REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LC PETITION E051 OF 2025

THOMAS MUSYOKI KALIMA ……

PETITIONER

VERSUS

NAOMI WAMBUI NGUGI …… 1st

RESPONDENT

COUNTY GOVERNMENT OF NAIROBI …… 2nd

RESPONDENT

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY …… 3rd

RESPONDENT

RULING

1. Vide a Notice of Motion dated 1st July, 2025 brought pursuant to the provisions of **Section 3** of the **Environment and Land Court Act, Section 1A, 1B, & 3A** of the **Civil Procedure Act,** and **Order 51** of the **Civil Procedure Rules**, the Petitioner/Applicant seeks the following reliefs:

i. That Pending the hearing and determination of the main suit, this Honourable Court be pleased to direct the 2nd and 3rd Respondents to make routine visits to the 1st Respondents' bakery premises during its active hours to measure the fumes and smoke levels and characteristics.

ii. That the costs of this Application be borne by the Respondent.

2. The Motion is supported by the Affidavit of Thomas Musyoki Kalima, the Petitioner/Applicant of an even date. He deponed that he is the registered proprietor of all that parcel of land known as Nairobi/Block 136/8170(*hereinafter the suit property*) on which he has put up his personal residence.

3. According to Mr Kalima, the suit property is located in a purely residential area in Ruai, Nairobi County and shares a wall with the 1st Respondents' premises. It was deposed that the 1st Respondent has a bakery in her premises which has for the past several months relentlessly released noxious smoke and fumes.

4. He deponed that as advised by Counsel, **Section 80** of the **Environmental Management and Co-Ordination Act (EMCA), CAP 387,** provides that an owner or operator of a trade, industrial undertaking or an establishment which after the commencement of the act is emitting a substance or energy which is causing or is likely to cause air pollution shall apply to the Authority for an emission license.

5. On the other hand, it was deposed that **Regulation 5** of the **Environmental Management and Co-0rdination Act (*Air Quality*) Regulations, 2024** prohibits any action that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution, and that **Regulation 9** mandates any person who allows the

generation of any odour which unreasonably interferes with another person's lawful use of his property to ensure the same is compliant with the ambient air quality limit.

6. Also, it was deposed**, Section 115** of the **Public Health Act** prohibits the causing of a nuisance and that as per **Section 118(1)(q),** what constitutes a nuisance includes any chimney sending smoke in such quantity or manner as to be offensive or injurious or dangerous to health.

7. The deponent asserted that the air pollution from the 1st Respondent's bakery is such that he is unable to enjoy quiet and peaceful occupation of the property, and that the same t has posed, and continuous to pose significant health risks to him and his family who are of advanced age.

8. He deposed that despite his efforts to engage the 1st Respondent, including through a formal demand letter dated 10th June 2025, she has neither acknowledged nor provided any proposal for resolving the issue.

9. According to the Applicant, guided by Part Two of the Fourth Schedule of the Constitution, which places the duty of preventing air pollution on the 2nd Respondent, he wrote to the 2nd Respondent requesting that a team of experts be dispatched to assess and measure the smoke emissions from the 1st Respondent's premises and take appropriate action. However, no response has been received to date.

10. It is the Applicant's case that as a result of the 2nd Respondents' inaction, he wrote to the 3rd Respondent but it too has declined to act. He urged that he is apprehensive

that should this court decline to grant the prayers sought, he and his tenants will continue to suffer great health risks.

11. The Applicant contended, on the advice of his Counsel, that pursuant to **Articles 22** and **258** of the **Constitution,** he is entitled to seek enforcement of the Constitution arising from the Respondents' violation of his rights.

12. In response, the 1st Respondent, Naomi Wambui Ngugi, swore a Replying Affidavit on 14th July, 2025. She deponed that she is a resident of Ruai within Nairobi County where she resides with her family. She was categorical that she does not run a bakery from her residence but often bakes for subsistence, domestic purposes, and for the benefit and enjoyment of her family and friends.

13. Ms Ngugi stated that she bakes using a wood-burning stove, which is situated outdoors, in a semi-open area on the back side of her home with plenty of ventilation; that the semi-open enclosure provides requisite shelter for the wood-burning stove while keeping any unwanted particles, if at all, from needlessly spreading to the neighbourhood and/or open air and that the wood-burning stove, she is located over thirty (30) meters from the perimeter wall that separates hers and the Applicants' land.

14. Further, she stated, there are over a dozen rows of maize plants separating her wood-burning stove from the Applicant's perimeter wall, which stands over two meters high. Given that her wood-burning stove burns dry wood in

a well-ventilated area, she always achieves complete combustion with minimal and odourless smoke.

15. Ms Ngugi deponed that, advised by Counsel, pursuant to **Regulation 4(3)** as read together with the **Fifth Schedule** of the **Environmental Management and Coordination (*Air Quality*) Regulations, 2024,** wood-burning stoves are permissible for use provided that they are not used for the disposal of waste and comply with the appropriate environmental and social safeguards.

16. It was her case that **Rule 5** of the same regulations provide that no person shall act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution, emit any liquid, solid or gaseous substance, or deposit any such substance in levels exceeding those set out in the First Schedule.

17. She contends that the Applicant has not demonstrated that the alleged smoke emissions coming from her home, if any, have exceeded the air quality tolerance limit levels set out in the **First Schedule** of the **Environmental Management and Coordination (*Air Quality*) Regulations, 2024** as evinced by the fact that he seeks to have the 2nd and 3rd Respondents compelled to issue an analysis report of the alleged emissions.

18. The 1st Respondent observed that contrary to the Applicant's assertions, no demand letter was ever issued to her. She pointed out that the letter addressed to the 3rd Respondent is dated 28th June 2025, a Saturday, and that there is no proof that it was ever served.

19. In any event, she deposed, given that the 3rd Respondent operates from Monday to Friday, the earliest the letter could have been served was on Monday, 30th June 2025. She observed that the Petition and Motion were filed just a day after the letter could have been served.

20. From the foregoing, she urged that it is clear that the Motion and the Petition are frivolous, bad in law, and an abuse of this court's process and the same ought to be dismissed.

21. Together with the Response, the 1st Respondent filed a Notice of Preliminary Objection of an even date premised on the grounds that:

i. The Petition dated 1st July, 2025 is hypothetical and premature as it is based on an assumption that the alleged smoke emissions by the 1st Respondent have violated and exceeded the prescribed Ambient Air Quality Tolerance Limited as provided for by the Environmental Management and Co-ordination (Air Quality) Regulations thereby offending the doctrine of ripeness.

ii. The Petitioner has approached this Honourable Court for recourse before invoking and exhausting the prescribed mechanisms provided under Sections 32 and 33 of the Environmental Management and Co-ordination Act. Further recourse is available before the

National Environment Tribunal as provided for by Section 129 of the Environmental Management and Co-ordination Act.

iii. As such, the Petition dated 1st July, 2025 offends the doctrine of exhaustion, which requires that a party ought to diligently pursue all available and alternative means of redress before turning to the courts for intervention.

iv. In addition, the Petition and Notice of Motion application herein have been drafted to couch and convert a purely environmental and air quality matter into a constitutional issue contrary to the principles of constitutional avoidance and notwithstanding that the 3rd Respondent has the powers, under the Environmental Management and Co-ordination Act to award appropriate legal reliefs including environmental restoration orders.

v. From the foregoing, this Petition is frivolous, bad in law and ultimately fails the legal test of justiciability.

vi. It is in the interests of justice that this Preliminary Objection is dispensed with in the first instance.

22. The Applicant filed a Supplementary Affidavit dated 26th September, 2025 wherein he reiterated his averments is support of the Motion further stating that the 1st Respondent runs a bakery from her residence as evinced

from the several motorcycles he has sited ferrying cakes from her homestead.

23. While conceding to the existence of maize rows and a perimeter wall separating his and the 1st Respondents compound, he noted that the amount of smoke emissions that get into his compound from her wood burning stove is always in large quantities violating his rights to a clean and healthy environment.

24. He noted that the demand letter dated 10th June, 2025 was sent to the 1st Respondent vide WhatsApp, and that 2nd and 3rd Respondents were, apart from the letter, also served vide email on the 19th August, 2025 and no response has been forthcoming.

25. Vide a pleading referenced a "*Reply to the Preliminary Objection*", it was indicated that **Article 70 (1)** of the **Constitution** grants this court the jurisdiction to entertain a matter with respect to the allegations of breach or threatened breach of the right to a clean and healthy environment protected under **Article 42** of the Constitution, and that pursuant to **Article 70(3),** the Applicant does not have to demonstrate that he has incurred loss or suffered injury.

26. It was noted that the Petition is based on an ongoing emission of excessive smoke and fumes into the air by the 1st Respondent which poses a great risk to the Applicant and his family's health. As such, the doctrine of ripeness does not apply.

27. It was asserted that whereas indeed the doctrine of exhaustion requires parties to first pursue and exhaust all available remedies before seeking court intervention, in this instance, the 2nd and 3rd Respondents have failed and/or refused to respond to the Applicant's letter and summons despite being served with the same leaving him with no alternative but to file the current Petition.

28. It was deponed that the question of constitutional avoidance does not apply in this case since the Petition involves a violation of the Applicants' right to a clean and healthy environment, which is a constitutional right guaranteed under **Article 42** of the **Constitution,** and that in any event, pursuant to **Article 159(2)(d)** of the **Constitution,** this court is enjoined to administer justice without undue regard to procedural technicalities.

29. The other parties did not participate in the Motion.

Submissions

30. The Applicant filed submissions on the 30th September, 2025. Counsel submitted that the doctrine of ripeness, as defined in ***Supreme Court Advisory Opinion, Reference No. E001 of 2023,*** is a doctrine that is designed to ensure that courts avoid making premature decisions on constitutional and other legal issues that are not yet fully developed or concrete.

31. Counsel averred that on the other hand, constitutional avoidance, refers to a legal principle that requires courts to avoid deciding a constitutional matter if the case can be resolved on other grounds. In the circumstances, it was

noted, the Petition does not violate the constitutional avoidance doctrine as the same is anchored on several violations of the Applicant's rights as enshrined in the Constitution, and which this court is mandated to determine. Counsel referenced the case of ***Godfrey Paul Okutoyi & others vS Habil Olaka & Another [2018] eKLR.***

32. According to Counsel, as expressed in ***In Chief Justice and President of the Supreme Court and Another vs Bryan Madila Khaemba [2021] eKLR,*** referencing the decision in ***Fleur Investments Limited vs Commissioner of Domestic Taxes & another, [2018] eKLR*** , although courts must ordinarily defer to specialized tribunals and statutory bodies established to handle specific disputes, they retain the duty to intervene where such bodies abuse their discretion, act arbitrarily or maliciously, or violate the rules of natural justice.

33. Also cited in in this regard was ***Republic vs National Environmental Management Authority Ex Parte Sound Equipment Ltd [2011]eKLR.*** The 1st Respondent did not file submissions within the timelines given by the court.

Analysis and Determination

34. Having considered the Motion, Objection, responses and submissions, the issues that arise for determination are:

i. *Whether the Preliminary Objection is merited and if not?*
ii. *Whether the Motion is merited?*

35. The threshold of a Preliminary Objection was set out by the Court of Appeal in the *locus classicus* case of ***Mukisa Biscuits Manufacturing Co. Ltd. vs West End Distributors (1969) EA 696 at 700*** wherein Law, JA stated that:

> ***"...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."***

36. Newbold, P further held:

> ***"A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact 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 butt unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop."***

37. The Supreme Court in the case of ***Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR*** re-affirmed the principle as set out in the **Mukhisa Case(*supra*)** stating:

> ***"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 … a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."***

38. The Preliminary Objection before the court is threefold. It is premised on the contention that the Petition offends the doctrines of ripeness, exhaustion, and constitutional avoidance. Collectively, it was argued that no justiciable dispute has crystallized and that the issues presented are either premature or more appropriately addressed through alternative statutory mechanisms.

39. Considering the same, and guided by the aforecited decisions, the court is satisfied that the matters raised in

the Objection properly fall within the ambit of a pure point of law. The issues of ripeness, exhaustion, and constitutional avoidance go to the heart of the court's jurisdiction and are determinable on the basis of the pleadings alone, without the need for ascertainment of contested facts or the exercise of discretion.

40. The doctrine of ripeness is primarily designed to avoid premature adjudication. Speaking to this, **Luis Franceschi et al, The Constitution of Kenya, A Commentary,** noted *inter-alia:*

> ***"The rationale for the doctrine of ripeness is to prevent a party from prematurely approaching a court when the party has not been subjected to prejudice."***

41. Expounding on the same, the Supreme Court in ***Attorney-General & 2 others vs Ndii & 79 others; Prof. Rosalind Dixon & 7 others [2022] KESC 8 (KLR)*** noted:

> ***"61.The doctrine of ripeness focused on when a dispute had matured into an existing substantial controversy deserving of judicial intervention. The doctrine of ripeness prevented a party from approaching a court before that party had been subject to prejudice, or the real threat of prejudice, as a result of the legislation or conduct challenged.***
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> ***63.Ripeness discouraged a court from deciding an issue too early. It therefore required a***

litigant to wait until an action was taken against which a judicial decision could be grounded and a court was able to issue a concrete relief. That approach shielded a court from dealing with hypothetical issues that had not crystalized."

42. Lastly, in ***Wanjiru Gikonyo and Others vs National Assembly of Kenya and 4 Others [2016] KEHC 5536 (KLR),*** it was explained that:

"Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases. The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through actual matrix, for determination…The court ought not to determine issues which are not yet ready for determination or is only of academic interest having been overtaken by events. The court ought not to engage in premature adjudication of matters through either the doctrine of ripeness or of avoidance. It must not decide on what the future holds either."

43. Vide the present Petition, the Petitioner seeks, *inter-alia*, declarations that the 1st Respondent's actions constitute a violation of his rights under **Articles 27, 28, 42, 43** and

47 of the **Constitution**, a declaration that the 2nd and 3rd Respondents failure to act on the Petitioner's complaint constitutes a violation of his right to fair administrative action and a mandatory injunction compelling the 2nd and 3rd Respondents to immediately proceed to the 1st Respondent's premises to investigate, measure and analyze the fumes and smoke levels.

44. He further seeks a mandatory injunction compelling the 1st Respondent to cease all operations emitting noxious smoke and to implement effective emission control mechanisms. The Petitioner also prays for an order directing the 2nd and 3rd Respondents to regularly monitor air quality in the vicinity of the 1st Respondent's bakery, enforce applicable regulatory limits, and close the premises until the 1st Respondent demonstrates full compliance with the Air Quality Regulations, 2024.

45. The Petitioner's case, as set out in the Petition, is that the 1st Respondent operates a bakery within her residence which neighbours his, and which is releasing noxious smoke and fumes in reckless disregard of his right to a clean and healthy environment.

46. He contends that this environmental nuisance persists due to the inaction of the 2nd and 3rd Respondents, whose statutory duty is to monitor and regulate such emissions and has resulted in the breach of the constitutional rights cited.

47. Under the Environmental Management and Co-ordination (Air Qality) Regulations, 2024, *"air quality"* is defined as

the concentration of pollutants in the atmosphere at the point of measurement, while *"air pollution"* refers to contamination of the environment by any agent that alters the natural characteristics of the atmosphere. **Regulation 5** of the Regulations provide that:

> ***"No person shall—(a)act in a way that directly or indirectly causes, or is likely to cause immediate or subsequent air pollution;***
> ***(b)emit any liquid, solid or gaseous substance or deposit any such substance in levels exceeding those set out in the First Schedule;***
> ***(c)engage in open burning save for in the manner permitted by this Regulation and the Act; or***
> ***(d)engage in spray painting save for in the manner permitted by this Regulation and the Act."***

48. The EMCA Air Quality Regulations, 2024 sets clear limits for ambient air quality in the First Schedule and prohibits emissions that exceed those thresholds.

49. Further, and as correctly stated, the **Public Health Act**, under **Section 118(1)(q)**, sets out as one of the examples of what constitutes nuisance, any chimney that emits smoke "*in such quantity or in such manner as to be offensive or injurious or dangerous to health*."

50. It should be noted however that the determination of what constitutes injurious or dangerous smoke is not left to subjective perception. It is guided by the Environmental

Management and Coordination (Air Quality) Regulations, 2024, in particular the First Schedule thereto.

51. Despite maintaining that the emissions from the 1st Respondent's bakery are "noxious," "excessive" and contravene the Air Quality Regulations, no technical or scientific evidence has been placed before the court to substantiate this claim.

52. Indeed, the Petition itself seeks, among other reliefs, an order compelling the 2nd and 3rd Respondents to undertake measurements and analyses of the alleged emissions to determine compliance with EMCA and the Air Quality Regulations.

53. This prayer, by its very framing, concedes that no such measurements or analyses have been conducted. It therefore follows that the court is being invited to make a determination in the absence of the very evidence that would form the factual foundation for such a finding.

54. Indeed, the 2nd and 3rd Respondents' actions or inactions also cannot be properly evaluated without first establishing whether the 1st Respondent's emissions exceed the prescribed air quality limits. In the circumstances, the absence of objective evidence renders the claim speculative, and consequently, the doctrine of ripeness applies.

55. The principle of Constitutional avoidance and exhaustion doctrine discourages the invocation of the Constitution to settle matters that can be adequately addressed through

existing statutory, regulatory, or procedural frameworks. At its essence, it prevents parties from elevating ordinary legal issues into constitutional claims.

56. Expounding on this, the Supreme Court in ***Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others [2014]eKLR*** held that:

> ***"The appellants in this case are seeking to invoke the ''principle of avoidance", also known as "constitutional avoidance". The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in S v. Mhlungu, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:***
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> "***I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed."***
>
> ***Similarly, the US. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could***

have been disposed of (Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936)).”

57. Equally, in ***C O D & another vs Nairobi City Water & Sewerage Co. Ltd (2015) eKLR*** the court noted:

> ***“11.Similarly, in Papinder Kaur Atwal -vs- Manjit Singh Amrit Nairobi Petition No. 236 of 2011where after considering several authorities on the issue, Justice Lenaola remarked as follows:All the authorities above would point to the fact that the Constitution is a solemn document, and should not be a substitute for remedying emotional personal questions or mere control of excesses within administrative processes….. I must add the following; Our Bill of Rights is robust. It has been hailed as one of the best in any Constitution in the World. Our Courts must interpret it [with] all the liberalism they can marshall. However, not every pain can be addressed through the Bill of Rights and alleged violation thereof.” (Emphasis added)***
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> ***12.The Supreme Court of India has also held that ordinary remedies available under common law and statutes must be pursued in the ordinary manner or as provided under statute. For instance, in Re Application by Bahadur[1986] LRC (Const) the Court expressed itself as follows at page 307;The***

Courts have said time and again that where infringements of rights are alleged which can be founded in a claim under substantive law, the proper course is to bring the claim under such law and not under the Constitution. This case highlights the un-wisdom of ignoring that advice…. the Constitution sets out to declare in general terms the fundamental concepts of justice and right that should guide and inform the law and the actions of men. While an infringement of the Constitution might in certain cases give rise to the redress provided for at section 14, yet, as has been proclaimed by the highest Court in the land, it is not, "a general substitute for the normal procedures for invoking judicial control of administrative action." (See Harrikissoon v A-G [1979] 3 WLR 62).

13.It was further observed in the case of Minister of Home Affairs vs Bickle & Others (1985) LRC Const(per (Georges C.J);Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a Court will usually decline to determine whether there has been in addition a breach of the Declaration of Rights."

58. Intricately tied to this is the doctrine of exhaustion which requires a party to exhaust any alternative dispute resolution mechanism provided by statute and/or law before resorting to courts. Speaking to the ambit and rationale for this doctrine, the Court of Appeal in ***Geoffrey Muthinja & another vs Samuel Muguna Henry & 1756 others [2015] eKLR*** observed as follows:

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

59. In the case of ***William Odhiambo Ramogi & 3 others vs Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested parties) [2020] eKLR***, a five-judge bench held as follows:

"The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts..."

60. The Court went on to outline the exceptions to the rule as follows:

"As observed above, the first principle is that the High Court(read ELC) may, in exceptional circumstances consider and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not

have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR.

In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion…"

61. Having found that the dispute before it is not ripe for adjudication, the court must necessarily refrain from engaging with the subsequent questions of constitutional avoidance and doctrine of exhaustion.

62. This is because where the dispute has not crystallized into an actionable wrong, there is, in effect, no live issue upon which to apply or assess the appropriateness of constitutional intervention or statutory remedies.

63. Having found the Petition premature and therefore incompetent, it cannot be sustained. Consequently, the

Notice of Motion dated 1st July 2025 equally fails, as its prayers are wholly dependent on the existence of a valid and subsisting Petition. Once the main cause collapses, the interlocutory application has no independent footing and must also be dismissed.

64. In the end, the Preliminary Objection succeeds. The Petition and the Motion dated 1st July, 2025 are hereby struck out with no orders as to costs.

Dated, signed and delivered in Nairobi virtually this 23rd day of October, 2025.

O. A. Angote

Judge

In the presence of;

Ms. Kemunto for Oyunge for Aplicant

Ms Wanjiku and Kinyanjui for 1st Respondent

Court Assistant: Tracy