Suyianka & another v Ministry of Foreign and Diaspora Affairs & 2 others; Odinga & another (Interested Parties) (Petition E681 of 2024) [2026] KEHC 1056 (KLR) (Constitutional and Human Rights) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1056 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E681 OF 2024

LN MUGAMBI, J

FEBRUARY 5, 2026

BETWEEN

LEMPAA SUYIANKA ..... 1ST PETITIONER

AFRICAN CENTER FOR PEACE AND HUMAN RIGHTS ..... 2ND PETITIONER

AND

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS ..... 1ST RESPONDENT

ATTORNEY GENERAL ..... 2ND RESPONDENT

MINISTRY OF FINANCE AND ECONOMIC PLANNING .... 3RD RESPONDENT

AND

RAILA AMOLLO ODINGA ..... INTERESTED PARTY

COMMISSION ON ADMINISTRATIVE JUSTICE ..... INTERESTED PARTY

RULING

Introduction

1. The Petitioners in the Petition dated 9th December 2024, challenge the Respondents failure to provide information relating to the government's sponsorship of the 1st Interested Party candidature for the position of Chairperson of the African Union Commission (AUC) on the basis that it is an infringement of Article 35 of *the Constitution*.

2. In opposition to the Petition, the Respondents filed a Notice of Preliminary Objection dated 26th February 2025 stating that:

i. It is inappropriate, under the doctrine of Exhaustion of Remedies and the scheme of *the Constitution* under Article 159, for this Court to exercise jurisdiction, at the first instance, over the subject matter in light of the alternative redress mechanisms available under Section 14(1)(a) of the *Access to Information Act* as echoed in Supreme Court decisions in NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) (Constitutional and Human Rights) (24 February 2023) (Judgment) (NGOs Co-ordination Board) and Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others; SC Petition No 3 of 2016, [2019] eKLR).

ii. The Petitioners have not pleaded nor demonstrated any inadequacy, ineffectiveness or hardship in the alternative redress mechanism pursuant to the restraint and effective remedy rule to warrant this Court invoking its jurisdiction notwithstanding the alternative mechanism as seen in Supreme Court decisions in Cortec Mining Kenya Limited v Cabinet Secretary Ministry of Mining & 9 Others [2017] eKLR; Bia Tosha Distributors Ltd v Kenya Breweries Ltd & 6 Others (Pet No 15 of 2020)[2023] KESC 14(KLR) (Const. and JR) (17 February 2023) (Judgment); and Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment)).

iii. Therefore, the Petition/Application cannot be considered by this Court unless and until the Court dispenses with the jurisdictional question in line with the legal principle established by the Court of Appeal in Owners of Motor Vessel 'Lilian S' V. Caltex Oil (Kenya) Limited [1989] KLR 1 and affirmed by the Supreme Court in In the Matter of the Interim Independent Electoral Commission (2011) eKLR.

iv. The nature of the information sought to be disclosed is protected under Section 6 (1) and (2) of *Access to Information Act* in so far as it relates to matters of foreign relations, foreign government information with implications on national security, and cabinet deliberations and records.

v. The orders sought in the Notice of Motion application cannot issue to the extent that they have since been overtaken by events.

vi. The order directing the 1st Respondent to provide information sought by the Petitioner amounts to a final order which cannot be issued at an interlocutory stage without hearing the Petition on merit.

vii. There is no cause of action demonstrated against the 2nd and 3rd Respondents, hence should be struck out from the proceedings for misjoinder pursuant to Rule 5(d)(i) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

Respondents' Submissions

3. In support of their Preliminary Objection, the Respondents through Deputy Chief State Counsel, Kaumba S.O. filed submissions dated 22nd May 2025.

4. On the Petitioner's failure to exhaust the available alternative remedies, Counsel submitted that Section 14(1) (a) of the *Access to Information Act*, mandates the 2nd Interested Party to review a decision of a public entity alleged to have refused to grant access to the information applied for. Furthermore that, Section 22 of the Act provides the measures the 2nd Interested Party can take to address such an instance and its powers to act stipulated under Section 23.

5. Considering this procedure, Counsel stressed that the Petitioners' actions of filing this suit despite the pendency of their complaint before the 2nd Interested Party is an abuse of the Court process. Counsel stressed that it is trite jurisprudence under the doctrine of exhaustion of remedies that courts should decline to exercise jurisdiction at the first instance over a subject matter in which lies a viable alternative primary constitutional or statutory redress mechanism yet the Petitioners had not demonstrated any exceptional circumstance to warrant approaching this Court directly.

6. Reliance was placed in Waity v Independent Electoral & Boundaries Commission & 3 others (Petition 33 of 2018) [2019] KESC 54 (KLR) where it was held that:

> "Where *the Constitution* or any other law establishes an organ, with a clear mandate for the resolution of a given genre of disputes, no other body can lawfully usurp such power, nor can it append such organ from the pedestal of execution of its mandate. To hold otherwise, would be to render the constitutional provision inoperable, a territory into which no judicial tribunal, however daring, would dare to fly."

7. Comparable reliance was placed in Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR and Krystalline Salt Limited v Kenya Revenue Authority [2019] eKLR.

8. Further, Mr. Kaumba argued that the information sought is protected under Section 6 (1) and (2) of *Access to Information Act* as it relates to matters of foreign relations, foreign government information with implications on national security, and cabinet deliberations and records. Counsel noted that national security is defined under subsection (2)(d) to include foreign relations. Notwithstanding, Counsel argued that the 2nd Interested Party in its power would have as well addressed this issue.

9. On cause of action, Counsel argued that none had been established against the 2nd and 3rd Respondents. This is especially since the request for information was directed to the 1st Respondent and thus in the absence of any allegation regarding the intervention of the 2nd and 3rd Respondents upon that request, no cause of action can arise against them. As such, Counsel urged that the 2nd and 3rd Respondents should be struck out from the proceedings as provided in Rule 5(d)(i) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013

Petitioners' Submissions

10. Mugeria, Lempaa and Kariuki Advocates filed submissions dated 30th June 2025 in reply to the Respondents' Preliminary Objection.

11. Regarding the Respondents contention that the Petition was abuse of the Court process, Counsel for the Petitioner instead argued that the contrary was the case submitting that it was the Respondents who were abusing the Court process by resorting to technicalities instead of addressing the merits of a Petition brought in public interest particularly on key issues of public participation and principles of public finance and service in relation to the 1st Interested Party's candidature for AUC Chairman.

12. Counsel argued that the Petition raises constitutional questions beyond the reach of the interpretational mandate and remedial provisions of the 2nd Interested Party. That said, Counsel urged that filing a complaint with the 2nd Interested Party is not a condition precedent to moving the court as noted in Katiba Institute V Presidents Delivery Unit & 3 others [2017] eKLR.

13. Counsel argued that the exhaustion principle is only practical where the remedy is available and effective. Counsel submitted that even after the Petitioners lodged their complaint with the 2nd

Interested Party, 7 days had lapsed prior to filing the instant Petition and still, nothing was forthcoming from the 2nd Interested Party regarding the information sought yet the Respondents were holding onto procedural technicalities to create obstacles in accessing the information.

14. Regarding assertion that the information sought falls within Section 6(1) of the *Access to Information Act*, Counsel's response was that this is not a pure point of law as the Court has to interrogate the facts and adduced evidence to ascertain whether the information falls within this category.

15. On whether there is a cause of action against the 2nd and 3rd Respondents, Counsel equally answered that resolution of that matter would have to involve examination of the evidence hence is not the subject of a preliminary objection.

1st Interested Party's case

16. This Party's submissions to the Preliminary Objection are not in the Court file or Court Online Platform (CTS).

2nd Interested Party's Case

17. Counsel, Elizabeth Musembi for the 2nd Interested Party in the submissions dated 14th May 2025, set out the key issue for determination as: whether the Petitioners exhausted the grievance redress mechanisms under the *Access to Information Act*.

18. Counsel stated that the 2nd Interested Party is empowered under the *Access to Information Act* to review decisions of a public entity or a private entity in relation to a request for information including a decision refusing to grant access to the information requested. Counsel stated that the *Access to Information Act* clearly outlines the process of handling of complaints noting that Sections 21 and 23 of the *Access to Information Act* provides mechanisms through which an aggrieved party can lodge a complaint and appeal to the High Court, in cases where an order made by the 2nd Interested Party is not satisfactory to the Party.

19. In light of this, Counsel affirmed that the 2nd Interested Party has jurisdiction to investigate complaints of access to information such as presented in this case and that the Petitioners can only approach the Court through the appellate process.

20. Counsel submitted that while the 2nd Interested Party received the Petitioners complaint, the Petitioners without allowing it to undertake its mandate proceeded to file this suit. Counsel stressed that this was contrary to the doctrine of exhaustion of the existing remedies as outlined in the *Access to Information Act*.

21. Reliance was placed in Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (2015) eKLR where it was held that:

> "It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews ... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his 01-11n interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

22. Further reliance was placed on Coast Legal Aid & Resource Foundation (CLARF) v Coast Water Board Services & 2 others (2021) eKLR and Savraj Singh Chana v Diamond Trust Bani, Kenya) Limited & another [2020] eKLR.

23. Counsel highlighted that the Petitioners had also not demonstrated why they failed to exhaust the redress mechanism as provided in the Act, before approaching the court. Counsel thus urged the Court to be guided by the principle of utilizing the primary procedure first before the courts can be approached for resolution of that dispute.

Analysis and Determination

24. Having regard to the submissions of Counsel, the Court considers the following as the issues that arise for determination:

    i. Whether the Respondents' Notice of Preliminary Objection has met the set threshold of a preliminary objection.

    ii. Whether the preliminary objection is merited.

SUBDIVISION - Whether the Respondents' Notice of Preliminary Objection has met the set threshold of a preliminary objection

25. The threshold of a preliminary objection was set out in the case of Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd (1969) EA 696 and later emphasized by the Supreme Court in the Joho & another v Shahbal & 2 others [2014] KESC 34 (KLR) as follows:

> "(31) To restate the relevant principle from the precedent-setting case, Mukisa Biscuit Manufacturing Co Ltd –vs. - West End Distributors (1969) EA 696:
>
> "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 has to be ascertained or if what is sought is the exercise of judicial discretion".

26. Discussing its nature in Dismas Wambola v Cabinet Secretary, Treasury & 5 others [2017] KEHC 8777 (KLR), the Court noted as follows:

> " A preliminary objection must first, raise a point of law based on ascertained facts and not on evidence. Secondly, if the objection is sustained, that should dispose of the matter. A preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but must be on pure points of law.
>
> It may be noted that preliminary objections are narrow in scope and cannot raise substantive issues raised in the pleadings that may have to be determined by the court after perusal of evidence...."

27. Additionally, the observation in the Oraro v Mbaja [2005] KEHC 3182 (KLR) offers significant insight where the Court observed that:

> " 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 facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues and this improper practice should stop... The principle is abundantly clear. A "preliminary objection" correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence....."

28. This objection challenges this Court's jurisdiction on the basis of the doctrine of exhaustion. This as is apparent is a pure point of lawas affects the Court's ability to entertain this matter, such that if the Court were to return a finding that the doctrine applies, it would have to down its tools in deference to the alternative resolution mechanism and would thus terminate the proceedings without venturing into its merits.

Whether the preliminary objection is merited

29. The Supreme Court explicated the doctrine of exhaustion in the Waity case (supra) as follows:

> "
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> "(63) Where *the Constitution* or the law, consciously confers jurisdiction to resolve a dispute, on an organ other than a court of law, it is imperative that such dispute resolution mechanism, be exhausted before approaching the latter. Were it not so, parties would bide their time, overlooking the recognized forums, and later springing a complaint at the courts. Such a scenario would be a clear recipe for forum shopping, an undertaking that must never be allowed to fester in the administration of justice. We are fortified in this regard, by the persuasive authority by the Court of Appeal, in Geoffrey Muthinja Kabiru & 2 Others; [2015] eKLR; wherein the Appellate Court observed:
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> "It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts be invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of

judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts."

30. Further in 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 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] KESC 83 (KLR) the Supreme Court held:

> "...We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant's petition lacked merit and was for dismissal."
>
> (118) 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.
>
> (119) 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."

31. The core of this Petitio is on the right to access information under Article 35 of *the Constitution*. This Article provides as follows:

1. Every citizen has the right of access to—
    a. information held by the State; and
    b. information held by another person and required for the exercise or protection of any right or fundamental freedom.
2. Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
3. The State shall publish and publicize any important information affecting the nation.

32. To give effect to Article 35 of *the Constitution*, Parliament enacted the *Access to Information Act* whose preamble provides thus:

> "Act of Parliament to give effect to Article 35 of *the Constitution*; to confer on the Commission of Administrative Justice the oversight and enforcement functions and powers and for connected purposes."

33. The Act then proceeds to expound on the right to information and proceeds to set out steps to be taken in accessing information including redress mechanism where difficulties are encountered. Key provisions in the Act include:

Section 4 of the Act which explicates the right to information.

Right to information

1. Subject to this Act and any other written law, every citizen has the right of access to information held by—
    a. the State; and
    b. another person and where that information is required for the exercise or protection of any right or fundamental freedom.
2. Subject to this Act, every citizen's right to access information is not affected by—
    a. any reason the person gives for seeking access; or
    b. the public entity's belief as to what are the person's reasons for seeking access.

Section 8 -deals with application process or procedure

8. Application for access

1. An application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.
2. Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.
3. The information officer shall reduce to writing, in a prescribed form the request made under subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.
4. A public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.

Section 14 is on the redress mechanism.

Review of decisions by the Commission

1. Subject to subsection (2), an applicant may apply in writing to the Commission requesting a review of any of the following decisions of a public entity or private body in relation to a request for access to information—

a. a decision refusing to grant access to the information applied for;

b. a decision granting access to information in edited form;

c. a decision purporting to grant access, but not actually granting the access in accordance with an application;

d. a decision to defer providing the access to information;

e. a decision relating to imposition of a fee or the amount of the fee;

f. a decision relating to the remission of a prescribed application fee;

g. a decision to grant access to information only to a specified person; or

h. a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

1. An application under subsection (1) shall be made within thirty days, or such further period as the Commission may allow, from the day on which the decision is notified to the applicant.

Section 23 is on the powers vested on Commission on Administrative Justice (2nd Interested Party). It provides:

1. In the performance of its functions under this Act, the Commission shall have the power to—

    a. issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

b. question any person in respect of any subject matter under investigation before the Commission; and

c. require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

2. The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order—

    a. the release of any information withheld unlawfully;

    b. a recommendation for the payment of compensation; or

    c. any other lawful remedy or redress.

3. A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.

4. An order of the Commission under subsection (2) may be filed in the High Court by any party thereto in such manner as the Commission may, in regulations made in consultation with the Chief Justice, prescribe and such party shall give written notice of the filing of the order to all other parties within thirty days of the date of the filing of the order.

5. If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.

6. Public entities and relevant private bodies shall provide to the Commission such reports as required by the Act.

7. The Commission shall, in consultation with the public, develop and publicize guidelines detailing the reporting requirements including the manner, means and timeframes that apply to public entities and relevant private bodies.

8. The Commission may request any further information from the public entity or the relevant private body to facilitate and enhance monitoring at any time and may issue an order compelling the provision of such further information.

34. My reading of the pleadings shows that the Petitioners wrote to the 2nd Interested Party on 28th November 2024 seeking information that is the subject matter of this Petition. However, the Petitioners proceeded and filed this Petition even before they heard from the 2nd Interested Party.

35. The *Access to Information Act* mandates the 2nd Interested Party to receive complaints on the refusal of a public body to provide information envisaged under Article 35 of *the Constitution*. In Dock Workers Union of Kenya v Kenya Ports Authority; Portside Freight Terminals Limited & another (Interested Parties) [2021] KEHC 9284 (KLR), citing with approval the case of Savraj Singh Chana v Diamond Trust Bank (Kenya) Limited & another [2020] eKLR,

held thus:

"

"29. Under section 23 of the *Access to Information Act* No. 31 of 2016, the High Court has been established to have appellate jurisdiction. In Savraj Singh Chana v Diamond Trust Bank (Kenya) Limited & another [2020] eKLR, Korir J observed correctly in my view, as follows:

"It is appreciated that the cited decision does indeed recognize that the unlimited jurisdiction of the High Court of Kenya under Article 165(3)(b) of *the Constitution* to determine questions on whether a right or fundamental freedom has been infringed or violated. Nevertheless, it must be appreciated that the High Court does not exercise its jurisdiction in a vacuum. Jurisdiction is exercised within the laid down principles of law. One of those principles is one which requires that where a statutory mechanism has been provided for the resolution of a dispute, that procedure should first be exhausted before the courts can be approached for resolution of that dispute. Indeed, like any other legal principle, this doctrine has exceptions. In my view, it is the duty of a party who bypasses a statutory dispute resolution mechanism to demonstrate that there were reasons for avoiding that route. In the case before me, the Petitioner has simply pointed to the jurisdiction of this Court. The exhaustion principle does not actually take away the constitutional jurisdiction of this Court. What it simply does is to provide the parties with a faster and more efficient mechanism for the resolution of their disputes. The courts will step in later if any party is aggrieved by the decision of the statutory body mandated to resolve the dispute."

36. The Court then concluded after reviewing the relevant sections of the *Access to Information Act*.

"... The legislators in their wisdom, and that wisdom has not been challenged, deemed it necessary that any issue concerning denial of information should first be addressed by the Commission on Administrative Justice...

Section 23(3) of the Act provides that:

> "A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made."
>
> "I do not think that Parliament intended to bestow both original and appellate jurisdiction on the High Court in matters where the Commission on Administrative Justice has been given jurisdiction under the *Access to Information Act*. Section 23(5) of the Act actually provides that an order of the Commission on Administrative Justice can be enforced as a decree. What the Petitioner seeks from this Court is readily available to him before the Commission on Administrative Justice."

37. A reading of the facts of the case shows that the Petitioners did not exhaust the primary mechanism and even after initially approaching CAJ. They came to this Court soon after setting in motion the process at CAJ meaning that they were in both forums concurrently, yet the High Court was only designed as an appellate mechanism under the scheme of access to information.

38. In my view, this Court's jurisdiction was invoked prematurely. This Petition thus offends the doctrine of exhaustion of remedies. The Respondents' Notice of Preliminary Objection succeeds.

39. I find no need to venture into any other issue at this juncture for I have to humbly decline jurisdiction in deference to the primary jurisdiction vested on the Commission on Administrative Justice under the *Access to Information Act*.

40. The upshot is that the Petition is struck out. I make no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF FEBRUARY, 2026.

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L N MUGAMBI

JUDGE