechanisms, including the Independent Electoral Board, the FKF Appeals Committee, and arbitration under the *Sports Act*.
6. The Ex-Parte Applicant further submitted that elections were validly held on 14th November 2024 in Nyamira County where winners were declared and results communicated, but that the 2nd Respondent later excluded these results from the national record and marked them as "called off" without notifying participants or giving reasons. This, they argued, was illegal, unreasonable, and violated Articles 25, 27, 47, and 50 of the Kenyan Constitution.
7. The Applicant seeks orders to quash the impugned decisions of 8th, 19th, 23rd, and 25th November 2024, prohibit further exclusion of Nyamira County from national delegate lists, and to compel release of the election results including the chairman-elect, Mr. Vincent Nyasani, in time for the upcoming FKF National Elections.
8. The Applicant urged the court to uphold internal dispute resolution principles and set aside the unlawful decisions.
9. The 2nd Respondent, on its part, identified the key issues for determination to be; whether valid FKF Nyamira County elections took place on 14th November 2024, whether the 2nd Respondent acted within its mandate and court orders, whether the Interested Parties had grounds for joinder and relief, and whether judicial review remedies were available.
10. The 2nd Respondent maintained that no valid elections occurred on 14th November 2024, as it neither authorized nor oversaw them, and that they were held in defiance of a subsisting court order issued by the Chief Magistrate's Court at Keroka on 8th November 2024 suspending the polls. Citing legal precedents, the 2nd Respondent stressed that court orders must be obeyed regardless of agreement, and that disobedience would have amounted to contempt.



11. It was submitted that the claim of exclusion from national elections is misleading, as the decision not to proceed was deference to judicial authority, not exclusion. The 2nd Respondent faulted the Interested Parties for participating in an unlawful process. The 2nd Respondent invoked the doctrine that no rights can arise from illegality.
12. The 2nd Respondent cited the decision in *Municipal Council of Mombasa vs. Umoja Consultants Ltd* [2002] eKLR for the argument that judicial review concerns the process and not the merits of the decision, and added that no material was presented to show that it acted beyond its powers or breached duty. It was the 2nd Respondent's case that the alleged elections were illegal, the application defective and an abuse of process. The 2nd Respondent urged the court to dismiss the Motion with costs.
13. The 6th to 53rd Interested Parties submissions addressed the issues of whether the decisions by the 1st and 2nd respondents to halt and exclude the FKF Nyamira County election results, as well as to withhold its chairman-elect from the national delegates list, were unlawful, ultra vires, procedurally improper, and in violation of Articles 25, 27, 47, and 50 of *the Constitution* of Kenya 2010. They argued that the orders issued by the Keroka Magistrate's Court on 8th November 2024 halting elections scheduled for 9th November 2024 were never served, lacked proper affidavit of service, and were obtained in secrecy, thus rendering them a nullity ab initio.
14. They maintained that elections were duly held on 14th November 2024 under the full oversight of the FKF Electoral Board, which provided all materials, selected and paid officers, and managed logistics. They emphasized that even the Sports Registrar denied being served with any such orders, and that the FKF Board's chairman, Dr. Hesborn Owilla, confirmed under oath, that no service occurred before the elections. They argued that the Respondents' actions, including pulling down results on 19th November 2024 without notice or hearing, violated principles of natural justice and good governance.
15. They stressed that the Keroka Magistrate's Court lacked jurisdiction over sports disputes, as per Articles 69(6)(7), 59, 65, and 70 of the FKF Constitution (2017) and Section 58 of the *Sports Act* No. 25 of 2013, which mandate exhaustion of internal mechanisms and appeals to the Sports Disputes Tribunal. They cited several authorities including *Republic vs. Kenya National Examinations Council; Ex-parte Gathenji & Others* (Civil Appeal No. 266 of 1996), affirming that orders of certiorari issue where decisions are made without or in excess of jurisdiction or contrary to natural justice;
16. They cited several authorities including; *Owners of Motor Vessel "Lilian S" vs. Caltex Oil Kenya Ltd* (1989) eKLR, establishing that jurisdiction is everything; *Samson Cherop vs. Nick Mwendwa & 3 Others* (SDTSC PET NO.E016 OF 2023), affirming the requirement to exhaust internal FKF remedies; *Godfrey Osotsi vs. Amani National Congress* (2019) eKLR and *Speaker of the National Assembly v James Njenga Karume* (1992) eKLR, underscoring that where the law prescribes a special procedure, it must be strictly followed; and *Andrew Thiwa Muthuku vs. Court of Appeal & 3 Others* (2021) eKLR, reinforcing the right to be heard as a core tenet of natural justice.
17. The Interested Parties further emphasized that FKF, as a public body under the *Sports Act*, is bound to follow its constitution and principles of fairness, and that no notice was ever given to winners or voters before the results were nullified.
18. The Interested Parties argued that the FKF Electoral Board acted illegally, unreasonably, unfairly, and in contravention of Articles 10, 25, 27, 47, and 50 of *the Constitution* of Kenya 2010 when it removed and excluded Nyamira County from the list of FKF national delegates and called off election results for the 14th November 2024 polls, despite having itself organized, overseen, and paid for the process. They stressed that the elections were conducted in line with Article 81 of *the Constitution*—being free, fair,



impartial, and transparent—yet the Board failed to provide reasons or notice, violating the principles of participation, non-discrimination, good governance, and accountability.

19. They noted that the results were never contested before the FKF Appeals Committee or Sports Disputes Tribunal within the 30-day statutory limit under the *Sports Act* (2013) and Sports Registrar Regulations (2016), thus were valid. They noted that the orders halting elections, issued ex parte by the Keroka Magistrate’s Court on 8th November 2024, were never served on stakeholders, lacked an affidavit of service, and were issued without jurisdiction, as disputes ought to have been addressed through FKF’s internal mechanisms per Articles 69, 59, 65, and 70 of the FKF Constitution (2017) and Section 58 of the *Sports Act*.
20. The Interested Parties further accused the 1st respondent of abusing process, bypassing specialized dispute resolution channels, and even initiating contempt proceedings and warrants of arrest against election officials and the chairman-elect without affording them a hearing. They cited Owners of Motor Vessel “Lilian S” vs. Caltex Oil Kenya Ltd (1989) eKLR and Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 Others (2012) eKLR on jurisdiction, emphasizing that acts without jurisdiction are nullities. They also relied on Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others (1997) eKLR to argue that prohibition orders prevent contemplated unlawful acts, not already-made decisions; Re Poyser and Mills Arbitration (1964) 2 QB 467 on the need for intelligible reasons; and Andrew Thitwa Muthuku vs. Court of Appeal & 3 Others (2021) eKLR on the right to be heard.
21. They contended that the High Court, under Article 165 of *the Constitution*, has supervisory and corrective jurisdiction to issue orders of mandamus compelling release of Nyamira’s results, as no other adequate remedy exists, with their petition to the FKF Appeals Committee on 25th November 2024 having been frustrated by procedural irregularities at Keroka. They pray for the quashing of the impugned decisions and orders prohibiting the respondents from further unlawful interference.
22. The Interested Parties argued that without an order of mandamus compelling the 2nd Respondent, the FKF Electoral Board, to release the Nyamira County election results from 14th November 2024, they and other interested parties will face extreme prejudice, as their sovereign authority will be undermined, Nyamira excluded from FKF programs for four years, and delegates’ investments in campaigns wasted. They framed the dispute as a matter of public interest, noting that the affected delegates represent 87% of registered voters in the county.
23. Citing several legal authorities, including Shah vs. Attorney General (Uganda) Kampala HCMC No. 31 of 1969 (1970) E.A. 543, Regina vs. Dudsheath, ex-parte Meridith (1950) 2 ALLER 741, Republic vs. Town Clerk, Kisumu Municipality, exparte East African Engineering Consultants (2007) 2 E.A. 441, and Republic vs. Attorney General ex parte Koroso (2013) KEHC 90 (eKLR), they stressed that mandamus is a public duty remedy used when no specific or effective alternative exists. They also referred to a recent Machakos High Court ruling in Dick Okinyi & Naftali Aseka vs. Sports Disputes Tribunal HCJR/E040/2024, where an order compelled FKF to reinstate a football club, as a parallel. They urged the court to exercise its discretionary powers to compel FKF to release the Nyamira results and include chairman-elect Vincent Nyasani in the national delegates list so as to ensure equal treatment with other counties.
24. The 6th to 53rd Interested Parties filed further submissions to address/clarify issues raised by the 2nd respondent, the FKF Electoral Board, in submissions dated 8th July 2025. They challenge the 2nd respondent’s claim that no valid elections were held in Nyamira County on 14th November 2024, asserting instead that the FKF Electoral Board fully organized, approved, and presided over those elections. They provided a chronological account from 12th to 14th November 2024, including



issuance of election notices, press statements, security requests to the OCS Gachuba Police Station, deployment of returning and presiding officers, printing and delivery of materials, accreditation of officers, declaration and submission of results, and payment to election officials. They argue that results were only removed from the portal after contempt proceedings began, without explanation.

25. It was submitted that the FKF Electoral Board's actions up to and during the elections, and the absence of any notice stopping them, demonstrate full participation and authorization. They argued that claims to the contrary stem from the new FKF CEO/General Secretary, Harold Ndege, who took office in February 2025, after the elections, and thus lacked first-hand knowledge. They highlighted that the previous board and commissioners never denied the elections took place, citing the FKF constitution (2017), *Sports Act* (2013), and Sports Registrar Regulations (2016).
26. They contended that purported orders from the Keroka court dated 8th November 2024 were issued ex parte, were never served, and referred to halting elections on 9th November 2024, not the 14th, making them ambiguous and unenforceable. They relied on the authority of *Sang vs. Keter & 5 others* (E010 OF 2023, 2024 eKLR) and *Samuel M.N. Mweru & others v. National Land Commission & 2 others* (2020 eKLR), emphasizing that for contempt to succeed, orders must be clear, served, known, and breached, which they argued, did not occur.
27. The interested parties asserted that the returning and presiding officers acted under the direct authority of the FKF Electoral Board, and that the 2nd respondent acted outside its mandate by calling off results thereby violating principles of natural justice and the Kenyan Constitution (Articles 10, 47, and 50(1)). They rejected the 2nd respondent's new claims as unsubstantiated and unsupported by evidence, invoking section 107(1) of the *Evidence Act*, Cap 80 Laws of Kenya, which places the burden of proof on the party making allegations. They argued the board's participation is proven beyond doubt, and the change of leadership after the national elections of 7th December 2024 should not be used to invalidate the Nyamira elections. They urged the court to allow the substantive notice of motion dated 29th December 2024 in full, so as to ensure justice for the interested parties and ex parte applicant.

A. Issues for Determination

28. Having considered the pleadings, affidavits, and written submissions by the ex-parte applicant, the 2nd Respondent, and the 6th–53rd Interested Parties, the record presents a dispute arising from the Football Kenya Federation (FKF) Nyamira County elections said to have been held on 14 November 2024. The ex-parte applicant seeks, inter alia, orders of certiorari, prohibition, and mandamus arising from;
 - i. an ex parte order issued by the Chief Magistrate's Court at Keroka on 8th November 2024; and
 - ii. the FKF Electoral Board's subsequent treatment of the Nyamira results.

The issues that arise for determination are as follows: -

1. Jurisdiction and validity of the Keroka Chief Magistrate's ex parte order of 8th November 2024.
2. Whether valid FKF elections for Nyamira County were held on 14 November 2024 under the sanction/oversight of the FKF Electoral Board.
3. Whether the FKF Electoral Board acted lawfully, reasonably, and fairly in excluding/ marking "called off" the Nyamira results—including compliance with Articles 10, 27, 47 and 50 of *the Constitution* and Article 81 on electoral principles.



4. Whether the remedies of certiorari, prohibition, and mandamus lie in the circumstances, and the appropriate consequential orders (including timelines and costs).

B. The Legal Framework and Authorities

29. The dispute is anchored in *the Constitution* of Kenya, 2010. The specific articles cited are; Articles 10 (national values and good governance), 27 (equality and non-discrimination), 47 (fair administrative action), 50 (fair hearing), 81 (electoral principles) and 165 (the High Court’s supervisory jurisdiction). Sections of statutes cited include the *Sports Act*, No. 25 of 2013, particularly Section 58 on the Sports Disputes Tribunal’s jurisdiction, and the Sports Registrar Regulations, 2016. The FKF Constitution (2017)—including Articles 59, 65, 69(6)–(7) and 70 which prescribes internal electoral and appellate mechanisms. The *Evidence Act*, Cap 80, section 107(1) thereof, places the burden of proof on he who alleges.
30. On jurisdiction and exhaustion, the Court will be guided by the decisions in: Owners of Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Ltd (1989) eKLR where it was held that “jurisdiction is everything”; Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 Others (2012) eKLR where it was held that jurisdiction flows from *the Constitution* or statute; Speaker of the National Assembly vs. James Njenga Karume (1992) eKLR, and Godfrey Osotsi vs. Amani National Congress (2019) eKLR where the court held that where a special procedure is provided by law, it must be strictly followed. On the nature of judicial review, reliance will be placed on the case of Municipal Council of Mombasa vs. Umoja Consultants Ltd [2002] eKLR for the holding that judicial review targets the decision-making process.
31. On contempt prerequisites and clarity/service of orders the case of Samuel M.N. Mweru & Others vs. National Land Commission & 2 Others (2020) eKLR; Sang vs. Keter & 5 Others (2024 eKLR) is relevant.

C. Analysis and Determination

1: Jurisdiction and validity of the Keroka order

32. The record shows the Chief Magistrate’s Court issued an ex parte order on 8th November 2024 relating to polls initially slated for 9 November 2024. The Interested Parties contend, and the affidavits reinforce, that (a) no affidavit of service exists on the Nyamira stakeholders (delegates/candidates/returning & presiding officers or FKF county organs); (b) even the Sports Registrar and FKF’s electoral officials deny service; and (c) the order referenced 9 November, not 14th November 2024, when the elections in question were eventually held. Most centrally, sports electoral disputes are, by law and the FKF Constitution, channelled through internal FKF mechanisms and, on appeal, the Sports Disputes Tribunal (FKF Constitution 2017, Arts. 59, 65, 69(6)–(7), 70; *Sports Act* s.58). The exhaustion doctrine, now of “esteemed judicial lineage” requires litigants to first utilize specialized forums.
33. Applying the principles stated in Lilian ‘S’ and Macharia (supra), I find that a court acting without jurisdiction acts in vain and that its orders are therefore a nullity ab initio. In this regard, I find that the Keroka court’s foray into a sports-electoral dispute before exhaustion and contrary to the specialized statutory/constitutional design, was beyond remit. The additional defects of ex parte issuance, in the absence of service, and ambiguity as to the operative date reinforce non-compliance with natural justice. I therefore find the Keroka Court’s orders of 8th, 19th 23rd and 25th November 2024 are ultra vires, procedurally tainted, and void.



2: Whether valid, sanctioned Nyamira elections occurred on 14th November 2024

34. Affidavits by the returning and presiding officers (appointed, accredited, and paid by the FKF Electoral Board) gives details of notices and press advisories of 12th and 13th November 2024, security requests to OCS Gachuba, dispatch of materials by courier, deployment, polling and tallying, declaration of winners, submission of returns, and subsequent publication of winners on the FKF portal, later removed. I find that these contemporaneous acts are consistent only with sanctioned elections.
35. The 2nd Respondent relied primarily on a later affidavit by its CEO Mr. Harold Ndege (who assumed office in February 2025), disputing sanction. I find that against first-hand accounts by then-sitting electoral commissioners/officers, and without documentary revocations or a contemporaneous cancellation notice, that denial is insufficient to dislodge the chain of authorization evidenced on the record. Under *Evidence Act* s.107(1), the burden to prove illegality/absence of authorization remained with the 2nd Respondent, which burden it did not discharge.
36. It is further uncontested that no appeal or challenge to the Nyamira results was filed within the 30-day window before the FKF Appeals Committee or the Sports Disputes Tribunal, as required by the *Sports Act* and Registrar's Regulations. On the totality, I find as a fact and in law that valid FKF elections for Nyamira County took place on 14th November 2024 under FKF Electoral Board oversight.

3: Lawfulness, reasonableness and procedural fairness of excluding/"calling off" the results

37. Under Articles 10, 27, 47 and 50 of *the Constitution*, public bodies are required to act transparently, give reasons for their decisions, and hear affected persons before adverse action. In the present case, I note that the FKF Electoral Board's removal/"calling off" of results on 19th November 2024 was done without prior notice, without reasons, and without hearing the winners or voters. That conduct violated Article 47 (fair administrative action) and Article 50 (right to be heard).
38. I find that the Board's justification, deference to the Keroka order, fails because that order was jurisdictionally void and, in any event, never served on those conducting or participating in the Nyamira poll. A body cannot rely on an illegal or inoperative order to defeat accrued electoral outcomes. The principle that no rights arise from illegality operates the other way here as the illegality was the ultra vires intervention by the Keroka court, not the Nyamira poll. Moreover, Article 81 of *the Constitution* requires elections to be free, fair, impartial, neutral, efficient, accurate and accountable; the record of accreditation, deployment, polling, declaration and prompt uploading of results demonstrates compliance, which the Board later undermined contrary to Article 10 values of participation, non-discrimination, transparency and accountability.
39. I therefore hold that the 2nd Respondent's decision to exclude/mark "called off" the Nyamira results was illegal, irrational and procedurally unfair, and ultra vires its mandate.

4: Whether certiorari, prohibition and mandamus lie

40. As can be seen from the precedents cited herein, judicial review targets the process, certiorari issues to quash decisions taken without jurisdiction or in breach of natural justice, prohibition restrains a tribunal or public body from continuing unlawful conduct, but does not quash what is already done while mandamus compels the performance of a public duty where there is no other adequate remedy. The High Court's supervisory authority is entrenched by Article 165 of *the Constitution*.



41. From the foregoing observations I find that: -

- i. The Keroka orders were jurisdictionally void and procedurally tainted. The said orders are hereby quashed by certiorari.
- ii. The FKF Electoral Board's exclusionary decision, being illegal and unfair, must equally be quashed.
- iii. To forestall further unlawful interference with Nyamira's participation, an order of prohibition is hereby issued to restrain the Respondents from enforcing or relying on the impugned orders/decisions.
- iv. Considering the public-law nature of FKF's electoral obligations and the absence of an adequate alternative remedy, exhaustion having been frustrated by the very impugned acts, an order of mandamus shall issue compelling the immediate administrative release and recognition of the Nyamira results and the inclusion of the chairman-elect, Mr. Vincent Nyasani, in the national delegates list.

Disposition

- a. Certiorari is issued quashing the ex parte orders and consequential steps emanating from the Chief Magistrate's Court at Keroka dated 8, 19, 23 and 25 November 2024, for want of jurisdiction and breach of the rules of natural justice.
- b. Certiorari is issued quashing the decision(s) of the FKF Electoral Board to exclude/mark "called off" the Nyamira County election results of 14 November 2024.
- c. Prohibition is issued restraining the 1st and 2nd Respondents, their agents or assigns, from enforcing, acting upon, or in any way giving effect to the impugned orders/decisions in (1) and (2) above.
- d. Mandamus is issued compelling the FKF Electoral Board to: Publish and recognize the results of the Nyamira County elections held on 14 November 2024; and Include the chairman-elect, Mr. Vincent Meroka Nyasani, in the list of FKF National Delegates as of right, together with the other duly elected Nyamira delegates; all within seven (7) days of service of this order.
- e. For avoidance of doubt, nothing in this ruling prevents any party from invoking the proper FKF/SDT appellate mechanisms against the substance of electoral outcomes, provided such challenges comply with the *Sports Act*, Registrar's Regulations, and the FKF Constitution.
- f. Costs: The 2nd Respondent shall bear the costs of the Motion to the ex-parte applicant and the 6th–53rd Interested Parties. As



the 1st Respondent did not enter appearance, I make no order as to its costs.

42. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 18TH DAY OF SEPTEMBER 2025.

W. A. OKWANY

JUDGE

