REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

APPLICATION NO. E142 OF 2025

BETWEEN

REPUBLIC..... APPLICANT

VERSUS

ALI GOLICHA..... EX-PARTE APPLICANT

VERSUS

HASSAN OLE NAADO (National Chairman) ..... 1ST RESPONDENT

MUHDHAR SHARIF (Deputy Chairman) ..... 2ND RESPONDENT

ABDULLAHI SALAT (Secretary General) ..... 3RD RESPONDENT

OMAR KHAMIS (Ag. Treasurer) .....4TH RESPONDENT

JUMA MUSA (organizing Secretary) ..... 5TH RESPONDENT

(*All sued in their capacity as officials of Supreme Council of Kenya Muslims, SUPKEM***)**

AND

REGISTRAR OF SOCIETIES.....INTERESTED PARTY

RULING

The Applicant's Case;

1. Before this court for determination is the application dated 28th May 2025 wherein the Applicant seeks the following orders: -

1) ...Spent.

2) THAT leave do issue for the Applicant to apply for an ORDER OF CETORARI against the Respondents to quash their decision expelling the Applicant as a member of SUPKEM and consequently as a member of the National Governing Council, SUPKEM and an official of the National Executive Committee during its Annual General Meeting held on 9th May 2025.

3) THAT leave do issue for the Applicant to apply for an ORDER OF PROHIBITION against the Respondents prohibiting them from barring the Applicant from executing his mandate and duties as Regional Coordinator, Nairobi Region, SUPKEM and as an official of the National Executive Committee, SUPKEM and further from suspending, expelling and/or in any way interfering with the Applicant's membership and position in SUPKEM.

4) THAT leave do issue for the Applicant to apply for an ORDER OF PROHIBITION prohibiting the Interested Party from registering any returns submitted by the Respondents purporting to remove the Applicant as a member and official of SUPKEM based on the Annual General Meeting held on9th May 2025.

5) THAT leave do issue for the Applicant to apply for an ORDEROF MANDAMUS compelling the Respondents to reinstate the Applicant as a member of SUPKEM and consequently as the Regional Coordinator for Nairobi and an official of the National Executive Committee with all rights, privileges, and responsibilities restored forthwith.

6) THAT leave so granted does operate as stay of the Respondents' decision made on 9th May 2025, expelling the Applicant as a member and an official of the National Executive Committee, SUPKEM, and any further proceedings such as submitting returns of the outcome of the Annual General Meeting (AGM) to the Interested Party, declaring a vacancy and/or replacing the Applicant's position as Regional Coordinator, Nairobi Region.

7) THAT this Honourable Court be pleased to grant any further orders as it deems fit.

8) THAT costs of this Application be provided for.

2. The application is predicated by a Statutory Statement dated 25th May, 2025 a Verifying Affidavit by Ali Golicha sworn on even date.

3. It is the Applicant's case that he was duly elected in October 2017 as the Regional Coordinator for the Nairobi Region of the Supreme Council of Kenya Muslims (hereinafter referred to as SUPKEM) by delegates representing Nairobi Muslims.

4. By virtue of this election, he became an ex officio member of both the National Governing Council and the National Executive Committee of SUPKEM. Since that election, it is not disputed that no further elections have been conducted within the organization.

5. He asserts that on 14th April 2025, the Secretary General of SUPKEM issued a notice convening an Annual General Meeting (AGM) scheduled for 9th May 2025 at Weston Hotel, Nairobi. The notice, which was duly circulated to members, contained the agenda for the said meeting. The Applicant, being the Nairobi Regional Coordinator and a member of the National Executive Committee, attended the meeting in that capacity.

6. However, the Applicant avers that among the eight items listed on the agenda, there was no indication that his conduct as an official, or any motion for his expulsion, would be discussed. He maintains that he was neither summoned nor informed of any complaint against him prior to the meeting.

7. The Applicant further contends that the meeting was not attended by bona fide delegates elected in 2017 but by individuals who were relatives and agents of various Regional Coordinators, purporting to act as legitimate delegates.

8. During the course of the meeting, the 1st Respondent is said to have made disparaging remarks portraying the Applicant as a problematic leader and, thereafter, called upon the purported delegates to vote for his expulsion from the Council. Following the said call, the chairperson put the matter to vote, announced that the Applicant had been

expelled, and directed his immediate removal from the meeting despite his pleas to be heard.

9. It is the Applicant's case that this process was conducted in blatant disregard of the Constitution of SUPKEM, particularly Article 16, which governs the discipline of members and the resolution of disputes. Article 16 provides, inter alia, that before any organ of the Council entertains a complaint, it must be satisfied that attempts to resolve the matter within the appropriate forum have failed; that all complaints and communications must be made in writing; and that any member or official facing disciplinary action must be accorded the right to be heard.

10. Further, upon hearing a complaint, the Council may take one or more actions, including demanding a written apology, issuing a warning, imposing a suspension not exceeding two years, expulsion, removal from office, or such other disciplinary action as it may deem appropriate.

11. The Applicant asserts that none of these procedural safeguards were observed. He was never notified in writing of any complaint, was not given an opportunity to respond, and was expelled summarily and without due process, contrary to the provisions of Article 16 of the SUPKEM Constitution.

12. He further avers that his right to a fair hearing and to fair administrative action was grossly violated, as guaranteed under the Constitution of Kenya.

13. Additionally, the Applicant points to Article 9.5 of the SUPKEM Constitution, which provides that the National Governing Council "may expel any of its own members or adjudicate on any suspension of a National Executive Committee (NEC) office bearer/s already suspended by the National Chairman for misconduct, subject to giving the member a hearing, and its decision shall be final."

14. The Applicant contends that his purported expulsion did not comply with this provision, as it was not preceded by any suspension, nor was he afforded a hearing as required.

15. According to the Applicant, the AGM degenerated into a forum for vilification and personal attacks, rather than a lawful assembly to address the agenda circulated by the Secretary General. He was vilified and condemned unheard, in what he terms a flagrant violation of the principles of natural justice. Despite subsequent demands that SUPKEM follow due process and accord him an opportunity to defend himself, the Respondents allegedly responded with hostility and contempt.

16. The Applicant maintains that his expulsion was unlawful, unconstitutional, and highly prejudicial. To date, no written communication has been issued to him detailing the reasons for his expulsion or furnishing a copy of the resolution said to have been passed. The Applicant avers that his removal from office has further

been communicated to third parties, including the Jamia Mosque Committee, through a letter authored by the 3rd Respondent, purporting that he is no longer a member of SUPKEM.

17. He contends that unless this Honourable Court intervenes, he will continue to suffer unlawful deprivation of his elected position as the Regional Coordinator for Nairobi Region and as a member of the National Executive Committee, thereby being prevented from discharging the mandate conferred upon him by his constituents.

18. The Applicant therefore urges that his expulsion was carried out in contravention of the Constitution of SUPKEM, the rules of natural justice, and Articles 47 and 50 of the Constitution of Kenya on fair administrative action and fair hearing.

19. He asserts that this application raises a prima facie case with high prospects of success, that no prejudice shall be occasioned to the Respondents if the reliefs sought are granted, and that it is in the interest of justice and fairness that the Court grants the orders prayed for.

The Respondents' Case;

20. The Respondents in rebuttal of the Applicant's Chamber Summons filed a Replying affidavit by Ali Hajji Hassan K. Ole Naado sworn on 24th June, 2025 and written submissions dated 21st August, 2025.

21. According to the Respondents, the dispute before the Court concerns internal matters of the Supreme Council of Kenya Muslims (SUPKEM),

a registered religious organization, and not any administrative act or decision of a public authority.

22. The Respondents maintain that the questions raised by the Applicant do not fall within the supervisory jurisdiction of this Court in judicial review but rather within the domain of private law.

23. SUPKEM is not a government agency or statutory body, and its officials are not public officers. Consequently, judicial review remedies, which are intended to oversee public bodies, cannot issue against decisions of a voluntary association such as SUPKEM.

24. The Respondents contend that the Applicant's grievances, if any, ought to have been pursued through civil proceedings or under the internal dispute resolution mechanisms established in the SUPKEM Constitution.

25. The present proceedings amount to an indirect appeal against a decision properly made within SUPKEM's structures, and the Applicant is improperly seeking to invoke the Court's public law jurisdiction to resolve a private dispute.

26. They further contend that the Applicant's claim that no SUPKEM elections have been held since 2017 is factually incorrect. Elections were suspended by order of the Court in HCC 262 of 2019 (Amb. Yusuf Nzibo v Hassan Ole Naado & 5 Others), which remains pending with a return date of 2nd October 2025.

27. Despite the suspension, SUPKEM has continuously filed its annual returns with the Registrar of Societies in full compliance with statutory

requirements. Indeed, the Applicant's own exhibit "AG–1a" confirms that SUPKEM filed its returns through Form I, following Annual General Meetings as required by law.

28. Moreover, in Judicial Review Case No. E036 of 2024, this Honourable Court directed the Registrar of Societies to register SUPKEM's Forms H and I, affirming the organization's compliance. The Applicant's contradictory assertions cannot stand.

29. It is argued that the Applicant was expelled from SUPKEM after due process and in accordance with Articles 15.00, 15.1, and 15.2 of the SUPKEM Constitution. The expulsion arose from his conduct in inciting members of his community to sabotage the WAQF Housing Project situated along Outering Road, Nairobi, a project funded by the Qatari Government and supported by the Office of the President.

30. The decision was communicated to him by letter dated 22nd May 2025, issued by the Nairobi Region SUPKEM Secretary (Exhibit "HOK–4"). Subsequent to his expulsion, Sheikh Ali Guracha was duly elected as the new Nairobi Regional Coordinator, as communicated in the same correspondence. The Registrar of Societies has since updated SUPKEM's official records to reflect this change.

31. The Respondents observe that the Applicant has not enjoined Sheikh Ali Guracha in these proceedings, yet he seeks orders that would directly affect him. This omission renders the application defective for non-joinder of a necessary party and further demonstrates its futility, as the contested decision has already been implemented. The orders

sought, including those of prohibition and certiorari, would therefore serve no useful purpose.

32. The Respondents contend that the allegations made by the Applicant that he was vilified, denied a fair hearing, or that the AGM was improperly conducted are unfounded.

33. He attended the meeting, raised no objection to the delegates present, and only challenged the process after an adverse decision had been made. He was afforded a fair opportunity to be heard and chose not to exercise his right to appeal internally under the mechanisms provided by SUPKEM's Constitution. The Respondents have produced documentary proof, showing that due process was strictly observed.

34. It is the Respondents' position that judicial review is concerned solely with the decision-making process and not with the merits of the decision itself.

35. The Applicant's claims raise deeply contested factual issues — including the propriety of his expulsion, the authenticity of delegates, and his alleged misconduct — which cannot be determined within the summary framework of judicial review. Such matters can only be resolved through viva voce evidence in a civil trial.

36. To allow the present application to proceed would improperly invite this Honourable Court to examine the merits of an association's internal decision, contrary to established law.

37. According to them, the reliefs sought by the Applicant are further incompetent because no actionable decision of a public nature has

been identified, and no order has been sought against the Interested Party, who is the only body capable of being subjected to judicial review. The Applicant's case is therefore devoid of substance, and the invocation of this Court's jurisdiction is misplaced.

38. The Respondents submit that the Applicant has failed to demonstrate any illegality, irrationality, or procedural impropriety on the part of the Respondents. The application is an abuse of court process, and the Honourable Court is urged to dismiss it with costs to the Respondents. They maintain that they have demonstrated that the Applicant's allegations are unfounded, misdirected, and based on disputed facts unsuitable for determination in judicial review.

39. The impugned decision was not a unilateral action by the deponent but a formal communication issued by the Nairobi Region SUPKEM Secretary via a letter dated 22nd May 2025, informing the Applicant of SUPKEM's decision to expel him for inciting members of his community to sabotage the Waqf Housing Project along Outering Road, Nairobi—a project funded by the Qatari Government and supported by the Office of the President.

40. The Respondents further submit that the Applicant posted Tiktok videos discrediting the project and vilifying SUPKEM's leadership, resulting in the cancellation of the project's official launch scheduled for 8th May 2025 by the President of the Republic of Kenya.

41. From these facts, the Respondents contend that the Applicant's case is replete with highly contested factual issues, including the propriety of

his expulsion, his alleged misconduct, and the internal operations of SUPKEM.

42. Such matters, they argue, cannot be resolved on affidavit evidence alone, as judicial review proceedings are not designed to test conflicting factual positions or to determine the merits of disputes.

43. The Respondents cite the Supreme Court decision in ***Saisi & 7 others v Director of Public Prosecutions & 2 others [2023] KESC 6 (KLR),*** where the Court held that judicial review is not intended to transform into a full-fledged inquiry into the merits of a matter. The Court emphasized that the nature of evidence in judicial review—being affidavit-based—does not permit the testing of disputed facts, which are better suited for trial proceedings involving testimony and cross-examination.

44. The Respondents further rely on ***Republic v County Council of Kwale & another ex parte Kondo & 57 other (1998) 1 KLR (E&L),*** where Waki J. (as he then was) held that leave for judicial review should only be granted if there exists an arguable case fit for further investigation. The requirement for leave serves to filter out frivolous, vexatious, or hopeless claims that would otherwise waste judicial time. They submit that the Applicant's claim fails this threshold test, as it raises private grievances and disputed facts rather than public law issues.

45. **T**he Respondents also rely on ***Republic v National Transport & Safety Authority & 10 others ex parte James Maina Mugo [2015] eKLR,*** where the Court held that disputes requiring

determination of contested issues of fact fall outside the ambit of judicial review, which is a special jurisdiction distinct from civil or criminal proceedings.

46. The Respondents further submit that the Applicant was accorded a fair hearing before SUPKEM, and he failed to exhaust the internal remedies available under SUPKEM's Constitution.

47. They invoke the doctrine of exhaustion of remedies, as affirmed in ***William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR,*** and in ***Speaker of the National Assembly v Karume [1992] KLR 21,*** which held that where a statutory or constitutional procedure exists for redress, it must be strictly followed before approaching the courts.

48. The Respondents further argue that the Applicant's plea for an order of prohibition is incompetent, as prohibition operates prospectively and cannot issue to quash a decision already made.

49. They rely on the Court of Appeal decision in ***Kenya National Examinations Council v Republic exparte Geoffrey Gathenji Njoroge [1997] eKLR,*** where it was held that prohibition cannot undo an act that has already been completed. Additionally, the Respondents refer to the Supreme Court's pronouncement in ***Dande & 3 others v Inspector General, National Police Service & 5 others [2023] KESC 40 (KLR),*** which clarified that a party invoking judicial review under Order 53 must adhere strictly to the procedural framework of the Law Reform Act and the Civil Procedure

Rules, unless the proceedings are expressly grounded in constitutional jurisdiction under Article 23. The Applicant herein has not invoked Article 23, and therefore his case cannot be treated as a constitutional petition.

50. In further support, the Respondents rely on the decision in ***Republic v Zacharia Kahuthu & another (Sued as Trustees of the Kenya Evangelical Lutheran Church) & another [2020] eKLR***, which held that judicial review is ill-suited for resolving disputed factual issues requiring direct evidence and cross-examination. Similarly, in ***Republic v Attorney General & 4 others ex parte Diamond Hashim Lalji & Ahmed Hasham Lalji [2014] eKLR***, the Court affirmed that where judicial review proceedings invite the Court to determine contested facts or assess the merits of rival versions, the Court must decline jurisdiction.

51. The Respondents submit that the Applicant's case is wholly misconceived, raises contested private facts unsuitable for judicial review, and seeks reliefs that are neither competent nor available under Order 53.

52. It is their case that the Applicant has adequate remedies in civil proceedings and has failed to demonstrate any illegality, irrationality, or procedural impropriety in the Respondents' conduct. They therefore pray for costs, in accordance with Section 27(1) of the Civil Procedure Act and the well-established principle that costs follow the event, as held in Hussein ***Jan Mohamed & Sons v Twentsche Overseas Trading Co. Ltd [1967] EA 287.***

Analysis and Determination;

The issue for determination is whether or not the Applicant has made out a case for the grant of the orders sought.

53. The applicable law on leave to commence judicial review proceedings is *Order 53 Rule 1*of the Civil Procedure Rules, which provides that no Application for judicial review orders should be made unless leave of the court was sought and granted.

54. The reason for the leave was explained by Waki J (as he then was), in **Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** as follows:

> *"The purpose of Application for leave to apply for judicial review is firstly to eliminate at an early stage any Applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the Applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an Application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived…Leave*

may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the Applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive Application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially".

55. It is also trite that in an Application for leave, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an Applicant's case is sufficiently meritorious to justify leave.

56. In **Uwe Meixner & another v Attorney General [2005] eKLR,** it was held that the leave of court is a prerequisite to making a substantive Application for Judicial Review with a view to filtering out frivolous Applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the Applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage." At this stage an Application for leave to bring Judicial Review proceedings must first be made. The leave stage as held by Waki J is used to identify and filter out, at an early stage, claims which may be trivial or without merit.

57. Before granting leave, the court must be satisfied that the following three principles exist:

a) The Application discloses a prima facie case,

b) The Applicant has locus standi,

c) The Application is not time barred.

58. When it comes to the first principle the court should carry our a mere cursory or a quick perusal of evidence before it so as to establish that the Applicant is advancing an arguable case with a reasonable chance or possibility of success on inter parties hearing.

59. In the case of **Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka[20061 1 EA 321** it was held;

> *"That leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave."*

60. In **Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** the court held that;

> *"Leave may only be granted if on the material available the court is of the view, court establishes that there is an arguable case for granting the relief claimed by the Applicant whose test is a case fit for further investigation at a full inter parties hearing of the substantive Application for judicial review."*

61. Similarly, in **Republic v National Transport & Safety Authority & 10 others [20141 eKLR, in Kihingo Village (Waridi**

Gardens) Management Limited v Attorney General & 2 others (Judicial Review 169 of 2023) [20231 KEHC 26714 (KLR) (Judicial Review) (20 December 2023) (Ruling) in granting leave to the Applicant to file judicial review held that;

> *"I have carefully perused through the record and submissions a prima facie case is established to warrant the grant ofthe leave sought."*

62. The SUPKEM has a Constitution which provides for an alternative dispute resolution framework.

a. "Clause 16 attends to DISCIPLINE OF MEMBERS AND DISPUTES RESOLUTION.

b. 16.1Before the Council, Sub-County Council and or/any organ of the Council entertains any

c. complaint, it must first be satisfied that efforts to resolve the conflict or the dispute

d. locally or within the appropriate forum have failed.

e. 16.2 Al complaints have to be submitted in writing and also communication by the Council shall be in writing.

f. 16.3 The Council, Sub-County Council and or/any organ of the Council shall afford member or official who faces disciplinary action and/or complaint against him/her

g. 16.4 Upon hearing the complaint, the Council, Sub-County Council and or/any organ of the Council may make one or more of the following: -

h. 16.4.1 Demand of a written apology

i. 16.4.2 Written warning

j. 16.4.3 Suspension for a specified period not exceeding two years

k. 16.4.4 Expulsion

l. 16.4.5 Removal from office

m. 16.4.6 Any other action that the Council may prescribe."

63. In the case of ***MMM (Suing Through JMM as Guardian and Next Friend) v Attorney General & 8 others; Moi Primary School Kabarak – Nakuru (Interested Party) (Petition E488 of 2023) [2024] KEHC 4010 (KLR)***, the court expressed itself as follows on the question of the doctrine of exhaustion;

> *"Equally, the Supreme Court in Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (2019) eKLR stated as follows:"... the Court must exercise restraint in exercising its jurisdiction under Article 16. Where there exist alternative*

methods of dispute resolution, the Court must exercise deference to the bodies statutorily mandated to deal with specific disputes in the first instance…. The foregoing verdict also finds support in an adage principle in administrative law of "Exhaustion of Administrative Remedies" and from the jurisprudence emanating from this Court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by the Constitution and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance …In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute… Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision

maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action."

32. Nevertheless, there are exceptional cases where despite the existence of alternative forum for dispute resolution, the Court may find its intervention necessary especially if it determines that such forums are inadequate to meet the ends of justice in a matter. The Court of Appeal in Fleur Investments Limited vs Commissioner of Domestic Taxes & another [2018] eKLR reasoned:"

22.For this proposition the appellant called in aid this Court's finding in the case of Speaker of National Assembly vs Njenga Karume (1990-1994) EA 546 where the Court expressed itself in relevant part as follows: -"...where there was an alternative remedy and especially where parliament has provided a statutory procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully to the suitability of the statutory appeal in the context of the

particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it…"

23…. Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly."

64. This Court cannot review the impugned elections which are an administrative decision unless the Applicant exhausts all remedies available under any written law — including internal mechanisms of review and appeal.

65. The fair administrative Action Act under Section 9 (2) The High court or a subordinate court under Sub section (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.

(4) Notwithstanding sub section (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.

66. In the case of **Republic versus Kenya Revenue Authority Exparte Style Industries Limited [2019] EKLR** the court clearly explained the provisions of Section 9 (2) and (3) of the FAAA and stated as follows;

"A proper construction of Section 9(2) and (3) of the FAA Act leads to the conclusion that they are couched in mandatory terms. The only way out is the exception provided by Section 9(4) which provides that;

"notwithstanding sub section (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. Two requirements flow from the above subsection. First, the Applicant must demonstrate "exceptional circumstances".

"The second requirement is that on application by the Applicant, the court may grant an exemption. My reading of the Law is that it is compulsory for the aggrieved party in all cases to exhaust the relevant internal remedies before approaching a court for review,

unless exempted from doing so by way of successful application under Section 9(4) of the FAA Act.

The person seeking exemption must satisfy the court first that there are exceptional circumstances and second,that it is in the interest of justice that the exemption be given. Section 9(4) of the FAA Act postulates an application to the court by the aggrieved party for exemption from the obligation to exhaust any internal remedy. My reading the said provision is that the Applicant must first apply to the court and demonstrate the existence of exceptional circumstances."

67. In the instant suit the ex-parte Applicant has moved this court without first seeking redress under the above available internal mechanisms. He has not demonstrated any exceptional circumstances to excuse him from the application of the doctrine of exhaustion.

68. In **Speaker of National Assembly versus Karume,** a pre-2010 decision in the following words: -

"Where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of Parliament that would be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures."

69. In the instant case, the Applicant made no reference to the SUPKEM, Constitution. He did not advance an argument that he was denied

access to the redress mechanism that is provided for in the SUPKEM Constitution.

70. Nothing will be ultimately achieved by granting the Applicant the orders sought because no substantive suit can be filed where the available alternative dispute resolution mechanisms have not been triggered.

71. Given that the leave prayer is not granted to Institute Judicial Review proceedings then a prayer that the leave so granted to operate as a stay cannot avail. That is the case in the instant suit.

72. The Exparte Applicant moved to this court prematurely and the application offending the doctrine of exhaustion and leave cannot be granted as prayed. The application lacks merit.

Costs;

73. In determining the issue of costs, this court is guided by the Supreme Court in the case of **Jasbir Singh Rai & Others vs. Tarlochan Rai & Others** observed that;

> *"In the classic common law style, the courts have to proceed on a case by case basis, to identify "good reasons" for such departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs..."*

74. The Applicant is not successful in the Application as a result of which he shall bear costs and I so hold.

Disposition;

75. The Applicant has not made out a prima case that can justify the grant of the orders sought.

Order;

The Application is dismissed with costs.

Dated, signed and delivered at Nairobi this 20th day of November, 2025.

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J. CHIGITI (SC)

JUDGE