



Nyakina v Boda Boda Safety Association of Kenya & 4 others (Petition E003 of 2024) [2025] KEHC 13245 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
PETITION E003 OF 2024
WA OKWANY, J
SEPTEMBER 18, 2025**

BETWEEN

NICHOLAS NYAKINA PETITIONER

AND

BODA BODA SAFETY ASSOCIATION OF KENYA 1ST RESPONDENT

BERNARD ORINDO 2ND RESPONDENT

FLORENCE OBUNGA 3RD RESPONDENT

NEHEMIAH KIGWA 4TH RESPONDENT

KEVIN MUBADI 5TH RESPONDENT

JUDGMENT

Introduction/Parties

1. The Petitioner herein, Nicholas Nyakina, is an adult of sound mind and describes himself as the current chairman of Bodaboda Association in Kisumu Kubwa Stage, Rigoma ward within Masaba North Sub-County in Nyamira County.
2. The 1st Respondent is an association established in Kenya being a non-political association to provide road safety and training to the members of the Bodaboda riders all over Kenya.
3. The 2nd Respondent is the current chairman elect of Nyamira County Bodaboda Association for which the Petitioner is challenging the said elections together with the executive committee in the instant petition.
4. The 3rd to the 5th Respondents are elected or appointed members of the 1st Respondent in different capacities all over the country.



5. Through the amended Petition dated 16th November 2024, the Petitioner challenges the validity of the elections held on 20th June 2024, in which the 2nd Respondent, Bernard Orindo, was declared chairman of the Nyamira County Branch of the Bodaboda Safety Association of Kenya (BAK) and seeks the following prayers: -
 1. A declaration that the elections held on 20th June 2024 were not fair, verifiable and were in contravention of the Constitution of Kenya 2010 and the Constitution of the Boda-boda Safety Association.
 2. A declaration that the 2nd Respondent and the entire Nyamira County Executive Committee were not duly elected.
 3. An Order of fresh elections in compliance with the Constitution of Kenya 2010 and the Boda-boda Safety Association Constitution.
 4. An Order that there must be a consensus on the list of voters between all the candidates who consist voters who were legible (sic) to elect at the time of the elections on the 20th June 2024.
 5. An Order that there be separate ballot papers in each category of seats.
 6. Costs of the Petition.
 7. Any other reliefs that the court may deem fit and justifiable.
6. The Petition is supported by the Petitioner's affidavit wherein he states that: -
 - a. That the elections held on the 20th June 2024 were not fair, verifiable or conducted according to the provisions of the law.
 - b. That the Petitioner was denied his constitutional right to choose a candidate of his choice in the said elections.
 - c. That the election process was marred with chaos and did not meet the threshold for secret ballot elections.
7. The 2nd - 5th Respondents opposed the Petition through a joint replying affidavit in which they averred that the Petition is brought in bad faith, is frivolous and scandalous and does not disclose any reasonable cause of action. They deny the allegation that the elections held on 20th June 2024 were unfair, unverifiable and contrary to the law. They state that the 3rd - 5th Respondents are not colleagues as alleged by the Petitioner but are members of the Bodaboda Association of Kenya (BAK) and that the Minutes of the meeting held on 8th April 2024 did not automatically translate to the law, particularly on the issue of having IEBC conduct the elections because the same was a mere proposal that would require money to be implemented.
8. The Respondents aver that no credible evidence of favouritism has been produced to show that the elections were not conducted openly or that the stakeholders were not adequately notified. They deny the claim that the Petitioner was denied his right to vote or that the elections lacked security features, transparency and credibility and state that the mode of electing the Executive Committee Members was consistent with the provisions of the Associations' constitution.
9. The Respondents further state that proper voter records of voters were maintained with the BAK officials who supervised the conduct of the elections alongside the Assistant County Commissioner who was present with police officers for security.



10. The Respondents contend that the elections were peaceful and that the venue change was communicated appropriately through FM radio stations within reasonable time frames. They added that the voters list contained 336 voters out of which 332 voted in the presence of all the candidates and their agents.

Analysis and Determination

11. I have carefully considered the pleadings filed herein and the parties' rival submissions. The Petitioner has invited this Court to nullify the elections of the Nyamira County Bodaboda Safety Association held on 20th June 2024, contending that they were marred by irregularities, lacked transparency, and contravened both the Constitution of Kenya 2010 and the Association's Constitution. The Respondents, on their part, maintain that the elections were conducted lawfully, that the Petitioner's claims are baseless, and that the Petition is an abuse of the court process.
12. The central issue for determination, therefore, is whether the Petition is merited. However, before addressing the merits of the Petition, it is important to examine whether this dispute was properly brought before this Court as a constitutional petition.

The Doctrine of Constitutional Avoidance

13. It is trite that a constitutional petition must from the onset raise a constitutional question for determination by the court so that the powers vested in the High Court under Article 165 of the Constitution are not unnecessarily stretched based on the wide scope of application of the Bill of Rights. It is also imperative for a party seeking constitutional reliefs to demonstrate that a constitutional Court is the only forum in which his grievances can be addressed.
14. The doctrine of constitutional avoidance is well-established in Kenyan jurisprudence. It posits that where a dispute can be resolved on another basis, whether statutory, contractual, or under internal organizational regulations, courts should refrain from unnecessarily invoking the Constitution.
15. In Communications Commission of Kenya & 5 Others vs. Royal Media Services Ltd & 5 Others [2014] eKLR, the Supreme Court affirmed that not every dispute should be elevated into a constitutional question. The Court rendered itself as follows: -
- “ [105]. We shall now turn to the Constitutional-Avoidance Doctrine. The doctrine is at times referred to as the Constitutional-Avoidance Rule. *Black's Law Dictionary*, 10th Edition at page 377 defines it as: -
- “The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion”
- [106]. The doctrine interrogates whether there are other ways of resolving a dispute outside a constitutional petition.
- [256] The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis.”
16. Similarly, in Uburnu Muigai Kenyatta vs. Nairobi Star Publications Ltd [2013] eKLR, the High Court stressed that the Bill of Rights should not be trivialized by converting every grievance into a constitutional claim.
17. Applying the above stated principles to the instant Petition, I note that the present dispute concerns the internal elections of a private association registered under Kenyan law. It cannot therefore be gainsaid



that the Association has its own constitution which provides mechanisms for conducting elections and resolving disputes. Additionally, the *Societies Act* (Cap 108) and general civil law provide avenues for challenging internal management issues of societies and associations.

18. The Petitioner herein has however not demonstrated that these mechanisms were exhausted, or that they were inadequate, ineffective, or unavailable. He has instead framed the matter as a constitutional petition on the basis that his political rights under Article 38 and the right to fair administrative action under Article 47 were violated. This court takes the view that while members of associations are entitled to fair elections, the Court must guard against expanding constitutional jurisdiction into areas where specialized or internal remedies exist. It is my finding that the instant Petition offends the doctrine of constitutional avoidance.
19. My above findings on the issue of the doctrine of constitutional avoidance notwithstanding, I am still minded to consider the merits of the Petition.

Merits of the Petition

20. The Petitioner's case is premised on the contention that the elections conducted on 20th June 2024 were not free, fair, transparent, and verifiable in line with the *Constitution* of Kenya 2010 and the Constitution of the Boda Boda Safety Association of Kenya. He asserts that the process was marred with irregularities, that he was denied his right to vote, and that the principle of secret ballot was not upheld.
21. The Respondents, on the other hand, maintain that the elections were conducted in accordance with the Association's Constitution, that proper voter records were maintained, that the Assistant County Commissioner and security officers oversaw the process, and that the elections were peaceful and credible. They further contend that the Petition is frivolous, vexatious, and amounts to an abuse of the court process.
22. Article 38 of the *Constitution* of Kenya guarantees every citizen the right to free, fair, and regular elections based on universal suffrage and the free expression of the will of the electors. Though this provision applies primarily to public elections, the principles of fairness, transparency, and accountability extend to elections of associations, societies, and other registered bodies where members' rights are at stake.
23. In the case of *Moses M. Mwicigi & 14 Others vs. IEBC & 5 Others* [2016] eKLR, the court emphasized that elections must not only be free and fair but must also be verifiable, meaning that the process must be capable of independent scrutiny. Similarly, in *Raila Odinga & Others vs. IEBC & 3 Others* [2017] eKLR (the 2017 Presidential Petition), the Supreme Court underscored that even seemingly minor irregularities can affect the credibility of an election if they substantially undermine its integrity.
24. Applying these principles to the present case, the court must consider whether the Petitioner has discharged the burden of proof placed upon him. It is settled law, as held in *John Kiarie Waweru vs. Beth Wambui Mugo & 2 Others* [2008] eKLR, that the burden rests with the party alleging electoral malpractices to prove them by credible evidence. Mere allegations, suspicions, or conjecture are insufficient to invalidate an election.
25. In the present case, the Petitioner has alleged chaos, lack of proper voter register, and violation of the principle of secret ballot. He has however not placed any cogent evidence, beyond his affidavit, before this Court to substantiate the allegations. Conversely, the Respondents produced evidence of a voter register showing 332 members, out of which 336 participated in the election. The Respondents further



demonstrated that the elections were conducted in the presence of state officials and security agencies, and that all candidates and their agents had the opportunity to observe the process.

26. The claim that the venue change disadvantaged members was also not supported by evidence. The Respondents averred, without serious rebuttal, that the venue change was communicated on local radio stations in good time. This Court is persuaded that such communication met the standard of reasonable notice under the circumstances.
27. On the use of secret ballot, the Respondents have confirmed that the elections were conducted by secret ballot, and no tangible evidence has been presented by the Petitioner to prove otherwise. The principle advanced in *Raila Odinga vs. IEBC* (2013) eKLR is that elections should be judged on the basis of whether the process as a whole meets constitutional standards, not on isolated grievances.
28. My finding is that while the Petitioner has expressed dissatisfaction with the outcome of the elections, this Court must be guided by the principle that elections are the will of the majority, and courts should not lightly interfere with that will unless there is proof of illegality or substantial non-compliance with governing instruments, as was emphasized in *Morgan vs. Simpson* [1974] 3 All ER 722 and applied in Kenyan jurisprudence.
29. I therefore find that the Petitioner did not discharge the burden of proof to the required standard to warrant nullification of the elections.

Conclusion

30. In light of the foregoing, this Court finds that the Petition lacks merit. I find that the elections of 20th June 2024 for Nyamira County Bodaboda Safety Association were conducted substantially in accordance with the *Constitution* of Kenya 2010 and the Association's Constitution.
31. Accordingly, the Petition is hereby dismissed with no orders as to costs.
32. It is so ordered.

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

W. A. OKWANY

JUDGE

