



**Kisia v Presiding Clerk Vihiga Yearly Meeting of Friends & 3 others;  
Secretary, County Education Board Vihiga (Interested Party) (Miscellaneous  
Case E081 of 2025) [2026] KEELRC 299 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 299 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS CASE E081 OF 2025  
JK GAKERI, J  
FEBRUARY 5, 2026**

**BETWEEN**

**TOM ONACHA KISIA ..... APPLICANT**

**AND**

**THE PRESIDING CLERK VIHIGA YEARLY MEETING OF FRIENDS & 3  
OTHERS & 3 OTHERS & 3 OTHERS ..... RESPONDENT**

**AND**

**THE SECRETARY, COUNTY EDUCATION BOARD VIHIGA .... INTERESTED  
PARTY**

**RULING**

1. Before the court for determination is the ex parte Applicant’s Chamber Summons dated 20<sup>th</sup> November 2025 filed under Certificate of Urgency seeking Orders that:
  1. Leave be granted to the Ex Parte Applicant to apply for Judicial Review Order of certiorari to bring into this court and quash the unilateral decision of the 1<sup>st</sup> respondent to revoke the applicant’s nomination to Friends Vihiga Boys High School and his eventual election as the chairman, Board of Management thereof without assigning any reasons Mandamus so as to question by what authority the 1<sup>st</sup> respondent purported to act beyond its authority and therefore improperly and Prohibition the respondent from condemning the Applicant unheard as a consequence of which the Applicant’s integrity is marred in a cloud of doubt.
  2. Spent.
  3. A declaration Order that the respondent’s letter dated 23<sup>rd</sup> October, 2025 is null and void ab initio for failure to accord the Applicant a chance to be heard and being beyond his authority.



4. Costs be in the cause.
2. The ex parte Chamber Summons was expressed under 53 Rules 1 and 2 of the Civil Procedure Rules, Section 3 and 3A of the *Civil Procedure Act* and Article 50 of *the Constitution* of Kenya and is grounded on the matters set out on its face, the statement by the ex parte Applicant and the verifying Affidavit sworn on 20<sup>th</sup> November 2025.
3. The pith and substance of the ex parte applicant's case is that he was nominated as a member of the Board of Management of Friends Vihiga Boys High School and was elected as chairman of the B.O.M but his nomination was withdrawn by the sponsor, the Vihiga yearly meeting of the Religious Society of Friends (Quakers) vide letter dated 23<sup>rd</sup> October 2025.
4. According to the ex parte Applicant, the respondents acted ultra vires and denied him the opportunity to be heard.

### **Respondents case**

5. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed grounds of opposition together with a Notice of Preliminary Objection dated 15<sup>th</sup> December 2025 urging that the instant suit was premature and irregular as it was contrary to Article XXXIII of *the Constitution* of the Society the ex parte Applicant belonged to and the court had no primary jurisdiction over the ex parte Applicant's case.
6. Reliance was placed on the decisions in Speaker of the National Assembly V Karume [1992] KLR 21 and the Supreme Court decision in Albert Chaurembo & 7 others V Maurice Munyao & 148 others [2019] eKLR, which upheld the Court of Appeal decision in Geoffrey Muthinja & another V Emanuel Muguna Henry & 1756 others [2015] eKLR on the doctrine of exhaustion.
7. By a Replying Affidavit sworn by Mr. Stanley Asava Madova on 15<sup>th</sup> December 2025, the affiant deponed that he was the presiding Clerk of the Vihiga yearly meeting of the Religious Society of Friends (Quakers), the Sponsor of Vihiga Boys High School.
8. The affiant further deponed that the society ought to have been the proper respondent through the Secretary General and the Society had an internal dispute resolution mechanism.
9. The affiant denied allegations that Vihiga Boys High School was being run illegally or corruptly and the sponsor acted within the law.

### **Ex Parte Applicant's submissions**

10. Counsel for the ex parte applicant submitted that the instant application was precipitated by the respondents refusal to respond to the demand letter dated 3<sup>rd</sup> November 2025 complaining that the applicant was condemned unheard contrary to Article 50 of *the Constitution* of Kenya and the respondents were thus not ready to settle the matter otherwise.
11. Reliance was also placed on Article 47 of *the Constitution* of Kenya to urge that the ex parte applicant was entitled to fair administrative action and no reasons had been given for revocation of the nomination.
12. Counsel further submitted that the respondents had not approached the court with clean hand and had not demonstrated good faith. That the 1<sup>st</sup> respondent made the decision in the first instance and the 1<sup>st</sup> respondents constitution did not bar a member from taking legal action and *the Constitution* 2004 had no alternative dispute resolution mechanism.



13. Finally, counsel submitted that the suit was framed against the respondents on account that the signatory of the letter of revocation of the ex parte applicant's nomination did not sign it as a representative but as General Secretary of the Church and no minutes of the meeting were availed.
14. Strangely, counsel submitted that if the court terminated by instant proceedings on account of the Preliminary Objection, the ex parte applicant would be left with no other option to resolve the dispute between him and the church.
15. That since the respondents constitution had no provision on alternative dispute resolution mechanism, the Supreme Court decision in *Albert Chaurembo & 7 others V Maurice Munyao and 14 others* (supra) was inapplicable.

### **Respondents' submissions**

16. Counsel submitted that the applicant as a member of the society was bound by the internal mechanisms of the sponsor and the intended suit was premature as the internal processes had not been complied with and ought to have been resulted to before the court's jurisdiction was invoked.
17. Reliance was placed paragraph 5(1)(f) of the 4<sup>th</sup> Schedule to the *Basic Education Act*, that appointment of a member to a Board of Management was revocable by the nominating body, as was Article 159 of *the Constitution* of Kenya on alternative dispute resolution.
18. Counsel cited the sentiments of the Supreme Court of Kenya in *Albert Chaurembo V Maurice Munyao & 148 others* [2019] eKLR on the need to exhaust internal dispute resolution mechanisms before filing a suit in court, to urge that the court was enjoined by *the Constitution* to promote other methods of resolving disputes.

### **Analysis and determination**

19. The ex parte Applicant's complaint before this court is simply that the respondent's revoked his nomination as a member of the Board of Management, Vihiga Boys High School, a power the ex parte Applicant alleged that they did not possess an even if they had, they did not accord him the opportunity to be heard as by law required and seeks leave to apply for the judicial review Order of Certiorari to quash the revocation, mandamus as well as prohibition.
20. When the matter came up on 1<sup>st</sup> December 2025, the court did not certify it urgent but directed service and response by the respondents and a mention on 18<sup>th</sup> December 2025 when both parties were present. The ex parte applicant appeared in person.
21. Parties agreed that the application and the Preliminary Objection be canvassed by way of written submissions and appropriate directions were given.  
The issues for determination are
  - i. Whether the respondent's Notice of Preliminary Objection is sustainable;
  - ii. Whether the ex parte Applicant's Chamber Summons dated 20<sup>th</sup> November 2025 is merited.
22. It is trite that whenever a Preliminary Objection is raised in a suit it ought to be disposed of at the earliest instance owing to its potential to dispose of the suit at that stage.
23. It is not in contest that the respondent's are challenging the court's jurisdiction to hear and determine the instant application.



24. Significantly, since the respondents are challenging the court’s jurisdiction, the court is satisfied that the Preliminary Objection meets the threshold enunciated in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* [1969] EA 796. (See also *Hassan Ali Joho & another V Suleiman Said Shabhal & 2 others* [2014] eKLR, *Aviation & allied workers Union Kenya V Kenya Airways Ltd & 3 others* [2015] eKLR).
25. It is trite law that jurisdiction is everything as held by the court of Appeal in the celebrated and often-cited sentiments of Nyarangi JA in *The Owners of Motor Vessel “Lilian S” V Caltex Oil (Kenya) Ltd* [1989] KLR 1 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 down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”
26. See also in this regard *Equity Bank Ltd V Bruce Mutie Mutuku t/a Diani Tours and Travel* [2016] eKLR, *Joseph Kamau Muthee Kamu & another* [2013] eKLR and *Lemita Ole Leme v Attorney General & 2 Others*.
27. In *Samuel Kamau Macharia & another V Kenya Commercial Bank & 2 others* [2012] eKLR the Supreme Court of Kenya held that a court’s jurisdiction flowed from *the constitution* or legislation or both, and a court could not exercise jurisdiction not conferred by law.
28. Jurisdiction is so foundational in the administration of Justice that the issue need not be raised by the parties for determination. The court can do so suo motu.
29. The Employment and Labour Relations Court derives its jurisdiction from the provisions of Article 162(2) (a) of *the Constitution* of Kenya and Section 12 of the *Employment and Labour Relations Court Act* and the court’s jurisdiction as encapsulated by law is to hear and determine disputes on
- “employment and labour relations and connected purposes”.
30. Section 12(1) of the *Employment and Labour Relations Court Act* provides:
31. The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the court relating to employment and labour relations including-
32. The provisions of Section 12(1) of the Act exemplifies ten (10) types of disputes over which the Employment and Labour Relations Court has jurisdiction. The provisions is not exhaustive by dint of use of the term “including”.
33. Significantly, Section 12(2) of the Act provides that:
- An application claim or complaint may be lodged with the court by or against an employee an employer, a trade union, an employers organization, a federation the Registrar of Trade Unions, the Cabinet Secretary or any other office established under any written law for such purpose.
34. As regards enforcement of rights and fundamental freedoms under *the Constitution* of Kenya, the sentiments of Majanja J in *United States International University (USIU) V Attorney General* [2012]



eKLR cited with approval by the Court of Appeal in Daniel N. Mugendi V Kenya University & 3 others [2013] eKLR, thus;

...By virtue of Article 162(3) Section 12 of the Industrial Court Act, 2011, has set out matters within the exclusive domain of that court. Since the court is of the status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret *the Constitution* and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of Section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of *the Constitution* within the matter before it”.

35. See also Attorney General & 2 others V OKiya Omtata OKoiti & 14 others [2020] eKLR Kenya Tea Growers Association & 14 others V National Social Security Fund KESC 63 (KLR) and Clerk Nakuru County Assembly & 3 others V Odongo & 7 others [2023] KECA 427 (KLR).

36. In the instant case, the ex parte applicant has neither alleged nor shown that he was an employee of the respondents or Vihiga Boys High School or that the membership of the Board of Management was an employment relationship.

37. In Nick Githinji Ndichu V Clerk, Kiambu County Assembly & 3 others V Odongo & 7 others (supra) Nduma J. (as he then was) held:

“For one to access the jurisdiction at ELRC, he must demonstrate that there exists an employer-employee relationship; that there is an oral or written contract of service or that the issue is a dispute falls (sk) within the provision of Section 12 of the E&LRC Act...”

38. Section 2 of the *Employment Act* defines employee as:

“A person employed for wages or a salary and includes an apprentice and indentured learner”.

39. Conversely, an employer is defined as

“Any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm corporation or company.

40. It is trite law that members of school boards of management are appointed by the County Education Boards pursuant to the provisions of the *Basic Education Act* and do not become employees of the school. They are office holders and generally serve the schools at Board of Management and its committee meetings.

41. School Boards of Management are a kin to Boards of Directors in the corporate sector or in state corporations and are not employees in law.

42. The question whether a company director is an employee was considered by the Court of Appeal in Rift Valley Water Services Board & 3 others V Asanyo & 2 others [2022] KECA 8778 (KLR) where the court held inter alia:

“We hasten to draw a clear distinction between an employee and a member of a board of directors of a corporate entity, such as the 1<sup>st</sup> appellant. That distinction lies in our answer to



the question as to whether directors are employees of the company to whose board they are appointed. They are not. In *McMillan V Guest* [1942] AC P. 51, it was held that a company director is an office-holder who is not without more, an employee of the company. That is the position here. In the absence of a contract of service in terms of which a director is engaged as full-time employee of a company, it cannot be presumed that such a director is an employee of the company. (See *Parson V Albert and Sons Ltd* [1979] ICR 271”.

43. It is not in contest that the ex parte Applicant was nominated for appointment as a member of the Board of Management (B.O.M) Vihiga High School by the respondents and was appointed and elected chairman of the B.O.M, allegations the respondents did not controvert.
44. The ex parte applicant did not avail evidence of having entered into a contract of service with the school to serve as an employee.
45. Evidently, the provisions of the *Employment Act* did not apply to him.
46. Having considered the ex parte Applicant’s Chamber Summons supporting documents and annexures, it is discernible that grievance between the parties does not fall under the rubric of employment and labour relations as envisioned by *the Constitution* of Kenya and the *Employment and Labour Relations Court Act* among other statutes.
47. The foregoing finding leads to the inescapable conclusion that the court has no jurisdiction to hear and determine the ex parte Applicant’s Chamber Summons dated 20<sup>th</sup> November 2025 and hereby downs its tools.
48. On exhaustion of internal dispute resolution mechanisms as submitted by the respondents counsel, the applicant ought to have done so before determining which court had jurisdiction to hear and determine his case.
49. The upshot of the foregoing is that the ex parte Applicants ex parte Chamber Summons dated 20<sup>th</sup> November 2025 is struck out with no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

