

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**

**CONSTITUTION & HUMAN RIGHTS PETITION MISC NO. E002 OF 2025**

**BETWEEN**

**DIANA CHEPKORIR .....1<sup>ST</sup> PETITIONER**

**SHEILA CHELANGAT .....2<sup>ND</sup> PETITIONER**

**VERSUS**

**ATHLETICS INTEGRITY UNIT.....1<sup>ST</sup> RESPONDENT**

**VOLARE SPORTS MANAGEMENT .....2<sup>ND</sup> RESPONDENT**

**ROSA ASSOCIATE MANAGEMENT .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Simultaneously with what the Applicants refer to as a **“Petition”** dated 24<sup>th</sup> June 2025, and filed 26<sup>th</sup> June 2025 the Petitioners who are acting in person, filed a Notice of Motion also dated 24<sup>th</sup> June 2025 under a Certificate of Urgency and expressed under Articles 22,23, 43 and 47 of the Constitution of Kenya, 2010, seeking the following Orders: -

**a) Spent.**

**b) That the honorable court be pleased to issue an anticipatory order refraining the 1<sup>st</sup> Respondent the Athletics Integrity Unit from suspending or banning the 1<sup>st</sup> Applicant until this matter is fully heard and determined.**

**c) That the honorable court be pleased to disallow any uncertified documents from an accredited laboratory by the Athletics Integrity Unit against 1<sup>st</sup> Applicant as defence.**

**d) That the honorable court be please to allow the 1<sup>st</sup> Applicant continue with her training and participate in all competitions in and out of the country until otherwise directed by this honorable court.**

2. In summary, the Applicants’ were challenging the 1<sup>st</sup> Respondent’s issuance to the 1<sup>st</sup> Applicant with ant doping notices on a finding after an analysis of

her blood samples and 2 samples from the 2<sup>nd</sup> applicant that found the samples containing erythropoietin which is a prohibited substance which would lead to the Applicants being banned from participating in the competition out and within the County Applicant. They challenged the credibility of the analysis of the alleged samples taken from them casting doubts as to authenticity of the results and the whole process culminating in the Notices thereto.

3. They argued that the Notices damaged their reputation, caused them trauma and severe mental torture. They termed the anti-doping system and rules as unconstitutional. In essence, they were seeking orders to stop any proceedings against them by the 1<sup>st</sup> Respondent in that regard.
4. At the certificate stage and after considering the application and the annexures thereto, this Court found no urgency in the matter and ordered service on the Respondents and granted the matter a date for directions being 30<sup>th</sup> July 2025. No conservatory orders were issued.
5. Upon being served, the 1<sup>st</sup> Respondent, and through the firm of Mukite Musangi & Co. Advocates, filed a Preliminary Objection dated 29<sup>th</sup> July 2025 citing:-

***a) Lack of this court's jurisdiction to hear and determine both the application and the petition against the 1<sup>st</sup> Respondent.***

***b) Affiliation by all International -Level Athletes to the Exclusive Disciplinary Framework under World Athletics Anti-Doping Rules.***

***c) Failure by the Applicants/Petitioners to exhaust internal remedies available.***

***d) Violation of Rules of International Service.***

***e) Absence of Justiciable constitutional Claims.***

***f) Doctrine of Competence- Competence .***

6. Further, the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 27<sup>th</sup> October 2025 by Collins Sami Situma Advocate in the firm of Mukite Musangi & Co

Advocates terming the application by the Applicants one devoid of merit, replete with procedural misrepresentations of facts and law thus calling for its dismissal.

7. On their part, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed their Replying Affidavits dated 2/7/2025 and 25/8/2025 respectively, opposing the application and the *Petition*.
8. They supported the Preliminary Objection.

**2<sup>nd</sup> Respondent's Replying Affidavit**

9. In its Replying Affidavit sworn on 30<sup>th</sup> July 2025 by Hannah Biwot in her capacity as the Director of the 2<sup>nd</sup> Respondent, it was deponed that the Application is misconceived and , unfounded in law, annoyance and an abuse of the court process, frivolous and an attempt to defeat the course of justice
10. Further that it does not disclose any conceivable constitutional violations by the 2<sup>nd</sup> Respondent and does not meet the threshold.
11. Be that as it may and while emphasising on its role as the Manager, it was deponed that the alleged money alleged owed by the 2<sup>nd</sup> Respondent should be pursued through a recovery suit not a constitutional petition in High Court as done here and therefore, the 2<sup>nd</sup> Respondent was wrongly dragged here. That the application herein is meant to tarnish the name of the 2<sup>nd</sup> Respondent.
12. She states that even so, the 2<sup>nd</sup> Respondent has cleared all monies and the 1<sup>st</sup> Applicant has not shown any money rightly owed. It was deponed that the only outstanding payment to her is the Berlin Half Marathon payment which 2<sup>nd</sup> Respondent is currently withholding pending the outcome of the doping allegation as required by WADA Rules and Guidelines.
13. It was deponed that upon the Applicant's failing the drug test, her contract with the 2<sup>nd</sup> Respondent was terminated for her failure to comply with the terms of the contact. That the Applicant refused to receive payment as she never signed the forms as required by the 2<sup>nd</sup> Respondent despite several reminders.

14. Further, it was deponed that as the Applicant's manager, the 2<sup>nd</sup> Respondent cannot instigate a ban as alleged. She urged that the 2<sup>nd</sup> Respondent be struck out from the petition and ultimately, that application /petition be dismissed with costs to the 2<sup>nd</sup> Respondent.

### **3<sup>rd</sup> Respondent's Replying Affidavit**

15. It was sworn on 25<sup>th</sup> August 2025 by Picotti Piergiuseppe as the Operations Manager of the 3<sup>rd</sup> Respondent, it echoed the 2<sup>nd</sup> Respondent's Replying Affidavit and termed the Application dated 24<sup>th</sup> June 2025 in seeking 3<sup>rd</sup> Respondent be struck out from the petition and that ultimately the Application/ Petition be dismissed in its entirety and with costs for being baseless, unfounded, abuse of the court process and a deliberate waste of judicial time and resources as the reliefs sought and the allegations put forth are unsubstantiated and lack any legal foundation, hence should not be granted by this Court.

16. The 1<sup>st</sup> Applicant (Diana Chepkorir) swore on 7<sup>th</sup> August 2025, what she terms a "***Replying Affidavit to the 2<sup>nd</sup> Respondent's Replying Affidavit***". She deponed that the purported termination of the sponsorship stated in the Affidavit sworn by the Hannah Biwott cannot stand authenticity test arguing that the 2<sup>nd</sup> Respondent is notorious for weaponizing anti-doping violation to swindle innocent athletes their hard-earned money.

17. She states that Hannah has been withholding her prize money amounting to Kshs. 3.5 million won at Eldoret City Marathon without a single Anti-Doping case. And therefore, withholding the said money without a conviction by any relevant tribunal or any justice system amounts to an economic sabotage.

18. She further stated that the 2<sup>nd</sup> Respondent acted in bad faith while they could have waited for all avenues to be exhausted on the said anti-Doping allegations.

19. The 2<sup>nd</sup> Applicant (Sheila Chelangat) also swore on 1<sup>st</sup> September 2025, what she termed a ***Relying Affidavit to the 3<sup>rd</sup> Respondent dated 25<sup>th</sup> August***

2025. She that the deponent is a stranger to her and meant to shield the actual person for purposes of dodging responsibility.

20. That her contract deal was with the giant sports equipment Company (Nike) was effected by Federico Rosa as her agent and that Federico Rosa deliberately withheld her Brading pay money provided by Nike Company.

21. She deponed that by siding with 1<sup>st</sup> Respondent, Rosa Association , the 2<sup>nd</sup> Respondent violated Anti-Doping Rules when she was only suspended and not convicted. That the action was in bad faith and an infringement of her fundamental right to the presumption of innocence until proved guilty and a scheme to steal her hard-earned money.

22. Pursuant to the Directions of this Court, the parties filed submissions on the Preliminary objection.

**1<sup>st</sup> Respondent's Submissions dated 7<sup>th</sup> August 2025**

23. The 1<sup>st</sup> Respondent has identified the following three broad issues for determination:-

*a) Whether this court has jurisdiction to hear and determine this matter /Petition, in the first instance.*

*b) Whether the Petition herein violates the rules of international service.*

*c) Whether Petition herein meets the legal threshold of a constitutional petition.*

24. On *Whether this court has jurisdiction to hear and determine this matter /Petition, in the first instance*, the 1<sup>st</sup> Respondent submitted that the Petition herein relates entirely to anti- doping issues and therefore , such matters are governed exclusively by the World Anti-Doping Code 2021 as incorporated in the World Athletics Anti- Doping Rules 2025 which require such disputes, such as the one now before this court, to be resolved solely by the internal disciplinary process of World Athletics/the Athletics international Unit (AIU) before an independent Disciplinary Tribunal and by

appeal to Court of Arbitration for sports (CAS) whose seat is at Lausanne, Switzerland .

25. It was submitted that the Applicants herein are registered as athletes with the Athletics Kenya, which is a member of Federation of World Athletics, which is the International governing body for athletics worldwide and is bound through its membership of World athletics to comply with all World Athletics Rules.
26. In this regard, it was submitted that the Applicants are subject to Article 32 (1) b of the Athletics Kenya Constitution and are bound by the WADA and IAAFF Anti-Doping Rules and regulations and the Federation's Anti- Doping Regulations.
27. It was therefore submitted that in accordance with Rule 1.4 .2 of the World Athletics Anti –Doping Rules 2025, the 1<sup>st</sup> Applicant is a Member of the World Athletics International Testing Pool and therefore deemed to have agreed to be bound by the rules and have submitted to the authority of the Integrity Unit to enforce the Anti- Doping Rules on behalf of the World Athletics including breach thereof and to the jurisdiction of hearing panels identified to hear and determine cases and appeals brought under the Anti-Doping Rules.
28. Further, it was submitted that in submitting to the Testing by or under the authority of World Athletics, the Applicants signed Doping Control Forms by which they agreed that any charges arising from such testing be resolved in accordance with the procedures set out in the World Athletic Anti- Doping Rules.
29. Consequently , it was submitted that having agreed to be bound by the above rules, and by the procedures of resolving the Anti- Doping disputes, then this court lacks jurisdiction to entertain this petition. In support of that position, the 1<sup>st</sup> Respondent placed reliance on Supreme Court decision in ***Samuel Kamau Macharia & another v Commercial Bank & 2 others Application No. 2 of 2012 [2022]eKLR*** and , where Court opined that “***a Court's***

***jurisdiction flows from either the constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...***

30. Further, reliance was placed on ***Owners of the Motor Vessel ‘Lilians’ vs Caltex Oild(Kenya ) Ltd [1989]KLR*** and ***Speaker of National Assembly vs Karume [21992]eKLR*** where it was held that ***Jurisdiction is everything. Without it ,, a court has no power or make one more step. Where a court a court has no jurisdiction, , there would be no bases for a continuation of proceedings pending evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that tit it is without jurisdiction...***
31. In this case, the 1<sup>st</sup> Respondent submitted that there are internal remedies for handling this dispute and therefore, the 1<sup>st</sup> Respondent notified the 1<sup>st</sup> Applicant of the Adverse Passport finding on her 13 blood samples duly examined and was informed that the 1<sup>st</sup> Respondent was considering asserting Anti- Doping Rule violation against her . Consequently, that the 1<sup>st</sup> Applicant was called upon to respond to the Expert Panel , and consequently all material documentation was provided to her.
32. It was therefore submitted that the decision to charge her with an Anti-Doping Rule Violation has not yet been made pending her formal response which is well within the 1<sup>st</sup> Applicant’s rights and in in light of the ongoing due process within the mechanism of the 1<sup>st</sup> Respondent, this Court has no jurisdiction to interrupt the ongoing process.
33. In regard to the 2<sup>nd</sup> Applicant, it was submitted that she was also informed of the results of two samples taken from her by World Athletics (the 1<sup>st</sup> Respondent) which were tested in two separate WADA, World Anti-Doping Agency, accredited laboratories and revealed the presence of prohibited substance, namely erythropoietin (EPO). That the 2<sup>nd</sup> Applicant was informed that the Adverse Analytical findings may result in Anti-Doping Rule

Violation and that World Athletics Anti-Doping Rules required per the Code that she be placed on a mandatory provisional suspension effective immediately.

34. It was therefore submitted that consequent to the aforesaid, the 2<sup>nd</sup> Applicant herein was provided with an opportunity to make a written submission/report to the 1<sup>st</sup> Respondent and had a chance to request for further analysis of her samples.
35. The 1<sup>st</sup> Respondent therefore submitted that currently, the matter is procedurally pending before the Disciplinary Tribunal and as such, this Court has no jurisdiction to interrupt the ongoing process.
36. Consequently, it was submitted that, any invitation by the Petitioners to have this Court interfere with legal and lawful disciplinary mechanisms contained in Disciplinary Tribunal and/or Court of Arbitration for Sport, will amount to clear violation of the doctrine of **Competence-Competence**, recognized under international arbitration law and supported under the New York Convention and the Kenya Arbitration Act, as the only specialized Tribunals.
37. In support of that argument, the 1<sup>st</sup> Respondent placed reliance of the decision in Petition No. 33 of 2018, **Sammy Ndungu Waity vs I.E.B.C. and 3 others [2019] eKLR** where the Supreme Court opined 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.”***
38. It was therefore submitted that, under the World Athletics Anti-Doping Rules 2025, Anti-Doping violations and other breaches of the Rules are heard by the Disciplinary Tribunal set up under Rule 1.3 and which operates with

Operational Independence in accordance with the World Anti-Doping Agency international Standards for Result Management.

39. Consequently, it was submitted that there exist proper mechanisms and a framework within the 1<sup>st</sup> Respondent and World Athletics Anti-Doping Rules and Code, and as such, this Petition herein has been instituted prematurely without properly exhausting the available forums of dispute resolution.

40. On *whether the Petition herein violates the Rules of International Service*, it was submitted that the 1<sup>st</sup> Respondent is foreign entity domiciled outside the jurisdiction of the Republic of Kenya and therefore, the Petitioners were under obligation to seek leave of the Court to effect service on the 1<sup>st</sup> Respondent but they did not do so contrary to Order 5 Rule 12 of the Civil Procedure Rules, 2010 in regard to service on a foreign Defendant.

41. Further reliance was placed on the case of *Misnak International (UK) Limited v 4MB Mining Limited C/O Ministry of Mining, Juba Republic of South Sudan & 3 others [2019] eKLR*, cited in *Motaung v Samasource Kenya EPZ Limited t/a Sama & 2 others (Petition E071 of 2022) [2023] KEELRC 320 (KLR) (6 February 2023) (Ruling)*, where the Court held;

*“The manner in which such jurisdiction is assumed by Court is that firstly, the Plaintiff has to seek leave of Court to serve such summons outside Court jurisdiction. The purpose of seeking leave is for the Court to weigh the reasons adduced by the Plaintiff and determine whether a proper case has been made out for service of summons outside the jurisdiction....secondly, upon such leave being granted, the summons have to be served upon such a Defendant. It is only upon such service of the summons that the Court assumes jurisdiction over foreign defendant and not a moment sooner.*

42. The 1<sup>st</sup> Respondent therefore urged this Court to strike out the Petition against the 1<sup>st</sup> Respondent.

43. On *whether the Petition herein meets the legal threshold for a Constitutional claim*, as set out in the case of *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272* and reaffirmed in *Mumo Matemu v Trusted*

***Society of Human Rights Alliance & 5 others [2013] eKLR***, the Respondent also emphasized on the World Athletics Anti-Doping Rules, 2025 , the World Anti-Doping Code to which Kenya, as a signatory to the UNESCO Convention through the Anti-Doping Act No. 5 of 2016, and its provisions to submitted that in their pleadings, the Petitioners have not demonstrated and/or particularized how the 1<sup>st</sup> Respondent in their conduct violated the Petitioners' Constitutional Rights.

44. It was submitted that the decision to charge the 1<sup>st</sup> Applicant for the Anti-Doping violation has not yet been made pending her formal response and therefore, considering the above process, this court lacks jurisdiction to interrupt the ongoing process.
45. As regards the 2<sup>nd</sup> Applicant, it was submitted that the 2<sup>nd</sup> Applicant was also informed of the results of two samples taken from her by World Athletics ( the 1<sup>st</sup> Respondent) which were tested in two separate WADA, World Anti-Doping Agency, accredited laboratories and revealed the presence of prohibited substance, namely erythropoietin (EPO).
46. That consequently, the 2<sup>nd</sup> Applicant was informed that the Adverse Analytical findings may result in Anti-Doping Rule Violation and that the World Athletics Anti-Doping Rules required as per the Code, that she be placed on a mandatory provisional suspension immediately.
47. It was submitted that consequent to the, aforesaid, the 2<sup>nd</sup> Applicant herein was provided with an opportunity to make a written submission/report to the 1<sup>st</sup> Respondent and had a chance to request for further analysis of her samples.
48. The 1<sup>st</sup> Respondent therefore submitted that currently, the matter is procedurally pending before the Disciplinary Tribunal and as such, this Court has no jurisdiction to interrupt the ongoing process.
49. It was therefore submitted that, any invitation by the Petitioners to have this Court interfere with legal and lawful disciplinary mechanisms contained in Disciplinary Tribunal and/or Court of Arbitration for Sport, will amount to clear violation of the doctrine of Competence-Competence, recognized under

international arbitration law and supported under the New York Convention and the Kenya Arbitration Act, as the only specialized Tribunals. In support of that argument, the 1<sup>st</sup> Respondent placed reliance on the decision in ***Petition No. 33 of 2018, Sammy Ndungu Waity vs I.E.B.C. and 3 others [2019] eKLR*** where the Supreme Court opined 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.”***

50. The 1<sup>st</sup> Respondent therefore submitted that, under the World Athletics Anti-Doping Rules 2025, Anti-Doping violations and other breaches of the Rules are heard by the Disciplinary Tribunal set up under Rule 1.3 and which operates with Operational Independence in accordance with the World Anti-Doping Agency international Standards for Result Management.

51. Consequently, it was submitted that there exist proper mechanisms and a framework within the 1<sup>st</sup> Respondent entity and World Athletics Anti-Doping Rules and Code, and as such, this Petition has been instituted prematurely without properly exhausting the available forums of dispute resolution.

**2<sup>nd</sup> & 3<sup>rd</sup> Respondents’ written submissions dated 25<sup>th</sup> August 2025.**

52. They supported the 1<sup>st</sup> Respondent’s Preliminary Objection that this Court lacks jurisdiction to hear and determine this matter and cited the case of ***Owners of the Motor Vessel “Lilian S”*** (supra) and urged the Court to down its tools .

53. It is submitted that in view of the doctrine of exhaustion, this Court lacks jurisdiction to handle the matter as this is a dispute relating to anti-doping matters which are exclusively governed by the World Anti-Doping Code 2021 which requires that such matters be resolved through internal disciplinary processes of Athletics Integrity Unit (AIU) before an

- independent Disciplinary Tribunal and that where applicable, by Appeal to Court of Arbitration for Sports (CAS)B seated in Lausanne , Switzerland.
54. Therefore, it was submitted that the Petitioners/Applicants are bound to conclusively exhaust all the dispute resolution mechanisms provided under Section 4 of the Anti- Doping Act No. 5 of 2016.
55. Citing the *Anarita Karimi* case (supra), they submitted that the Applicants/ Petitioners' petition under Certificate of urgency dated 24<sup>th</sup> June 2025 is vague , opaque , imprecise competent and fails to meet the requirement of an application for enforcement of human rights and freedoms; failing to disclose the constitutional provisions violated , the nature of the violation and the injury caused; and, the reliefs sought by the Petitioners; and the specific rights and fundamental freedoms alleged to have been violated.
56. It was therefore submitted that pursuant to Notice of Allegations of Anti-Doping Rule violation dated 4<sup>th</sup> June 2025 addressed to the 1<sup>st</sup> Applicant by the Athletics Integrity Unit, clause 3 explained to her the necessary steps that an athlete could exhaust to resolve the dispute arising as a result of the adverse finding including providing an explanation for the abnormalities detected, admission of the Anti- Rule Violation and offering substantial assistance to the Athletics Integrity Unit which options were to be communicated to the AIU vide email address thereunder by not later than 18<sup>th</sup> June 2025.
57. It was submitted that the Petitioners chose not to respond thereby voluntarily denying themselves the chance of other options but of charge , which is yet to be issued.
58. In conclusion, they therefore urged this Court to dismiss the Petition with costs.

**1<sup>st</sup> and 2<sup>nd</sup> Applicants' joint submissions dated 11<sup>th</sup> August 2025**

59. They submitted that 1<sup>st</sup> Respondent is a formation of World athletics and enforcer of World Anti- Doping Agency (WADA) Rules and another formation called Disciplinary Tribunal all under one roof operating

independently and that the 1<sup>st</sup> Respondent is responsible for all samples collected from athletes for analysis that must be taken to World Anti-Doping Agency accredited laboratories and that is a mandatory rule. .

60. They therefore submitted that so far as the 1<sup>st</sup> Respondent had sanctioned and banned an estimation of 200 Kenyans since the beginning of this year is quite alarming and damaging the reputation of this great republic of Kenya ahead of World Athletics Champions in Tokyo.

61. Further, and while attaching a list of Kenyans they submitted that the 1<sup>st</sup> Respondent might be taking advantage of the huge number of the Kenyan athletes to obtain relevance in and maintain their Anti-Doping funding. Arguing that Doping is a sophisticated scientific method, most Kenyans who are semi-illiterate and might find it unrealistic to handle it by themselves and therefore Kenyans are scared of how the entire process of Anti-Doping is carried out by the 1<sup>st</sup> Respondent especially after Asbel Kiprop, a former 1500m Olympics champion and multiple world champion lost an Anti – Doping case though duly represented by a Counsel.

62. They submitted that the 1<sup>st</sup> Respondent cited may rules on matters of jurisdiction yet well aware that under Article 165 of the Constitution of Kenya 2010 mandates High Court to hear all civil and criminal matters presented before it by any person and therefore, this matter filed at the High Court Human Rights Division cited.

63. Terming the petition, a milestone and a reference in the entire Anti-Doping cases across the world, they attached a list of the Athletes allegedly banned by the 1<sup>st</sup> Respondent and which swells everyday thus raising serious concerns.

### **Determination**

64. Having looked at the Application/petition, the Preliminary Objection, the affidavits and submissions by all parties. Together with the case law cited.

65. As to the threshold to be met in a Preliminary Objection, the Supreme Court in *Hassan Ali Joho & Another v. Suleiman Said Shahbal & 2 Others*,

Petition No. 10 of 2013, [2014] eKLR restated the principles in Mukisa Biscuit Manufacturing Co Ltd v West End Distributors (1969) EA 696 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 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”.*

66. In those circumstances the issue of jurisdiction is a pure point of law and in the celebrated case of *Owners of Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd* (supra) where Nyarangi J held:

*“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”*

67. On the source of a Court’s jurisdiction, the Supreme Court of Kenya in *Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR* stated as follows: -

*A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot*

*arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.*

68. Whereas 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,* as put by the Applicants, the dispute herein relates entirely to Anti- Doping issues.
69. There is no disputed that the Applicants herein are registered as athletes with the Athletics Kenya, a member of Federation of World Athletics, which is the International governing body for athletics worldwide and is bound through its membership of World athletics, to comply with all World Athletics Rules governed exclusively by the World Anti-Doping Code 2021 as incorporated in the World Athletics Anti- Doping Rules, 2025.
70. These Rules require such disputes to be resolved solely through the internal disciplinary process of World Athletics/the Athletics international Unit (AIU) before an independent Disciplinary Tribunal and by appeal to Court of Arbitration for Sports (CAS) at Lausanne, Switzerland.

71. However, the Applicants failed to subject themselves to the available dispute resolution mechanism and adamantly insisted on approaching High Court in regard to the dispute, but this Court lacks jurisdiction to entertain and determine this Application/petition and without jurisdiction, this Court cannot go into the merits or otherwise, noted in the affidavits and submissions by the parties herein in.

72. In conclusion therefore,:-

- 1. The Preliminary Objection is merited**
- 2. The application/ petition are hereby struck out.**
- 3. Costs are awarded to the Respondents .**

**Dated, signed and delivered at Nakuru this 23<sup>rd</sup> Day of February , 2026.**

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

**Diana Chepkorir- 1<sup>st</sup> Applicant**

**Sheila Chelangat - 2<sup>nd</sup> Applicant**

**Mr. Situma for 1<sup>st</sup> Respondent**

**Ms Kimurgo for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**

**Erickson, Court Assistant**