

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

JUDICIAL REVIEW NUMBER E006 OF 2025

**IN THE MATTER OF PRAYERS FOR JUDICIAL REVIEW, ORDER
OF CERTIORARI, MANDAMUS AND PROHIBITION**

AND

**IN THE MATTER OF THE DECISION BY THE NATIONAL
OLYMPIC COMMITTEE OF KENYA (NOC-K) TO PUBLISH JOHN
OGOLA AS THE ONLY CANDIDATE FOR THE POST OF
SECRETARY GENERAL - NOCK**

AND

**IN THE MATTER OF ARTICLES 2 (1), 3 (1) 10, 38, 47, 81,
159 & 258 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS
ACT NO. 4 OF 2015 LAWS OF KENYA**

AND

**IN THE MATTER OF THE SECOND SCHEDULE OF THE
SPORTS ACT AND REGULATION 20 OF THE SPORTS
REGISTRAR’S REGULATIONS 2016**

AND

**IN THE MATTER OF ARTICLE 17 OF THE NOCK
CONSTITUTION AS READ WITH THE NOCK ELECTORAL
RULES AND REGULATIONS 2025**

AND

**IN THE MATTER OF THE JUDGEMENT OF THE COURT IN
ELDORET IN CONSTITUTIONAL PETITION E021 OF 2025
JOCELYNE NYAMBURA & 2 OTHERS VS INDEPENDENT
ELECTORAL BONDARIES COMMISSION**

BETWEEN

REPUBLIC OF KENYAAPPLICANT

VERSUS

INDEPENDENT ELECTORAL

BOUNDARIES COMMISSION 1ST RESPONDENT

NATIONAL OLYMPICS

COMMITTEE OF KENYA 2ND RESPONDENT

AND

KENYA TABLE TENNIS

ASSOCIATION 1ST INTERESTED

PARTY

JOHN OGOLA 2ND INTERESTED

PARTY

DANIEL MUNGAI KIMANDO 3RD INTERESTED

PARTY

SPORTS REGISTRAR 4TH INTERESTED

PARTY

RULING

1. This Ruling is in respect to the 2nd Interested Party's Preliminary Objection dated 9th September 2025. He relied on the following grounds: -

- I. THAT by dint of **section 20(7) of the Sports Act No. 25 of 2013**, this Honourable Court lacks jurisdiction to hear and determine this matter.
- II. THAT the jurisdiction to hear and determine sports related disputes, including sports elections is a preserve of the Sports Tribunal.
- III. THAT by dint of the **Fair Administrative Action Rules, 2024 (Legal Notice 165 of 2024)**, the Judicial Review Application filed herein is defective.
- IV. THAT pursuant to **sections 5, 6 and 8 of the Fair Administrative Action Rules, 2024**, the ex-parte Applicant did not, inter alia: -
 - a) Issue a notice of intention to sue.
 - b) File the suit in the lowest court with competence to hear the matter.
 - c) File the suit where the subject matter arose or where the Respondent resides and;
 - d) File the suit in the prescribed format.

V. Therefore, the Application is premature as the Applicant has not exhausted the procedures provided in law and has not been filed in compliance with the requirements provided in law.

2. As of the date of writing this Ruling, there was no response to the Preliminary Objection. This court directed that the Preliminary Objection be dispensed off through written submissions.

2nd Interested Party's written submissions

3. In his written submissions dated 24th October 2025, the 2nd Interested Party submitted that the Judicial Review Application ought to comply with the provisions of the Fair Administrative Action Act and that **section 8** provided that the Application should be filed in the lowest court with competence and within the jurisdiction where the subject matter arose. The 2nd Interested Party further submitted that the subject matter arose in Nairobi and not Bomet.

4. It was the 2nd Interested Party's submission that this court did not have jurisdiction to handle the dispute. That the same was vested in the Sports Tribunal as the first port of call. It was the 2nd Interested Party's further submission that **Rule 26 of the Sports Disputes Tribunal** provided a clear appellate mechanism for decisions arising from the Sports Tribunal. That any person aggrieved by a decision of the Sports Disputes Tribunal may appeal to the Court of Arbitration for Sport.

5. The 2nd Interested Party submitted that the ex-parte Applicant had deliberately refused to follow the above remedy and brought the Application to this court prematurely. He relied on **S K Macharia vs Kenya Commercial Bank & others (2012) eKLR**, and **sections 9 (1), (2) and (3) of the Fair Administrative Actions Act**. The 2nd Interested Party further submitted that the court should direct the ex-parte Applicant to exhaust all remedies available in law before coming to court.

Ex-parte Applicant's submissions

6. Through his written submissions dated 21st October 2025, the ex-parte Applicant submitted that the matter was properly before this court. That the Sports Disputes Tribunal was a party in this case and could not adjudicate on a matter in which it is a party. That principles of natural justice concern procedural fairness. He relied on **David Oloo Onyango v Attorney-General [1987] KECA 56 (KLR)**. The ex-parte Applicant further submitted that the High Court had unlimited original jurisdiction.
7. In response to filing the suit in Bomet and not Nairobi, the ex-parte Applicant submitted that Judicial Review proceedings are supervisory in nature directed at ensuring lawful exercise of power. That **section 8 of the Fair Administrative Actions Act** did not apply to Judicial Review proceedings. The ex-parte Applicant further submitted that what mattered was the supervisory nature of the court and not its location.

8. I have considered the Preliminary Objection dated 9th September 2025, the 2nd Interested Party's written submissions dated 24th October 2025 and the ex-parte Applicant's written submissions dated 21st October 2025. The only issue for my determination was whether the Preliminary Objection had merit.

9. What constitutes a Preliminary Objection was set out in the oft cited case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, where it was held: -

“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 had to be ascertained or if what is sought is the exercise of judicial discretion. (Emphasis added)

10. Similarly, the Supreme Court of Kenya in **Independent Electoral & Boundaries Commission v Cheperenger & 2 others [2015] KESC 2 (KLR)** held: -

“.....The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other

resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.” (Emphasis added)

11. In the present matter, the ex-parte Applicant was aggrieved with the way the 2nd Respondent handled the elections for the post of its Secretary General. The ex-parte Applicant stated that he had been cleared to vie for the post of Secretary General of the 2nd Respondent against the 2nd Interested Party. I have gone through the pleadings and I have noted that the 2nd Interested Party was elected as the 2nd Respondent’s Secretary General and it is this election result alongside the process that led to the election that is the crux of the present Judicial Review Application. On the

other hand, the 2nd Interested Party stated that the Judicial Review Application was brought prematurely before this court as the law allowed the ex-parte Applicant other dispute resolution avenues before approaching this court.

12. Rule 20 of the Sports Registrar Regulations, Legal Notice 158 of 2016 provides: -

- (1) An organization shall hold election in accordance with the Rules provided in its constitution.**
- (2) Notwithstanding paragraph (1), a sports organization seeking to hold an election shall—**
 - (a) appoint an independent panel consisting of at least five members to conduct the election;**
 - (b) include observers from at least one umbrella sport organization, the Ministry responsible for matters related to sports and the Registrar's office;**
 - (c) observe the principle of non-discrimination as provided in their Constitution;**

- (d) inform the Registrar at least four weeks prior to the expected date of the elections;**
- (e) conduct the election in an open, free and fair environment;**
- (f) ensure that the nominated candidates obtain clearance from the Directorate of Criminal Investigation, the Kenya Revenue Authority; the Ethics and Anti-Corruption Commission, the Credit Reference Bureau and the Higher Education Loans Board; and**
- (g) ensure that the office of the chairman or president, secretary and treasurer are reserved for Kenyan citizens only.**
- (3) An observer in an election and the returning officer shall, within seven days of the election, submit a separate report to the Registrar on the credibility of the elections.**
- (4) The sports organization shall, within twenty-one days, notify the Registrar of the newly elected**

office bearers in the Form R set out in the First Schedule.

(5) The Registrar may register a newly elected office bearer, if satisfied with the election and the election process.

(6) The newly elected office bearers shall hold office for a period of four years and may be elected for one further term.

(7) A person who is dissatisfied with the results of an election may appeal to the Tribunal within thirty days of the election. (Emphasis)

13. Rule 26 of the Sports Disputes Tribunal Rules, Legal Notice 49 of 2022 provides: -

(1) Any party dissatisfied with a decision of the Tribunal may lodge an appeal to the Court of Arbitration for Sport if the rules or policies of the

relevant International Federation or National Sports Organization so provide.

(2) An appeal to the Court of Arbitration for Sports shall be lodged within the time specified in the relevant rules of the International Federation or National Sports Organizations or within fifteen days of the date of the decision of the Tribunal where the relevant rules of the International Federation or National Sports Organizations do not specify the time.

(3) Unless the Tribunal or the Court of Arbitration for Sport otherwise order, an appeal shall not operate as a stay of the decision to which the appeal relates.

14. From the above, it is clear that there exist alternative dispute resolution mechanisms relating to the elections of members of the 2nd Respondent. It has often been held in various authorities that where there exists an alternative mode of

dispute resolution, a party should exhaust such processes before approaching a court of law. In the case of **Joseph C. Kiptoo & another v Kericho Water and Sewerage Company [2016] KEHC 4082 (KLR)**, Mumbi J. (as she then was) held: -

“It has been stated time and again that where an Act of Parliament provides for a mechanism for resolution of disputes, that mechanism must be strictly followed.”

15. Similarly, in the case of **The Speaker of the National Assembly vs Karume (2008) 1KLR (E.P) 425**, the Court of Appeal held that: -

“In our view there is considerable merit that where there is a clear procedure for the redress of any particular grievance prescribed in the

Constitution or an Act of Parliament, the procedure should be strictly followed.”

16. The above position is further anchored by **section 9 of the Fair Administrative Action Act** which provides: -

(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

17. That said, the ex-parte Applicant is allowed to by-pass the doctrine of exhaustion if he is able to demonstrate exceptional circumstances that would necessitate such a by-pass as provided for by **section 9(4) of the Fair**

Administrative Actions Act above. Having gone through the ex-parte Applicant's pleadings, I find no such evidence by the ex-parte Applicant.

18. This then calls into question the jurisdiction of this court in handling this dispute at this stage. The Court of Appeal in **Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment)** discussed the issue of jurisdiction to wit:

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts

in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA relying, inter alia, on the above cited treatise by John Beecroft Saunders held 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 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.”

A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

The Supreme Court In the Matter of Interim Independent Electoral Commission [2011] eKLR, Constitutional Application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the Constitution, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

“...a court may not arrogate to itself jurisdiction through the craft of

interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.”

In Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, Application No 2 of 2011, the Supreme Court reiterated its holding on a court’s jurisdiction. In the matter of the Interim Independent Electoral Commission (supra) at paragraph 68 of its ruling, the Supreme Court 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 itself

jurisdiction exceeding that which is conferred upon it by law.”

19. Flowing from the above, it is evident that the ex-parte Applicant had not exhausted all the dispute resolution mechanisms as provided for by the **Sports Act Cap 223, Rule 20 of the Sports Registrar Regulations, Legal Notice 158 of 2016 and Rule 26 of the Sports Disputes Tribunal Rules, Legal Notice 49 of 2022.**

20. In the end, it is my finding therefore that the Judicial Review Application dated 8th August 2025 is premature. It is my further finding that this court has no jurisdiction to hear and determine the Judicial Review Application at this stage and it is hereby struck out.

21. Each party to bear their own costs.

Ruling delivered, dated and signed at Bomet this 20th day of November, 2025.

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**HON. JULIUS K. NG'ARNG'AR
JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants)

Makori for the Applicant

Bellion for the Respondents

Kwandori for the Interested parties

ORIGINAL