

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CASE NO HCCHRPET/E010 OF 2025

IN THE MATTER OF;ARTICLES
1,2,3,10,22,23,47,73,174,185, 196 and 285 OF THE
CONSITUION OF KENYA, 2010

AND

IN THE MATTER OF; THE COUNTY GOVERNMENTS
ACT,2012 AND THE COUNTY ASSEMBLIES POWERS AND
PRIVILAGES ACT,2017

AND

IN THE MATTER OF; THE INTERNAL PROCEEDINGS AND
COMMITTEE STRUCTURE OF THE COUNTY ASSEMBLY OF
MARSABIT

BETWEEN

HON ADHI BINO.....
PETITIONER

VERSUS

THE COUNTY ASSEMBLY OF MARSABIT.... 1st
RESPONDENT
THE SPEAKER OF THE COUNTY ASSEMBLY

OF MARSABIT.....2nd
 RESPONDENT
 THE CLERK OF THE COUNTY ASSEMBLY OF MARSABIT
3rd RESPONDENT
 MEMBERS OF THE COUNTY BUDGET AND
 APPROPRIATIONS COMMITTEE.....4th
 RESPONDENT
 MEMEBERS OF THE COUNTY PUBLIC ACCOUNTS &
 INVESTMENT COMMITTEE.....5th RESPONDENT

RULING

A. Introduction

1.The Petitioner filed this petition raising serious legal and constitutional issues regarding the composition and continued operation of the county budget and Appropriations committee, Finance and Economic planning committee and the County Public Accounts and Investment Committee (PAC/PIC) of Marsabit county Assembly all of which had been constituted in clear violation of ***standing order 3(1), 186(4), 187(1), 187(2) and 187(4)*** and thus by extension breached ***Articles 10, 27, 73(1) , 174, 185(3), 196(1)(b), 201(3) and 232 of the Constitution of Kenya 2010*** by failing to uphold national values of transparency, accountability, equity fairness and good governance.

2. The said petition was concurrently filed with its notice of motion seeking conservatory orders, which were granted in the interim. In response the 1st to 5th respondent, through their counsel filed their preliminary objection dated 25th November 2025, where they raised the following grounds of objection, namely that;

a. THAT this court lacks jurisdiction to entertain, hear, determine or make any orders concerning the internal proceedings, composition, or operations of the county Assembly, as such matters fall exclusively within the legislative and administrative domain of the county Assembly pursuant to Articles 185(3) and 196 of the Constitution and Section 14 of the County Government Act, under the Doctrine of separation of Powers.

b. THAT this suit offends the doctrine of exhaustion, the suit is premature, misconceived and incompetent for failure by the petitioner to invoke and exhaust the available internal remedies and dispute resolution mechanisms provided under the standing Orders of the County Assembly of Marsabit, including standing order 168 to 187(6), the petition is thus filed contrary to the doctrine of Exhaustion codified under Section 9(2) of the Fair Administrative Action Act, 2015.

- c. THAT by virtue of Section 8, 10 and 11 of the County Assemblies Powers and Privileges Act No 6 of 2017, the proceedings and decisions of the county Assembly and its committee's as well as acts done by the speaker, Members and the clerk in the discharge of their lawful functions are expressly immunized from judicial questioning and consequently this court lacks jurisdiction to entertain the Petition.**
- d. THAT this Petition and Application are an abuse of the due process of the court as they invite the court to interfere in the internal governance and management of the County Assembly of Marsabit, matters which are not justiciable before this Honourable court in the first instance and whose jurisdiction is clearly outlined within the standing orders of the Marsabit County Assembly and the County Assembly Powers and Privilege's Act, 2017.**
- e. THAT this petition and application violates the established political question doctrine whereby the issues raised in the petition relate to internal legislative organization, political balancing, committee allocation, and governance discretion which, under the Political question doctrine, falls outside judicial determination.**

f. THAT the petition is fatally defective for failing to specify the constitutional rights violated, the manner of violation, and the nexus between the alleged acts and constitutional injury, contrary to the established principles laid in the Anarita Karimi Njeru Vr Republic (1979) KLR 154 and Mumo Matemu Vs Trusted Society of Human Rights Alliance (2013) Eklr.

g. THAT the petition and application is fatally defective as it does not raise and justiciable issues and thus amounts to abuse of the court process and ought to be struck out and dismissed with costs.

3. The Preliminary objection was canvassed by way of written submissions.

B. Parties Submissions.

(i) The Respondents/Applicants Submissions

4. The 1st to 5th Respondent relied on their submission's dated 4th December 2025 and stated that their objection was premised on five (5) issues namely;

a) Whether this court had jurisdiction, over disputes concerning the internal proceedings, committee composition and budgetary process of the county Assembly of Marsabit.

b) Whether the Petition violates the doctrine of exhaustion under Section 9(2) of the Fair Administration Actions Act, 2015 and the internal mechanism

provided by the County assembly Standing orders.

c) Whether, in view of the doctrine of Separation of powers and legislative privilege, the questions raised are non-justiciable political/organizational questions reserved to the Assembly.

d) Whether the Petition satisfies the constitutional pleadings threshold set out in Anarisa Karimi Njeru V Republic (1979)KLR 154 and Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 Others (2013) Eklr, and Whether it discloses any justiciable constitutional cause of action.

e) Whether, in the circumstances, the Petition and the notice of motion amount to an abuse of the court process and ought to be struck out in limine, with consequential orders on the interim conservatory orders.

5. Relying on the case of **“owner of the Motor vessel “Lillian’S Vs Caltex oil (Kenya) ltd (1989) KLR,”** the respondents reiterated that jurisdiction was every thing and if it was proved that the court lacked the same, it must **“down its tools”** and not proceed further in entertaining the petition filed. **Article 185(3) of the Constitution** vested legislative authority of the county in its County

Assemble, allowing it to determine its own procedure in oversight of the county executive. The said constitutional provision was to be read together with **Section 14 of the County Government Act and Sections 8, 10 and 11 of the county Assemblies Powers and privilege's Act, 2017**, which provided for the Assemblies standing orders which immunized members, the speaker and clerk of the assembly from civil or criminal proceedings for words spoken or acts done in the performance of their legislative duties. The said provisions also protected the assembly proceedings and decision's and that of all its committees from being questioned in court, so long as they were undertaken in accordance with the Act and the said standing orders.

6.The petitioners grievance went to the internal re constitution and leadership of committees, the allocation of positions such as chair and vice chair, and the conduct of budget related and oversight business of the assembly, which very matters the constitution and the above statues deliberately vested in the assemble as part of its institutional autonomy and they were thus protected by the doctrine of separation of powers , which limited the court not to intrude in the internal workings of the

assemble. Reliance was placed in the cases of **Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 others (2013) Eklr, Wilfred Manthi Musyoka Vs County Assembly of Machakos (2019) Eklr, Justus Kariuki Mate & Another Vs Martin Nyaga Wambora & another (2017) Eklr AND Njiru & 11 Others Vs Kenya Kwanza Coalition & 18 Others (2025) Eklr.**

7. It was the 1st to 5th respondents contention that questioning how the assembly constituted its budget and public Accounts & Investment committees and which members occupies the said position would intrude into the county assembly internal budgeting & oversight process and amount to managing the assemblies internal political and administrative arrangements, which was not feasible and would infringe on the doctrine of separation of powers and thus invited the court to respectfully decline the said invitation.
8. On the Second issue, it was submitted that **Section 9(2) of the Fair Administrative Actions Act**, expressly provided that the high court or subordinate court would not review an administrative action or decision of a body it supervises unless the mechanism, including internal mechanism for appeal

or review and all remedies available under the law were first exhausted. The county assembly of Marsabit standing orders provided for internal mechanism for handling disputes relating to committee membership, including recourse to the committee on selection, the committee on powers and privileges and other internal complaint and review procedure, which the petitioner was yet to exhaust before moving to court thus rendering her petitioner premature and incompetent. Reliance was placed on the case of **Geoffrey Muthinja Kabiru & 2 others V Samuel Munga Henry & 176 Others (2015) Eklr, Supreme Court case of Sammy Ndungu Waity Vs IEBC & 3 Others (2019) Eklr and Speaker of the National Assembly Vs Njenga Karume (2018) 1KLR 425**, where the said doctrine was re-emphasized.

9. On the third issue, relating to non-justiciability and the political doctrine question, the respondent's submitted that stripped of rhetoric, the petition was complaint about political and organizational choices within the Assembly which process the court should not interfere with as doing so would amount to usurping legislative authority. Such questions were best dealt with through the standing orders, party

structures, coalition negotiations and not supervised by the court.

10. A further basis for objection was that the petition as filed did not meet the established constitutional pleading threshold as the petitioner had only cited various constitutional provisions but did not specify how her rights thereto had been infringed and thus did not disclose a justiciable constitutional cause of action. The respondents thus urged the court to uphold their preliminary objection on the five grounds raised and proceed to strike it out on the basis that it constitutes an abuse to the process of court.

(ii) Petitioner/Respondent Submissions

11. The Petitioner/respondent filed his submissions dated 19th December 2025 and stated that **Article 165(3) of the constitution** gave the court unlimited original jurisdiction to interrogate and deal with violations of human rights which the petitioner had clearly elaborated in his petition, and had nothing to do with “words spoken or acts done while performing legislative function”. To the contrary the assembly had deliberately violated its own procedures, which was not immune from courts

interrogation. Reliance was placed on **Trusted Society of Human Rights Vs Attorney General & Others (Petition 229 of 2012, {2012} KEHC 2480 (KLR).**

12. On the doctrine of separation of powers, while it was true that the three arms of government had to show difference and accord each other sufficient room to work, it did not mean that where the assembly/parliament blatantly violated the law, they could not be corrected by the court. The petitioner had raised several constitutional infractions in his petition and it was only the high court that was clothed with jurisdiction to enforce the bill of rights. Reliance was placed in the case of **Munyitha Vs Speaker of the County Assembly Kitui & Another (Petition 6 of 2023){2023} KEHC 25344 (Kklr),** which cited with approval the case **Supreme court case of Justus Kariuki Mate & Another Vs Martin Nyaga Wambora & Another (2017) eKLR ,** where it was held that no arm of the government was above the law and that courts could intervene for purposes of averting any real danger of constitutional violation.

13. On the third issue of doctrine of exhaustion and political question, it was submitted that the issues

related to blatant violation constitution, and other relevant provisions law and not internal administrative, and/or political issues which had to be sorted out internally first.

14. Finally, as to whether the petition met the constitutional threshold as stipulated in the **Anita Kirimi Njeri case (Supra)**, the petitioner submitted that he had clearly and conscientiously pleaded out his case, particularizes the provisions of the constitution and law that had been breached by the respondent's omissions/ commissions, and also pleaded all relevant facts and thus his petition could not be termed as incompetent. The preliminary objection also raised issue of disputed facts, which required the court to look at the evidence and thus did not meet the threshold of raising pure points of law as stated in **Mukisa Busicits Manufacturers Co Ltd Vs West End Distributors Ltd (1969) EA 696**.

15. The Petitioner thus urged the court to find that the objections raised lacked merit and be pleased to dismiss the same.

C. ANALYSIS & DETERMINATION

16. I have carefully considered the Preliminary objection raised, the submissions filed by both parties together

with all supporting legal authorities relied upon and proceed to condense and determine the issues arising as follows;

- a) *Whether the court has jurisdiction to hear the Petition, if the said petition satisfies the constitutional pleadings threshold as set in the **Anarita Kirimi case (Supra)** and/or whether it raises Justiciable issues (violates the doctrine of Exhaustion and Political question Doctrine).*
- b) *Whether the court has jurisdiction over internal disputes of the Assembly- separation of powers doctrine.*
- c) *Who should bear the costs of the objection?*

(i) Whether the court has jurisdiction to hear this petition, if the said Petition satisfies the constitutional pleadings threshold as set in the Anarita Kirimi case (Supra) and/or whether it raises Justiciable issues (violates the doctrine of Exhaustion and Political question Doctrine).

17. The constitutional/jurisdictional foundation of the High Court is anchored in **Article 165(3) of the Constitution** which provides that, the High court has;

- (a) Unlimited original jurisdiction in criminal and civil matters;**
- (b) Jurisdiction to determine the question whether a right or fundamental freedom in the bill of Rights has been denied, violated, infringed or threatened;**
- (c)**
- (d) Jurisdiction to hear any question respecting the interpretation of this constitution including the determination of**
 - (i) The question of whether any law is inconsistent with or in contravention of this constitution;**
 - (ii) The question whether anything said to be done under the authority of this constitution or of any law is inconsistent with, or in contravention of, the constitution;**
 - (iii) any matter relating to constitutional powers of state organs in respect of county governments and any matter relating to the constitutional relationship between the level of governments; and**
 - (iv) A question relating to conflict of laws under Article 191; and**

(v) Any other jurisdiction, original or appellate conferred to it by legislation.

18. **Article 165(3)** above should be read together with **Article 20(1),(2),(3), Article 22(1), & 258(1) and Article 47 of the constitution of Kenya 2010**, which broadly provide that every person shall enjoy his/her rights and fundamental freedoms to the greatest extent consistent with the nature of the right or fundamental freedom and they had a right to move to court and institute proceedings where they claim that their rights had been denied, violated, infringed or *threatened*. The court was also mandated to hear and determine these petitions and in applying the provisions of the bill of rights, the court was to adopt the interpretation that most favors the enforcement of a right or fundamental freedom as provided for under **Article 20(3)(b) of the said constitution**.

18. Based on the above succinct provisions of the constitution there is no doubt whatsoever that this court has original jurisdiction to hear and determine this petition.

19. Secondly, In the case of **Anarita Karimi Njeru v Republic [1979] eKLR** the Court stated that a

party who wishes the Court to find in his favour must plead with a reasonable degree of precision the rights he claims to have been violated, the constitutional provisions allegedly violated, and the jurisdictional basis for it.

20. This was also reiterated in the case of **Meme v Republic [2004] eKLR**. In that case the court observed; -

“Where a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the applicant's instant application had not fully complied with the basic test of constitutional references, as it was founded on generalised complains without any focus on fact, law or Constitution, hence it had nothing to do with the constitutional rights of the appellants”

21. The Petition filed herein does meet the legal threshold of specificity of pleadings. The petitioner has set out his cause of action in clear details, pointing out the constitutional infractions being carried out by the respondents, the fundamental

rights infringed and the manner in which they are infringed plus the relieves sought. It is a long shot to allege otherwise.

22. On the third issue, ***Black's Law Dictionary***, 9th Edition, Thomas Reuters Publishers at Page 943-944 Defines Justiciability as follows

“proper to be examined in courts of justice” or “ a question as may properly come before a tribunal for decision”.

23. **In Coalition for Reform and Democracy (CORD) & 2 Others -v- Republic of Kenya & Another HCCP 628 of 2014 [2015] eKLR**, the Court cited the case **of Patrick Ouma Onyango & 12 Others -vs- AG & 2 Others; Misc. Appl No. 677 of 2005** wherein the Court endorsed the doctrine of justiciability as stated by **Lawrence H. Tribe in his treatise American Constitutional Law, 2nd Ed. Page 92** as follows:

“In order for a claim to be justiciable as an article III matter, it must “present a real and substantial controversy which unequivocally calls for adjudication of the rights asserted.” In part, the extent to which there is a; real and substantial controversy is determined under the doctrine of standing; by an examination of the sufficiency of the stake of the

person making the claim, to ensure the litigant has suffered an actual injury which is fairly traceable to challenged action and likely to be redressed by the judicial relief requested. The substantiality of the controversy is also in part a feature of the controversy itself- an aspect of ‘the appropriateness of the issues for judicial decision...and the actual hardship of denying litigants the relief sought. Examination of the contours of the controversy is regarded as necessary to ensure that Courts do not overstep their constitutional authority by issuing advisory opinions. The ban on advisory opinion is further articulated and reinforced by judicial consideration of two supplementary doctrines: that of; ripeness; which requires that the factual claims underlying the litigation be concretely presented and not based on speculative future contingencies and of; mootness; which reflects the complementary concern of ensuring that the passage of time or succession of events has not destroyed the previously live nature of the controversy. Finally, related to the nature of the controversy is the; political question; doctrine, barring decision of certain disputes best suited to resolution by other Governmental actors.”

24. Similarly, in **KKB -vs- SCM & 5 others (Constitutional Petition 014 of 2020) [2022] KEHC 289 (KLR) (22 April 2022) (Ruling)**; the Court stated;

“The doctrine of ripeness and constitutional avoidance gives credence to the concept that the Constitution does not operate in a vacuum or isolation. It has to be interpreted and applied in conjunction with applicable legislation together with other available legal remedies. Where there are alternative remedies the preferred route is to apply such remedies before resorting to the Constitution. The possibility of the elevation of any dispute to a constitutional issue is what is sought to be averted by the doctrines of ripeness and constitutional avoidance. It is borne out of a realization that all legislative or common-law remedies are part of the legal system.”

25. Considering the above in the context of the question of exhaustion of internal remedies, the respondents aver that its standing Orders provide internal mechanism for handling disputes relating to committee membership and leadership, which the petitioner had not exhausted thus had moved

court prematurely. It should be noted at this point that the respondents have not filed any response to the petition nor have they attached their standing orders pointing to which section that deals with resolution of internal disputes and to what extent. Be that as it may the nature of the dispute raised also relates to a deliberate breach of several constitutional and statutory infringements which clearly cannot be shoved under the rug and/or be determined by the respondent already accused of violating the very law the want to arbitrate over.

26. Further on this issue, the supreme court in **Petition No 007 of 2023 Abidha Nicholus Vs The Attorney General & 7 others; (The National Environmental Complaints Committee & 5 others -Intrested Parties)** a (a recent five Bench decision) dealt with the “ **doctrine of Exhaustion**” at length and established at para 104 that;

“Having considered the above complaints, we reiterate our earlier finding in this judgment that the mandate and jurisdiction to determine these questions lie with the ELC under Articles 22, 23(3) and 162(2)(b) of the Constitution as read with Section 3(1) of the Environment and

Land Act. We say so because neither the NET, EPRA nor EPT have the jurisdiction to determine alleged violations of the Constitution. That right to access the court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms. We say this persuaded by the elegant reasoning in **William Odhiambo Ramogi & 3 other versus Attorney General & 6 others; Muslims for Human Rights and 2 others (interested parties) (2020)eKLR** where the High Court (Achode (as she then was), Nyamweya (as she then was), & Ogola, JJ) stated;

“In the instance case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere ‘bootstraps’ or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”

27. Further at paragraph 105 of the said Judgment the supreme court did further uphold that.

“We agree with the above reasoning and find that the viability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. This is because the act of seeking constitutional relief is contingent upon the adequacy of an existing alternative means of redress. If the alternative remedy is deemed inadequate in addressing the issue at hand, then the court is not restrained from providing constitutional relief. But there is also a need to emphasize the need for the court to scrutinize the purpose for which a party is seeking relief, in determining whether the granting of such constitutional reliefs is appropriate in the given circumstances. This means that a nuanced approach to the relationship between constitutional reliefs for violation of rights and alternative means of redress, while also considering the specific circumstances of each case to determine the appropriateness of seeking such constitutional reliefs, is a necessary prerequisite on the part of any superior court.”

28. The supreme court in its conclusion at paragraph 107 did determine that;

“Flowing form the above finding and in that context, it is our view that, where the reliefs under the alternative mechanism are not adequate or effective, then there is nothing that precludes the adoption of a nuanced approach, as we have stated. What must matter at the end is that a path is chosen that safeguards a litigant’s right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. This is because, to achieve a harmonious and effective legal framework, it is imperative to strike a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant’s right to access the court. However, such convergence requires a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism. See also our decision in Bia Tosha Distributors Ltd vrs Kenya Breweries Ltd & 6 others (Pet. No.15 of 2020) [2023] KESC 14 (KLR) (Const. and JR) (17 February 2023) Judgement.”

29.It is clear from the “ratio decidendi” of the above supreme court judgment, that availability of an alternative remedy did not necessarily bar an

individual from seeking intervention of the constitutional court as the county assembly of Marsabit did not have jurisdiction to determine alleged violation of the constitution. Further the right to access court for redress of alleged constitutional violations, should not be impeded or stifled in a manner that frustrates the enforcement of fundamental rights and freedoms.

30. Similarly, on the political question issue, the court reiterates that the petition does not complain about political and organizational choices within the assembly and how power is shared therein. The broad issues raised include deliberate non adherence to the standing orders of the Assembly unlawful merger of functions of two separate and distinct committees and willful and deliberate refusal of the assembly leadership to reconstitute committees despite lapse of their term. These are legal and constitutional issues and not political as alleged by the respondents.

(ii) Whether the court has jurisdiction over internal disputes of the Assembly-separation of powers doctrine

31. On this question, the law is now settled that no arm of government is above the law. The supreme court in the case of **Justus Kariuki Mate & Another Vs Martin Nyaga Wambora & another (2017) eKLR** held that despite the doctrine of separation of powers there were instances that warranted judicial intervention. Specifically, they did hold that;

“.... No arm of the Government is above the law. This being a constitutional democracy, the constitution is the guiding light for the operation of all state organs. The courts mandate, where it applies, is for the purpose of averting any real danger of constitutional violation.”

31. The Supreme court then proceeded to formulate the following considerations by courts to be taken into account while exercising their jurisdiction;

- i. Each arm of government has an obligation to recognize the independence of the other arms of Government.***
- ii. Each arm of Government is under duty to refrain from directing another organ on how to exercise its mandate.***
- iii. The courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this attended***

- with the duty of objectivity and specificity, in the exercise of judgment.*
- iv. For the due functioning of constitutional governance, the courts be guided by restraint, limiting themselves to intervention in requisite instances, upon ascertaining the prevailing circumstance's, and the objective needs and public interests attending each case;*
 - v. In performance of their respective functions every arm of government is subject to the law."*

32. Correspondingly, the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance, Attorney General, Minister of Justice & Constitutional Affairs, Director of Public Prosecutions, Kenyan Section of the International Commission of Jurists & Kenya Human Rights Commission [2013] KECA 445 (KLR)* held at para 49 that:

"It is not in doubt that the doctrine of separation of powers is a feature of our constitutional design and a pre-commitment in our constitutional edifice. However, separation of powers does not only proscribe organs of government from interfering with the other's functions. It also entails empowering each organ of government with countervailing powers

which provide checks and balances on actions taken by other organs of government. Such powers are, however, not a license to take over functions vested elsewhere. There must be judicial, legislative and executive deference to the repository of the function. We therefore agree with the High Court’s dicta in the petition the subject of this appeal that: “[Separation of powers] must mean that the courts must show deference to the independence of the Legislature as an important institution in the maintenance of our constitutional democracy as well as accord the executive sufficient latitude to implement legislative intent. Yet, as the Respondents also concede, the Courts have an interpretive role - including the last word in determining the constitutionality of all governmental actions...”

33. Finally on this issue, the South African Constitutional Court in **Minister of Health and Others vs. Treatment Action Campaign and Others (2002) 5 LRC 216**, underscored the Court’s role to protect the integrity of the Constitution as follows:

“The primary duty of courts is to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. The Constitution requires the

State to respect, protect, promote, and fulfil the rights in the Bill of Rights. Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as that constitutes an intrusion into the domain of the executive that is an intrusion mandated by the Constitution itself.”

34. Thus, while restraint must be shown, in clear cases where constitutional violation has been shown, such as the ones pleaded herein, the court will not intervene to uphold the law.

DISPOSITION

35. The upshot is that all issues raised in the preliminary objection dated 25th November 2025 lacks merit and the same is dismissed with costs to the Petitioner.

36. It is so ordered.

Dated, signed, and delivered virtually at **Marsabit** this **20th** day of **JANUARY 2026**.

FRANCIS RAYOLA OLEL
JUDGE

Delivered on the virtual platform, Team this **20th** day of
JANUARY 2026.

In the presence of: -

Dr. ChitibwePetitioner

Mr. MakubaRespondent

Mr. JarsoCourt Assistant