



**Musotsi v Football Kenya Federation (Constitutional Petition
E011 of 2025) [2025] KEHC 15111 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CONSTITUTIONAL PETITION E011 OF 2025
S MBUNGI, J
OCTOBER 21, 2025**

BETWEEN

PATRICK MATASI MUSOTSI PETITIONER

AND

THE FOOTBALL KENYA FEDERATION RESPONDENT

RULING

1. The respondent filed a notice of motion application dated 11th April 2025 seeking the following orders;
 - a. That this application be certified urgent, be heard on a priority basis, and exparte at the first instance
 - b. That pending the hearing and determination of this instant Application, the Honourable court be pleased to vacate and set aside the conservatory orders issued on 8th April 2025.
 - c. That, pending the hearing and determination of this application, this Honourable court be pleased to stay the execution of the conservatory orders issued on 08th April 2025.
 - d. That pending hearing and determination of the Application herein the Honourable Court be pleased to issue an order of injunction restraining the petitioner, either by himself, agents, servants and/or any person acting under the petitioner's instructions from making any sporting contact with Respondent's officials and or committee members, players, clubs, coaches, officials and or other support personnel, referees and or any other match officials officiating at the event, members of local host organizing committees, FKF, employees or contractors and FKF.
 - e. That pending hearing and determination of the Application herein, the Honourable court be pleased to issue an order of injunction restraining the petitioner, either by himself, agents,



servants and/or any other person acting under the petitioner's instructions, from interfering with match manipulation investigations.

- f. That the Honourable court be pleased to strike out the entire suit for want of jurisdiction.
 - g. That the Honourable Court be pleased to make any other and further orders that it deems just.
 - h. That the costs of this Application are in the cause.
2. The application is premised on the grounds set out on its face and on the supporting affidavit sworn on the same day by the applicant's General Secretary/CEO.

Applicant Case

3. The applicant avers that the respondent, Federation of Kenya Football, an organisation registered in Kenya in compliance with the *Sports Act*, is a national sports organisation in charge of the administration, management and running of football in Kenya. He avers that the organisation controls and supervises all football matches.
4. He referred the court to Paragraph F of the second schedule of the *Sports Act* that mandated all the bodies registered under the statute to have out of court dispute resolution mechanisms.
5. The Applicant avers that it has formulated the Federation of Kenya Football anti-Match Manipulation regulations (2016) in line with provisions of the *Sports Act* to promote fairness and ethics in matters football and also to prevent all forms of corruption and match manipulations.
6. The Applicant depones that on or about 26th March 2025, a whistle-blower shared a clandestine video capturing the petitioner boldly admitting to have compromised several matches with an intention of fraudulently enabling successful betting on outcome of matches.
7. This information forced the Applicant to invoke section vii (2) of the Federation of Kenya Football match manipulation regulations and suspended the petitioner to pave way for investigations. Contrary to the petitioners' allegations that he was condemned unheard or suspended maliciously. Before he was suspended he was informed of the allegations and he denied warranting further investigations.
8. The applicant further contended that they were not able to attend court on 03rd April 2024 for the mention notice served was defective, their absence made the court to issue the ex parte conservatory order being sought to be vacated without hearing the Applicant.
9. The conservatory orders allowed the petitioner to continue participating in the activities organised by the Applicant while his integrity was in question.
10. The Applicant also averred that this court arrogated itself to non-existent jurisdiction for the Petitioner had not exhausted dispute resolutions mechanisms as provided for by the *sports act* and the Applicant's match manipulation regulations.
11. Further that the petitioner in his petition contends factual matters which are still subject for determination, under the Applicant's match manipulation regulations of 2016.
12. The applicant aver that the petition is not ripe for determination as it failed to consider the doctrine of exhaustion as well as the fact that the court lacked the jurisdiction to hear and determine the petition under section 46 (3)(b)(vi) of the *sports Act*, Article 11 (3)(d) Article 14 (i)(g) Article 64 of the FKF Constitution (2017) and the FK Anti Match Manipulation Regulations.
13. The Applicant referred the Court to the case of Samuel Kamau Macharia vs. Kenya Commercial Bank and 2 others to support its position.



14. The applicant further avers that the issues raised by the petitioner are of an employment nature and, as such, should be dealt with under the employment court.
15. That the Applicant will suffer irreparable harm on violation of their rights to enforce discipline if the conservatory court order is not set aside.
16. The Petitioners case is hinged on the Petition as it is drafted and filed.
17. The application was canvassed by way of written submissions.

Respondents submission.

18. In their submission dated 10th June 2025, the petitioners raised issues for determination, being;
 - a. Whether this Honourable Court has jurisdiction to hear and determine this Petition.
 - b. Whether the conservatory orders issued should be vacated.
 - c. Whether the prayer of injunction barring the Petitioner from interfering with match manipulation investigations can issue.
 - d. Whether the Respondent's Application constitutes an abuse of court process.
19. The first issue raised by the petitioner is whether this Court has Jurisdiction to hear the instant. The petitioner submits that the Petition is anchored upon Articles 10, 22, 23, 27, 28, 43, 47, 48 and 50 of *the Constitution* of Kenya, 2010, all of which guarantee fundamental rights and freedoms enforceable by this Honourable Court.
20. He cited Article 165(3)(b) of *the Constitution*, which grants jurisdiction upon the High Court to determine questions relating to the violation of fundamental rights and freedoms. And since the Petitioner alleges violations of the Petitioner's right to fair administrative action under Article 47, Right to fair hearing under Article 50(1); Right to dignity under Article 28; (iv) Freedom from discrimination under Article 27, this court has jurisdiction.
21. To support his position the Petitioner referred the court to the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, where the court held that "the jurisdiction of a court flows from *the Constitution*, statute, or both." And the case of Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others [2014] eKLR, which reaffirmed that Article 165(3)(b) gives the High Court broad jurisdiction over any question concerning violation of rights".
22. According to the petitioner, the respondent's claim of lack of jurisdiction lacks basis as the dispute is not about a sports dispute but a violation of his constitutional rights.
23. Further, the Petitioner referred the court to the case of Geoffrey Andare v Attorney General & 2 Others [2016] eKLR, where the High Court ruled: "Constitutional questions transcend the boundaries of specialised tribunals. It is the High Court alone that has jurisdiction under Article 165(3)(b) to resolve questions concerning the Bill of Rights."
24. On whether the court should lift the conservatory orders, the petitioner relied on the cases of Centre for Rights Education & Awareness (CREAW) & Others v Speaker of the National Assembly & Others [2017] eKLR and Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR, where the Court held that a conservatory order will not be vacated unless the applicant demonstrates:



- i. Material change in circumstances;
 - ii. That the order was granted in error or was obtained through non-disclosure;
 - iii. That public interest militates against its continuance.
25. The petitioner implores the court not to lift the conservatory order for the Applicant have come to court with unclean hands, for it defied the court's order by threatening to escalate the Petitioners' ban to FIFA which ban will affect his career and livelihood. Secondly, the Applicant has not filed an Appeal or review for the said orders, and further that the Applicant has not provided any evidence to show that the Petitioner will interfere with investigations or witnesses.

Applicants submission

26. The Applicant submitted that it has met the requirements necessary to set aside the ex parte orders, and this court has the discretion to set aside the orders.
27. The Applicant largely reiterated the contents of its supporting affidavit and cited the following authorities Kampala in Uganda in *Obiga v Electoral Commission & another, Election Petition Appeal No 4 of 2011 [2012] UGCA* and *Sodha v Hemraj (1952) Uganda LR Vol 1*, cited with approval in the case of *Stephen Ndichu v Monty's Wines and Spirits (2006) eKLR* to guide the court into arriving to a determination.

Analysis and determination

28. I have carefully considered the application before the court, the rival submissions by both counsels for the respective parties to this application, and the relevant authorities cited before me. I have also considered the applicable law as it is in Kenyan statutes, and I find the following issues for determination;
- a. Whether this court wrongly issued the ex parte orders for it lacked jurisdiction..
 - b. Whether the doctrine of exhaustion applies;
 - c. Whether the conservatory orders issued on 8th April 2025 ought to be vacated; and
 - d. Who should bear the costs of the application?
29. On whether this court has jurisdiction, Jurisdiction, simply put, is the court's power or authority to hear and determine a dispute before it. A court's jurisdiction is conferred by either *the Constitution* or other written law. It is trite that jurisdiction cannot be assumed or inferred from pleadings filed by the parties, nor can it be acquiesced or granted by consent of the parties.
30. The above position was succinctly captured by the Supreme Court in *Samuel Kamau Macharia & Another V Kenya Commercial Bank & 2 others [2012] eKLR* when it held as follows;
- ” A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law....the court must operate within the Constitutional limits. It cannot expand jurisdiction through judicial craft or innovation



31. The “Locus classicus” on this subject is the celebrated case of *The owners of the Motor Vessel “Lillians” V Caltex Oil Kenya Ltd* [1989] KLR 1 in which Nyarangi J emphasised the centrality of jurisdiction as follows;
- ”...jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for the continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it, the moment it holds that it is without jurisdiction.”
32. The dispute between the Petitioner and the Respondent emanates from alleged disciplinary proceedings under the FKF Regulations. The Petitioner was suspended under the FKF Anti–Match Manipulation Regulations.
33. The Petitioner invoked this Court’s jurisdiction under Article 165(3)(b) of *the Constitution*, alleging violation of his fundamental rights. The article , which grants the court authority to determine questions concerning violations of fundamental rights and freedoms. He alleges violations of his rights to fair administrative action under Article 47, fair hearing under Article 50, dignity, Article 28, and freedom from discrimination under
34. Article 27. And cited the cases of *Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR and *Communications Commission of Kenya & 5 Others v. Royal Media Services Ltd & 5 Others* [2014] eKLR, which affirm the High Court’s broad jurisdiction over constitutional rights violations.
35. From the foregoing, I have no doubt that this court has the requisite jurisdiction to entertain the Petition for it is anchored under Articles 10,19,20 ,22,23,27,28,43,47,48,50,159,165 of *the Constitution*. Therefore, I dismiss the Applicants submissions that this court issued the conservatory orders devoid of jurisdiction. Infact the High Court jurisdiction over violations of constitution supercedes jurisdiction of any specialised tribunal (see the holding in *Geoffrey Andare v Attorney General & 2 Others* [2016] eKLR.)
36. The other question to answer is whether the court issued the conservatory order *exparte* and also whether the court can issue such orders *exparte*.
37. A conservatory order can be defined as a temporary judicial order that prevents a party from taking a specific action to maintain the status quo until a full case is heard. It is used to preserve the subject matter of a legal dispute, To maintain the current situation and prevent irreparable harm to a party while a lawsuit is ongoing, It acts as a temporary freeze on certain actions until the court can make a final determination on the merits of the case.
38. It can be granted by a court upon an application, and the court may issue it even if the other party has not yet responded or appeared in court see the cases of *Kibagendi & 3 others v Commission for University Education & 7 others* (Petition E009 of 2024) [2025] KEHC 4578 (KLR) and *Mwaniki v Ndiga & 3 others* (Constitutional Petition E020 of 2024) [2025] KEHC 9562 (KLR)
39. The application dated 28.3 2025 was filed on the same date, when it was presented before the court ordered the Applicant/Petitioner to serve the application upon the respondents for inter party hearing on 8.4.2025 . The Respondent did not file a response nor attended court on 8.4.2025 when the matter came for interparty hearing before the court proceeded to issue the conservatory order therefore it is not true that the court issued the conservatory order *eparte* on the first instance. In any case the court can issue a conservatory order at the first instance.



40. From the above the applicant cannot say that it was condemned without being heard they were given a chance to respond and they did not respond.
41. On the whether this court should vacate the conservatory orders, the applicant should demonstrate the following:-
 - i. There has been material non-disclosure.
 - ii. The order was issued in error; or
 - iii. There has been a material change in circumstances see Centre for Rights Education & Awareness (CREAW) & Others v. Speaker of the National Assembly & Others [2017] eKLR, and Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR.
42. Having looked at the submissions for the applicant, the petitioner/respondent failed to disclose that there was inhouse mechanism to solve disputes similar to the dispute in question.
43. It is a settled principle that a party should exhaust all available dispute resolution mechanism provided under the statute before invoking jurisdiction of a court of law.
44. In the case of Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR Court of Appeal emphasised that:

“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.”
45. Similarly, in Speaker of the National Assembly v Karume [1992] KLR 21, the Court of Appeal held:

“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 adhered to.”
46. The Supreme Court in Moses Mwiggi & 14 Others v Independent Electoral and Boundaries Commission & 5 Others [2016] eKLR reaffirmed this position, stating that the doctrine of exhaustion is grounded in sound constitutional principle and institutional competence.
47. In Mutanga Tea & Coffee Company Ltd v Shikara Ltd & Another [2015] eKLR, the Court of Appeal held that the exhaustion doctrine is not a mere procedural technicality but a jurisdictional requirement intended
48. The *Sports Act*, 2013, under Section 58 establishes the Sports Disputes Tribunal (SDT) to hear appeals from decisions of sports organisations and to determine disputes arising within the sports sector. Further, paragraph (f) of the Second Schedule to the *Sports Act* requires every sports organisation to adopt internal dispute resolution mechanisms.
49. The FKF Constitution (2017) also establishes disciplinary and judicial bodies mandated to investigate and adjudicate matters relating to match manipulation, disciplinary control, and ethical conduct of players and officials.
50. There is no evidence that the Petitioner invoked this procedure before invoking the jurisdiction of the court. Secondly, there is no evidence that the officers presiding over the two levels of dispute resolution had breached or threatened to violate the Petitioners' constitutional rights as claimed in the petition.



51. Had the court been made aware of the existence of the well laid dispute resolution mechanism under the *Sports Act*, this court could not have given the orders being sought to be set aside therefore, they were issued in error. I do vacate them.
52. Finally, the applicant seeks an injunction to restrain the Petitioner from contacting FKF officials, players, or others and from interfering with match manipulation investigations, citing risks to the investigation and football's integrity.
53. The Petitioner argues that no evidence supports this prayer, relied on the case of Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] eKLR.
54. In *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358, stated in *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court outlined that an injunction requires: (i) a prima facie case; (ii) irreparable harm; and (iii) a balance of convenience.
55. I have looked at the Respondent's affidavit. There is nothing to show that the Petitioner has attempted or is intending to contact FKF officials, players, or others or to interfere with match manipulation investigations. This prayer is speculative and I decline to issue it.
56. For the reasons stated here in above, the Court makes the following orders:
 - a. The Petition is struck out for being brought to court prematurely, as the matter should be first resolved through the Respondent's internal mechanisms and then Sports Dispute Tribunal.
 - b. The conservatory orders issued on 8th April 2025 are hereby vacated and set aside.
 - c. The prayer for injunction is declined.
 - d. Each party to bear its own Costs of the application for anyone has a right to approach the High Court incase he/she is apprehensive that her constitutional rights may be violated.
 - e. Right of Appeal 30 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 21st DAY OF OCTOBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr Munyendo for the Respondent /Applicant – present online.

Mr Kige for the Petitioner/Respondent -Absent.

Parties- Absent.

