



Luther v Executive Committee Nakuru Amature Boxing Club (Judicial Review E005 of 2025) [2026] KEHC 1106 (KLR) (9 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW E005 OF 2025
PN GICHOHI, J
FEBRUARY 9, 2026**

BETWEEN

MARTIN BWANGA LUTHER APPLICANT

AND

EXECUTIVE COMMITTEE NAKURU AMATURE BOXING CLUB RESPONDENT

RULING

1. By Originating Motion dated 9th June 2025 and expressed to be brought under Section 7, 9 and 11 of the Fair Administrative Actions Act and Rule 10 (2) and 13 of the Fair Administrative Rules, the Applicant herein sought :-
 1. An Order of temporarily injunction restraining the Respondent from suspending or continuing to suspend the Applicant from the Club and also restraining the Respondent from preventing the Applicant from using the Club or accessing the Club facilities or participating in the activities of the Club including general meetings or any social media or communication platforms or instigating the arrest or prosecution of the Applicant for accessing the Club or using the Club facilities pending hearing and determination of this Originating Motion.
 2. An Order setting aside the decision of the Respondent contained in the letter to the Applicant dated 3rd June 2025 to indefinitely suspend the Applicant from the membership of the Nakuru Amateur Boxing Club.
 3. An Order prohibiting the Respondent from suspending or expelling or purporting to suspend or expel the Respondent from the Membership of the Nakuru Amateur Boxing Club .
 4. Costs of the application be paid by the Respondent.



2. Upon being served, the Respondent filed a Preliminary Objection dated 17th November 2025 mainly on the ground that this Court lacks jurisdiction to hear and determine this Judicial Review Application for reasons that the issues raised therein fall within the jurisdiction of the Sports Dispute Tribunal.
3. Further, the Respondent termed the Application fatally defective, bad in law and improper before this Court as it contravenes the law and well-set procedures hence, it should be dismissed.
4. By consent of both parties, directions were taken that the Preliminary Objection be heard first and by way of written submissions. However, the Applicant did not file any. The Respondent complied by filing its submissions on 19/11/2025.

Respondent's Submissions

5. In its extensive submissions, the Respondent framed the following issues for determination in regard to the Preliminary Objection :-
 1. Whether the Application herein is properly before this Court.
 2. Whether this Court has jurisdiction to hear and determine this application .

Whether the Application herein is properly before this Court.

6. The Respondent submitted that though the Applicant moved this Court by way of Judicial Review, he offended the provisions of Order 53 Rule 1 (1) of the Civil Procedure Rules which require that leave of the court be sought first but the no leave was sought before filing the Judicial Review Application, hence the application should not be entertained.
7. In support of that argument, the Respondent placed reliance on case of Republic vs County Counsel of Kwale & another Ex parte Kondo & 57 others HCMCA No. 384 of 1996 as cited in Republic vs Anti- Corruption Commission & Another; Musyimi (Exparte ; Sonko & Another (interested parties) Paul Ndonge Musyimi [2020]eKLR].
8. The Respondent therefore submitted that the application herein is improperly before this Court and therefore, it should be struck out with costs to the Respondent.
9. Further, the Respondent cited the decision in case of Nation Media Group Limited vs Commissioners (Application EO46 OF 2023) [2024]KEHC 3417 (KLR) Judicial Review) (12 April 2024) (Ruling) to emphasise that considering the provisions of the law cited by the Applicant when filing this application, leave has to be sought before filing judicial Review proceedings under the Fair Administrative Actions Act and urged this court to uphold its Preliminary Objection on that ground.

Whether this Court has jurisdiction to hear and determine this application

10. On the onset, the Respondent submitted that his Preliminary Objection is on pure points of law as stated by Sir Charles Newbold in the case of Mukhisa Biscuit Manufacturers Ltd vs West End Distributors (1969) EA 696.
11. In this case, he submitted that the issues raised by the Applicant herein relate to the Applicant's access, use and participation in the activities of Nakuru Amateur Boxing Club and therefore, if aggrieved by the Respondent's decision to suspend him, the Applicant ought to have filed an appeal in the Sports Dispute Tribunal as provided for under Section 58 of the *Sports Act*.
12. The Respondent therefore submitted that there being an alternative dispute Resolution Mechanism before approaching this Court, then the Applicant ought to have exhausted that mechanism first.



In support of that argument, the Respondent relied on the case of Speaker of National Assembly vs Karume (1992)KLR 21 .

13. Further, the Respondent placed in the case of Republic vs Kenya National Examinations Council Ex parte Gathenji and others Civil Appeal No. 266 of 1996 and submitted that as the managing body of the Nakuru Amateur Boxing Club, the Respondent is neither a public officer nor a public body and therefore, it should not be subjected to judicial review proceedings.
14. The Respondent therefore submitted that pursuant to the celebrated case of Owners of motor Vessel “Lilian s” vs Caltex Oil Kenya Limited (1989) KLR, this Court should down its tools and strike out the Originating Motion . Lastly, the Respondent urged that it be awarded costs of these proceedings.

Determination

15. This Court has looked at the Applicant’ s Originating Motion , the Preliminary Objection raised by the Respondent herein as well as its submissions. The broad issue for determination is whether this court has jurisdiction to hear and determine this application.

16. It is settled that jurisdiction is everything and without it, a court must down its tools as was settled in the celebrated case of Owners of Motor vessel Lilian “S” (supra) that:-

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority.”

17. Within that broad issue is the competence of the application herein. The Applicant has moved this Court by way of judicial Review. Order 53 Rule 1 (1) of the Civil Procedure Rules provides that:-

“(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.”

18. The above is not a matter of choice. It is a mandatory procedure and as rightly submitted by the Respondent, there was no leave sought to file the substantive application for Judicial Review Orders. In Republic vs County Council of Kwale & another Ex parte Kondo & 57 others (supra) Waki, J (as he then was) emphasised the importance of that leave when he held:-

The purpose of the application for leave to apply for judicial review was to eliminate at an early stage any applications for judicial review which were either frivolous, vexatious or hopeless and to ensure that the applicant was only allowed to proceed to the substantive hearing if the court was satisfied that there was a case fit for further consideration.”

19. In this case , the Applicant ought to have sought leave before filing judicial Review proceedings even under the Fair Administrative Actions Act but he did not do so. In the circumstances, failure by the Applicant to obtain leave was fatal and indeed, the Court in Nation Media Group Limited (supra) held while upholding a Preliminary Objection of failure to obtain leave, the Court held;-

“On the whole, when the question of requirement for leave is considered from a wider perspective, of why leave is necessary in the first place, it is easier to see why it cannot be the intention of *the constitution* or the *Fair Administrative Action Act* to discard this



requirement...the reasons for this requirement are much relevant today as they were before the promulgation of the Constitution of Kenya 2010 and the enactment of the Fair Administrative Action Act.”

20. Further regarding the suing of the Respondent before this Court, it is clear that the Applicant is aggrieved by the Respondent’s actions against him including suspending him from the Club.
21. As rightly submitted by the Respondent, there is an avenue for handling that dispute, being the Sports Dispute Tribunal as provided for under Section 58 of the Sports Act thus:-

“The Tribunal shall determine-

- (a) Appeals against decisions made by national sports organisations or umbrella national sports organisations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that an issue including-
- (i) Appeals against disciplinary decisions;
- (ii) Appeals against not being selected for a Kenyan team or squad;
- (b) Other Sports related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
- (c) Appeals from the decisions of the Registrar under this Act.”

22. Indeed, the Court in Speaker of National Assembly (supra), held:-

“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, the procedures should 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.”

23. It is therefore clear that the Applicant herein failed to exhaust the lawful mechanism for resolving that dispute and therefore, the application herein is not only incompetent but also improperly before this Court.
24. However, this Court cannot delve into the Respondent’s issue as whether it can be sued or not based on the decision in Republic vs Kenya National Examinations Council Ex parte Gathenji and others (supra). That is a merit issue that cannot be raised before this Court.
25. In conclusion, this Court issues the following orders:-
1. The Respondents’ Preliminary Objection is upheld.
 2. This Court lacks jurisdiction to hear and determine the Originating Motion dated 9th June 2025.
 3. The said Originating Motion is hereby struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF FEBRUARY, 2026.

PATRICIA GICHOCHI

JUDGE

In the presence of:



Mr Kenyatta for the Applicant

Ms Karanja for Kahiga for the Respondent

Erickson, Court Assistant

