

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KAKMEGA**

**MISC. CIVIL APPLICATION NO E004 OF 2024 (JUDICIAL REVIEW)**

REPUBLIC -----  
APPLICANT

VERSUS

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION --- 1<sup>ST</sup>  
RESPONDENT

CYNTHIA LIVOLI-----2<sup>ND</sup>  
RESPONDENT

AND

MAJOR SULEIMAN KANYANYA SUMBA-----EXPARTE  
APPLICANT

AND

AMINA HANJIRA LUTTA-----1<sup>ST</sup>  
INTERESTED PARTY

KENYA AFRICAN NATIONAL UNION (KANU)-----2<sup>ND</sup> INTERESTED  
PARTY

**RULING**

1. The exparte applicant filed an application dated 23<sup>rd</sup> July 2024 vide chamber summons seeking the following orders;
  - a) *That this Honourable court be pleased to grant leave to the exparte applicant to apply for the prerogative orders of;*
  - b) *Certiorari to bring before this Honourable Court for the purpose of quashing the Gazette Notice No. 10712 published on the 9<sup>th</sup> day of September 2022, insofar as concerns the name of Cynthia Livoli being nominated as a Member of the County Assembly (MCA) OF Kakamega under the Gender Top Up list of the Kenya African National Union (KANU) as regards the 2022 General elections.*
  - c) *Mandamus directing the Independent Electoral and Boundaries Commission (IEBC) to gazette the name of Amina Hanjira Lutta as the duly nominated MCA of Kakamega under*

*the Gender Top Up list of KANU as regards the 2022 General Elections.*

2. In a statement to support the orders he seeks, he states that the general elections were conducted on August 2022 and the 2<sup>nd</sup> interested party (KANU) in line with section 34 (4) of the Elections Act as read with Article 177 (1) (b) of the Constitution of Kenya, 2010 had forwarded its Gender Top Up list which has the names of the 2<sup>nd</sup> Respondent (Cynthia Livoli) and the 1<sup>st</sup> interested party (Amina Hanjira Lutta) in order of priority, for nomination as MCA of Kakamega.
3. He avers that he challenged the eligibility of the 2<sup>nd</sup> Respondent to be an MCA vide Kakamega Political Parties Dispute Tribunal (PPDT) complaint No. E023 of 2022, in which the tribunal was in agreement and directed that the 1<sup>st</sup> respondent expunge the name of the 2<sup>nd</sup> Respondent from the Gender Top Up list of the 2<sup>nd</sup> interested party (KANU).
4. He states that the 2<sup>nd</sup> respondent lodged an appeal against the finding of the PPDT in Kakamega High Court Civil Appeal Case No E068 of 2022, which was dismissed on 9<sup>th</sup> May 2024 for want of prosecution. Despite the appeal being dismissed, the 1<sup>st</sup> respondent (IEBC) had failed to de-gazette the name of the 2<sup>nd</sup> Respondent as the MCA of Kakamega, arguing that in Kakamega High Court Election Petition Appeal Cause No. E004 of 2023, it was decreed that the 2<sup>nd</sup> Respondent was eligible to serve as a nominated MCA of Kakamega which they argued was not factual since both Kakamega Election petition No e005 of 2022 and Kakamega High Court Election Petition Appeal Cause No E004 of 2023, the courts were reluctant to discuss the merits of the holding by PPDT as the same was sub-judice Kakamega High Court Civil Appeal Cause No. E068 of 2022, which was dismissed and as such, the orders of PPDT remained intact and valid.
5. That since the orders by PPDT remained valid, then the nomination of the 2<sup>nd</sup> respondent as MCA ought to be gazetted and the 1<sup>st</sup>

interested party be gazetted as the duly nominated MCA of Kakamega.

6. In response, the 1<sup>st</sup> respondent, IEBC, filed a replying affidavit dated 16<sup>th</sup> January 2025, where they gave a chronological account of events that led to the claim. They stated that on 9<sup>th</sup> September 2022, the IEBC, in exercise of its constitutional mandate, published in the Kenya Gazette the names of the nominees of the various county assemblies and the 2<sup>nd</sup> respondent was listed as the nominee of the county assembly of Kakamega under the gender top-up list through the 2<sup>nd</sup> interested party (KANU).
7. That on 12<sup>th</sup> September 2022, the 1<sup>st</sup> respondent (IEBC) was served with the judgment of the political parties dispute tribunals (PPDT) where the complainant sought the name of the 2<sup>nd</sup> interested party be expunged from their list on allegation of irregularity claiming the name of the 2<sup>nd</sup> respondent was wrongfully included in their list and they further went to file an election petition in Kakamega Chief Magistrate Court Election Petition No. E005 of 2022 seeking a declaration that the Gazette notice No 10713 Vol CXXIV No.186 was void ab initio as the name of Cynthia Livoli was included, and according to them, the court held that they had no capacity to comply with the orders from PPDT as their mandate had ended with the publication of the above mentioned Gazette Notice and the court dismissed the petition.
8. On 20<sup>th</sup> September 2022, the 2<sup>nd</sup> respondent filed a petition in Kakamega High Court Civil Appeal Cause No E068 of 2022, Cynthia Livoli vs. Suleiman Kanyanya Sumba & KANU, appealing against the decision of the PPDT; however, the appeal was dismissed on 9<sup>th</sup> May 2024 for want of prosecution.
9. They held that the exparte applicant filed an appeal, **Election petition no. E005 of 2022 Major Suleiman Kanyanya Sumba vs. KANU & 4 others** against the lower court decision in **Kakamega High Court Election Appeal No. E004 of 2023**

**Major Suleiman Kanyanya Sumba vs. IEBC & 4 others**, which was then dismissed as the court stated that the appeal lacked merit.

10. They aver that on 30<sup>th</sup> May 2024, they received a letter from the exparte applicant stating that the decree from PPDT was final and Valid and that they, IEBC, ought to immediately de-gazette the 2<sup>nd</sup> Respondent, Cynthia Livoli, and instead gazette the 1<sup>st</sup> Respondent, Amina Hanjira Lutta, as the nominated Member of the County Assembly under the 2<sup>nd</sup> interested party. KANU, party list.
11. They responded on 24<sup>th</sup> June 2024, stating that it could not gazette the 1<sup>st</sup> interested party as the High Court had already pronounced itself on the matter and dismissed it for want of merit.
12. They stated that pursuant to Article 90 (2) of the Constitution of Kenya, 2010, as read with sections 35 and 36 of the Election Act, they are obliged to conduct and supervise elections for allocation of party seats in the parliament and county assemblies.
13. They aver that once the 1<sup>st</sup> respondent issued a gazette notice, its mandate ended and the election by way of party list of the 2<sup>nd</sup> respondent can only be declared either valid or invalid through an election petition pursuant to section 75 of the Election Act.
14. According to them, the exparte applicant has already exhausted his available legal mechanisms by challenging the election of the 2<sup>nd</sup> respondent both at the lower court and the High court and in both his case was dismissed for lack of merit.
15. They hold that the judicial review is misconceived and bad in law with respect to the decision of the PPDT and not in any way with respect to any administrative action of the 1<sup>st</sup> Respondent.
16. They further hold that the judicial Review is Res Judicata as the matter was already determined by the Honourable court in **Election Appeal No E004 of 2023; Major Suleiman Kanyanya Sumba vs. IEBC & 4 others**, as it involved the same parties on the same issue.

17. They further stated that they are not a party to the political parties dispute Tribunal (PPDT) complaint No. E023 of 2022; **Suleiman Kanyanya Sumba vs. KANU Cynthia Livoli and IEBC (interested party)**, and cannot implement orders of the PPDT and that the orders were directed to the 2<sup>nd</sup> interested party and not to them as the 1<sup>st</sup> respondent.
18. They aver that the application, disguised as a Judicial Review, is a petition challenging an election of a Member of the County assembly, which this court lacks jurisdiction to entertain and pray that the court dismisses the application.
19. The application was canvassed by way of written submissions.

**Joint submissions by the exparte applicant and the 1<sup>st</sup> interested party**

20. In their submissions dated 29<sup>th</sup> May 2025, they submitted that under order 53, Rule 2 of the Civil Procedure Rules 2010, an application for writ of Certiorari should be filed within 6 months of the judgment and stated the gazette Notice No.10712 which they seek to be quashed was published on 9<sup>th</sup> September 2022 yet the JR suit was filed on 31<sup>st</sup> July 2024 and quoted the case of **Ako vs. Special District Commissioner, Kisumu & another (1989) eKLR.**
21. He avers that though the writ of certiorari was time-bound, the order for Mandamus is not time-bound, and the court cant hear the mandamus application. They quoted the case **of Nakuru High Court Judicial Review Application No E018 of 2023.**
22. On the impact of the previous application, they assert that the ruling by PPDT in complaint No. E023 of 2022, the 1<sup>st</sup> respondent was directed not to publish the 2<sup>nd</sup> respondent's name in the Kenya Gazette as a nominee of the 2<sup>nd</sup> interested party. The 2<sup>nd</sup> respondent appealed in the Kakamega High Court Civil Appeal cause no. E068 of 2022, but the same was dismissed for want of prosecution on 9<sup>th</sup>

May 2024 and further that the delay in filing the Judicial review was due to the pending appeal, Cause No E068.

23. The applicants aver further that under section 40 of the Political Parties act, the tribunal had jurisdiction over a political party dispute, while the High Court has appellate jurisdiction over such matters, and the Magistrate's court does not and thus issue of election petition were outside the tribunal's scope thus making it incorrect to argue that the judicial review was res judicata.

24. They stated that the election appeal caused no E004 was delayed to avoid interfering with appeal Cause No E068 and thus neither the Magistrate's court nor the High court had jurisdiction to review the Tribunal's decision regarding the 2<sup>nd</sup> respondent's ineligibility for nomination to the County assembly of Kakamega.

25. They claim that the High court Appeal cause No E068 had the power to review the Tribunal ruling but since the case was dismissed for want of prosecution, the tribunal decisions remains valid and enforceable and the respondent's argument that once the 2<sup>nd</sup> Respondent's name was published in the Kenya Gazette, it could not be de-gazetted is flawed and that Judicial review is a legal avenue that can quash the impugned Gazette Notice if circumstances warrant the same.

26. They finally submitted that since a competent tribunal had ruled that the 2<sup>nd</sup> respondent was ineligible for nomination, the rightful course of action is for the next candidate is the 1<sup>st</sup> interested party, to be gazetted as the nominee representing the 2<sup>nd</sup> interested party in the gender top-up list for the county assembly of Kakamega.

### **2<sup>nd</sup> Respondent submission.**

27. In their submission dated 9<sup>th</sup> June 2025, the 2<sup>nd</sup> respondent gave a brief background of the case and raised three issues for determination, being whether the Judicial review application is time-

barred; whether the judicial review application is Res judicata; and finally, whether this court, in determining the judicial review, can overturn the decision of the election court.

28. The first issue of whether the Judicial review is time-barred, they relied on Order 53, Rule 2 of the Civil Procedure Rules 2010, which states that writs of certiorari and mandamus being sought were lodged about 1 year and 11 months after the judgment was delivered on 9<sup>th</sup> September 2022.
29. They aver that appeals do not act as a mandatory stay of execution; hence, they would have lodged the JR any time after the judgment to enforce the PPDT decision. They stated that the exparte applicant chose to enforce the decision via an election petition before Hon. Ndururi and later an appeal by Hon. P.J. Otieno, and as such, they cannot take a third bite as they are now forum shopping.
30. They hold that the court in quashing the finding of the election court and the subsequent appeal, the 1<sup>st</sup> respondent would be put in a difficult situation as they would violate valid court orders, while they would be denied the fruits of their labour in both courts.
31. On whether the Judicial review application is res judicata, they stated that the issue before PPDT was the nomination of the 2<sup>nd</sup> respondent by the 2<sup>nd</sup> interested party and subsequent gazettement by the 1<sup>st</sup> respondent and that the orders sought in the PPDT complaint were to find the 2<sup>nd</sup> respondent ineligible for the nomination, IEBC to expunge the 2<sup>nd</sup> respondent's name from the list of nominees.
32. They stated that the grounds and prayers in both the PPDT complainant and the election petition raised similar issues and sought the same prayers. They aver that the introduction of new issues or parties does not itself absolve the matter from the doctrine of res judicata and quoted the case of **Diocese of Eldoret Trustees (Registered) vs. Attorney General (on behalf of the Principal Secretary, Treasury) & another (2020) KEHC 8370**

**(KLR) and Pangaea Holdings LLC & another vs. Hacienda Development Ltd & 2 others (2020) KEELC 1644 (KLR).**

33. According to the 2<sup>nd</sup> respondent, the issues raised at the election court and the appeal court are similar to the dispute being raised in the JR suit, which seeks the same remedy as in the election court is res judicata and that the ex parte applicant has decided on a frivolous course of action and denied him from enjoyment of the fruits of the judgment.
34. On whether the judicial review can overturn the decision of the election court, they hold that the election petition, the court without relying on the decision of the PPDT determined the validity of the nomination of the 2<sup>nd</sup> respondent and list published by IEBC and the court found it had jurisdiction to determine the matter and the exparte applicant never proved any illegality or procedural impropriety and upheld her nomination and subsequent gazettment.
35. She holds that according to the election court once the 1<sup>st</sup> respondent had gazetted the nominated MCAs its role ended and quoted the case of **Moses Mucigi & 14 others vs. IEBC & 5 others (2016) eKLR** which stated: I. 107 ***“It is therefore clear that the publication of the Gazette Notice marks the end of the mandate of IEBC, regarding the nomination of party representatives, and shifts any consequential dispute to the Election Courts.”***
36. They aver that the Petition and PPTD Complaint were all tethered to whether the 1st Respondent had validly and properly gazetted her as the nominated MCA under the gender top-up list of KANU and that both the lower court and the High court in the Election Petition and Appeal held that IEBC had already gazetted the nominated MCAs on September 9th 2022, found that IEBC did not wrongfully or illegally exclude the 1<sup>st</sup> Interested Party (Amina Hanjila Lutta) since the 2nd Respondent was qualified to be an MCA, was validly appointed by the 2<sup>nd</sup> Interested Party and the Party List was legally allowed and published by the IEBC.

37. They pray that this court strike out the Judicial review application since allowing it would overturn the election petition appeal judgment decision by Justice P.J Otieno and Hon. Ndururi who sat as election courts and allowing multiplicity of suits over the same issue would allow re-litigation and should be abhorred by the Honourable court and further that it would be contrary to proper judicial process for an election court decision to be overturned by a judicial review other than the court of Appeal which the exparte applicant had abandoned.
38. In conclusion, she prayed that the court dismisses the judicial review application with costs.

**1<sup>st</sup> respondent's submissions.**

39. In their submission dated 9<sup>th</sup> June 2025, the respondent raised 3 issues for determination, being whether this Honourable Court has jurisdiction to entertain this matter, whether the judicial review application tendered herein is merited, and finally, who is to bear the costs of the instant application.
40. On the first issue of whether this Honourable Court has jurisdiction to entertain this matter, the aver that this court lacks the jurisdiction to entertain the application, which they aver is res judicata as provided under section 7 of the Civil Procedure rules, which provides that:
- “No court shall, try, any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”***
41. Relies on the case of **Supreme Court in John Florence Maritime Services Limited & another v Cabinet Secretary**

**Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)**

in explaining the elements of res Judicata

42. Respondent case is that the applicant had filed an Election Petition at the Principal Magistrate at Kakamega, in Election Petition No. E005 of 2022; Major Suleiman Kanyanya Sumba vs. KANU & 4 Others, seeking orders inter alia, a declaration that the Gazette Notice No. 10712 - Vol CXXIV - No. 186 is void ab initio to the extent that it includes the name of Cynthia Livoli as a nominated member of the County Assembly of Kakamega. The Court dismissed the Petition by a judgment dated 17th January, 2023.
43. The applicant filed an appeal at the High Court at Kakamega in Kakamega High Court Election Appeal No. E004 of 2023; Major Suleiman Kanyanya Sumba Vs- IEBC & 4 Others, against the aforementioned judgement of the Principal Magistrate Court at Kakamega, which this court dismissed the Appeal vide a judgement dated 20th July, 2023.
44. On the second element on whether the judgment was decided on merit pursuant to Section 75(3) of the Elections Act. The court heard the matter on merits and at page 28 of its judgment held that "*the petition has failed.*"
45. Further, with respect to the appeal judgement of the High Court, reference is also made to Paragraph 4(f) of the said Replying Affidavit and the High Court's judgement of 20th July, 2023 paragraph 38 of the judgement, the Honourable Court stated that "*at the end, the appeal is determined to lack merits and is dismissed with costs to the Respondents...*"
46. On the 3<sup>rd</sup> element, whether the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.
47. The matter related to the nomination of a member of Parliament, where the Principal Magistrate Court was vested with the requisite statutory jurisdiction to hear and determine the matter

as an election court, and jurisdiction flows from Section 75(1A) (2) (3) of the Elections Act 18.

48. On the fourth element of Resjudicate the dispute at all levels related to the same parties subject matter in the cause of action.

49. The 1<sup>st</sup> Respondent maintains that the subject matter and cause of action herein has remained the same from the PPDT to this very instant case. In this regard, the 1st Respondent submits that the underlying subject matter is the election of the 2nd Respondent as a Member of the County Assembly of Kakamega by way of Party Lists.

50. The applicant seeks to have the 1st Respondent enforce the decree emanating from the judgment in Political Parties Disputes Tribunal Complaint No. E023 of 2022; Suleiman Kanyanya Sumba - Vs- KANU, Cynthia Livoli and IEBC (Interested Party), wherein, the complainant therein had sought that the name of the 2nd Respondent herein be expunged from the 2nd Interested Party's gender top-up list for Kakamega County on the allegation that she was irregularly included in the said list.

**51.** The doctrine of *res judicata* doctrine is to ensure there is no multiplicity of cases, which would lead to a backlog of cases in our courts and relied on the the Supreme Court decision in the case of **Kenya Commercial Bank Limited & another v Muiri Coffee Estate Limited & 3 others [2016] KESC 6 (KLR).**

52. On whether the judicial review application tendered herein is merited.

53. The 1<sup>st</sup> Respondent questioned which administrative action, the application seeks to review, none, thus the judicial review is unmerited, bad in law and an abuse of the court's process.

54. 1st respondent publication is not an administrative action by the 1st Respondent, but rather a declaration of election results which can only be challenged through an Election Petition before a court of competent jurisdiction and cited the decision in the Supreme Court in the case of **Mwicigi & 14 others v**

**Independent Electoral and Boundaries Commission & 5 others [2016] KESC 2 (KLR)** which held that the mandate of the 1st Respondent ends with respect to elections of Members of County Assemblies by party lists under Articles 90(1)(2) and 177 (1)(b) and (c).

55. The publication of the Gazette Notice marks the end of the mandate of IEBC, regarding the nomination of party representatives, and shifts any consequential dispute to the election courts. The Gazette Notice also serves to notify the public of those who have been “elected” to serve as nominated Members of a County Assembly.”

**Analysis and determination**

56. Having considered the pleadings, affidavits and written submissions, this court finds the following issues for determination;

- a) Whether this Court has jurisdiction to entertain the application
- b) Whether the doctrine of res judicata operates as a bar to this application.
- c) Whether, on the facts, the Applicant is entitled to the prerogative orders sought.

57. The first issue for determination is whether this Court is seized with jurisdiction to entertain the present Judicial Review. It is trite that jurisdiction is the lifeblood of any judicial process. Without it, a court acts in vain. This foundational principle was firmly established in the celebrated decision of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1, where Nyarangi, JA* pronounced:

***“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 a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”***

66. The jurisdiction of this Court to supervise subordinate courts and quasi-judicial tribunals is anchored under **Article 165(6) and (7)** of the Constitution, and operationalized under **Sections 8 and 9 of the Law Reform Act (Cap 26)**, read together with **Order 53 of the Civil Procedure Rules**. Nonetheless, this supervisory jurisdiction is not boundless. It is circumscribed by established principles of law and may not be invoked where a matter has already been conclusively adjudicated, is time-barred, or where an alternative statutory remedy exists.
67. In the present matter, the Applicant has invoked the supervisory jurisdiction of this Court through judicial review to challenge an administrative decision which, according to the Respondents, has already been the subject of final determination before competent courts. The Respondents argue that this Court lacks jurisdiction to reopen the issue since the matter is *res judicata* and because judicial review cannot be employed as an appellate mechanism to revisit findings made by courts of competent jurisdiction.
68. It is worth noting that once a competent court has conclusively adjudicated upon a dispute, this Court's mandate to reopen or re-examine that issue is entirely exhausted. In exercising its supervisory jurisdiction, the High Court cannot transform itself into an appellate forum over its own prior decisions or those of courts of concurrent jurisdiction.
69. In **Republic v Registrar of Societies ex parte Justus Nyang'aya & 3 Others [2005] eKLR**, the Court held that judicial review is not intended to afford parties a second bite at the cherry, nor is it a substitute for an appeal. Where a matter has been conclusively heard and determined, the appropriate recourse lies in the appellate process, not in judicial review proceedings.
70. The Court of Appeal in **Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others [1996] eKLR** emphatically

stated that litigation must come to an end and that parties are not permitted to re-litigate the same matter under a different guise.

71. In the premises, I find that issues raised herein were determined by a court of competent jurisdiction, this Court lacks jurisdiction to entertain the present application. Jurisdiction, once spent, cannot be revived by recasting a dispute in a different procedural form.

71. The next issue for determination is whether the present proceedings are barred by the doctrine of res judicata. The principle is codified under **Section 7 of the Civil Procedure Act (Cap 21)**, which provides that: *same parties... and has been heard and finally decided by such court.*"

72. For the bar of res judicata to apply, four elements must be satisfied as outlined by the Court of Appeal in **Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR:**

- a. The matter in issue must be identical in both suits;
- b. The parties must be the same or litigating under the same title;
- c. The matter must have been heard and finally determined; and
- d. The court that determined the earlier matter must have been competent.

73. The rationale for the doctrine was lucidly explained in **E.T. v Attorney General & Another [2012] eKLR**, where the Court observed that the doctrine serves the public interest of ensuring finality in litigation, preventing abuse of court process, and promoting certainty in judicial determinations. Courts must therefore guard against attempts by litigants to reopen issues conclusively settled by competent tribunals merely by seeking different reliefs.

74. From the record, it is not disputed that the Ex parte Applicant was the Petitioner in **Election Petition No. E005 of 2022** and

later, the Appellant in **Election Petition Appeal No. E004 of 2023**. The 1st and 2nd Respondents herein were parties in both suits, as were the Interested Parties. The element of identity of parties is therefore satisfied.

75. On the element of subject matter, the pleadings show that **in Election Petition No. E005 of 2022 Major Suleiman Kanyanya Sumba v KANU & 4 Others**, the Applicant sought a declaration nullifying *Gazette Notice No. 10712* and an order substituting the 2nd Respondent with Amina Hanjira Lutta. The same reliefs are sought in the current application. The cause of action and relief are identical.
76. The Principal Magistrate's Court, presided over by Hon. Ndururi, dismissed the petition on **17th January 2023**, holding that "the petition has failed." Subsequently, in **Election Petition Appeal No. E004 of 2023, Hon. P.J. Otieno J.** upheld that decision, finding the appeal devoid of merit. These were determinations on the merits, not procedural dismissals.
77. In **Republic v National Land Commission ex parte Muktar Saman Olow [2015] eKLR**, the Court held that judicial review cannot be used as a collateral appeal mechanism to revisit decisions already finalized. That reasoning squarely applies here.
78. Accordingly, I find that the issues raised in this Judicial Review application were directly and substantially in issue in the previous proceedings between the same parties and have been conclusively determined by courts of competent jurisdiction.
79. To entertain this application would offend Section 7 of the Civil Procedure Act and undermine the principle of finality in litigation as emphasise in **Uhuru Highway Development Ltd vs. Central Bank of Kenya** (supra). The proper recourse for the aggrieved party lay in appeal, not in the institution of fresh proceedings in the guise of judicial review.

80. I therefore hold that this application is barred by the doctrine of res judicata, and consequently, this Court lacks jurisdiction to reopen or reconsider matters already determined.

### **Conclusion**

81. In view of the foregoing, I find that this Court lacks jurisdiction to entertain the application, and further, that the Application for the Judicial review is also barred by the doctrine of res judicata.

- a) Accordingly, the Chamber Summons dated 23rd July 2024 is hereby struck out for want of jurisdiction.
- b) The ex-parte applicant shall pay costs to the 1st respondent, 2nd respondent.
- c) Right of Appeal 30 days.
- d) File closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA  
THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025.**

**S.MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Angong'a

Mr. Mwiti for the 2<sup>nd</sup> respondent present online.

Ikumbi holding brief for Mr. Kungu for the ex-parte Applicant and 1<sup>st</sup> Interested party present online.