

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CONSTITUTIONAL PETITION NO. E020 OF 2024**

**REV. GORDON OUMA OPIYO.....**

**.....PETITIONER**

**VERSUS**

**THE ANGLICAN CHURCH OF KENYA.....1<sup>ST</sup>**

**RESPONDENT**

**THE ARCHBISHOP**

**ANGLICAN CHURCH OF KENYA.....2<sup>ND</sup>**  
**RESPONDENT**

**THE CHANCELLOR DIOCESE OF MASENO EAST**

**ANGLICAN CHURCH OF KENYA.....3<sup>RD</sup>**  
**RESPONDENT**

**DIOCESE OF MASENO EAST.....4<sup>TH</sup>**  
**RESPONDENT**

**THE RT. REV. DR. MOSES MASAMBA.....5<sup>TH</sup>**  
**RESPONDENT**

**REV. BENARD OTIENO OWUOR.....6<sup>TH</sup>**  
**RESPONDENT**

**DIOCESE OF KAJIADO**

**ANGLICAN CHURCH OF KENYA.....7<sup>TH</sup>**  
**RESPONDENT**

**AND**

**THE VENERABLE HANNINGTON OLUOCH ONDIEK...1<sup>ST</sup> INTERESTED**  
**PARTY**

**THE VENERABLE BENARD OGOLLA OKULLO.....2<sup>ND</sup> INTERESTED**  
**PARTY**

**JUDGEMENT**

**A. The petition.**

1. The Petitioner herein **Rev. Gordon Ouma Opiyo** commenced the present proceedings vide the amended petition dated 17<sup>th</sup> December, 2024 in which he seeks the following reliefs;

- a. **A declaration that the actions of the 2<sup>nd</sup> and 4<sup>th</sup> Respondents in failing to organize and call for elections to fill the vacant position of the Episcopal See of the Diocese of Maseno East were in violation of the constitutions of the Church and the Diocese as well as the law and by extension the freedom of association in *Article 36 of the Constitution of Kenya, 2010.***
- b. **A declaration that the actions of the 5<sup>th</sup> Respondent of refusing to interview the Petitioner following his nomination to run for the vacant position of the Episcopal See of the Diocese of Maseno East amounted to undignified and disrespectful treatment of the Petitioner in violation his inherent right under *Article 28 of the Constitution* and a violation of his right to fair administrative action that *Article 47 of the Constitution* guarantees.**
- c. **A declaration that the actions of the 5<sup>th</sup> Respondent of refusing to interview the Petitioner following his nomination to run for the vacant position of the Episcopal See of the Diocese of Maseno East along with the other nominees violated the Petitioner's freedom from discrimination enshrined in *Articles 10 and 27(5) of the Constitution.***
- d. **A declaration that the actions of the 5<sup>th</sup> Respondent of ignoring the Petitioner's advocate's letter seeking**

**information regarding the events of the 2<sup>nd</sup> November, 2024 and the failure to give reasons for the decision were a violation of the Petitioner's right of access to information guaranteed under *Article 35(1)(b)*, amounted to disrespectful and undignified treatment of the Petitioner in violation his inherent right under *Article 28* of the *Constitution* and constituted a violation of the Petitioner's right to fair administrative action that *Article 47* of the *Constitution* guarantees.**

- e. A declaration that the decision by the 4<sup>th</sup> Respondent to surrender the duty to receive nomination papers of candidates for the vacant See of the Diocese of Maseno East to the office of the 6<sup>th</sup> Respondent violated the Petitioner's right to fair administrative action that statute law and *Article 47* of the *Constitution* guarantee.**
- f. A declaration that the decision to allow the 6<sup>th</sup> Respondent to submit his candidature and to run for the position of the vacant See of the Diocese of Maseno East while still serving in the positions that he holds in the 3<sup>rd</sup> Respondent is a violation of the Petitioner's constitutional rights in *Articles 36* and *47* of the *Constitution*.**
- g. A declaration that the election of REV. BENARD OTIENO OWUOR, the 6TH RESPONDENT on the 30th November, 2024 as the Second Bishop of the Diocese of Maseno East of the Anglican Church of Kenya was so conducted in in violation of the Petitioner's constitutional rights and of the law and was therefore null and void and of no consequence.**

- h. An order of *certiorari* removing into the High Court the proceedings of the 2<sup>nd</sup> November, 2024 of the Search Committee chaired by the 5<sup>th</sup> Respondent for the position of the vacant See of the Diocese of Maseno East and on such removal, the proceedings and the decision made thereat be quashed.**
- i. An order of *certiorari* removing into the High Court the contents of the letter dated 4<sup>th</sup> November, 2024 by the 7<sup>th</sup> Respondent and in such removal the same be and the decision contained therein be quashed.**
- j. An order of *mandamus* or a mandatory injunction directing the 5<sup>th</sup> Respondent to furnish the Petitioner with all the information that the Petitioner requested for vide his advocate's letter dated 7<sup>th</sup> November, 2024**
- k. An order of prohibition barring the Respondents or any of them from proceeding with the election of the 2<sup>nd</sup> Bishop of the See of the Diocese of Maseno East of the Anglican Church of Kenya on the 30<sup>th</sup> November, 2024 or any other date in violation of the Constitutions of the Anglican Church of Kenya and of the Diocese of Maseno East and in violation of the law and the Petitioner's rights.**
- l. A permanent injunction restraining the Respondents from proceeding with the election of the 2<sup>nd</sup> Bishop of the See of the Diocese of Maseno East of the Anglican Church of Kenya on the 30<sup>th</sup> November, 2024 or any other date in violation of the Constitutions of the Anglican Church of Kenya and of the Diocese of Maseno East and in violation of the law and the Petitioner's rights.**

- m. A permanent injunction restraining the Respondents or any of them, whether by themselves, their agents, servants or anyone claiming through them or acting at their instance, from proceeding with the consecration and enthronement of REV. BENARD OTIENO OWUOR, the 6<sup>TH</sup> RESPONDENT as the Second Bishop of the Diocese of Maseno East of the Anglican Church of Kenya.**
- n. A permanent injunction restraining the REV. BENARD OTIENO OWUOR, the 6<sup>TH</sup> RESPONDENT from taking over the office of the Second Bishop of the Diocese of Maseno East of the Anglican Church of Kenya or discharging any of the functions of that office.**
- o. General damages for the malicious and *mala fide* contravention of Petitioner's constitutional and legal rights.**
- p. Costs of this petition to be paid by the Respondents.**

**B. The Petitioner's supporting affidavit.**

2. In his affidavit in support of the Petition sworn on 27<sup>th</sup> November, 2024, the Petitioner states that at the material time, he was serving as a priest of the Anglican Church of Kenya (ACK) Diocese of Kajiado. The Petitioner annexed to his affidavit as "GOO1" copies of his Licences to Officiate and Certificate of Ordination.
3. The Petitioner avers that with effect from 15<sup>th</sup> July, 2024, the Episcopal See of the Diocese of Maseno East ("DME"),

one of the dioceses of the ACK, fell vacant following the retirement of the immediate former Bishop, the **Rt. Rev. Joshua Owiti Ouma**, upon attaining the mandatory retirement age of sixty-five years as stipulated under the Constitution of the ACK and that of the DME. The Petitioner annexed copies of the said constitutions to his affidavit, marked GOO2 and GOO3 respectively.

4. The Petitioner further deposes in his affidavit that both constitutions expressly require that, upon the office of Bishop becoming vacant by reason of retirement, the process of electing a successor must commence no later than three months prior to the effective date of the outgoing Bishop's retirement and be finalized no later than one month before the actual date of retirement.
5. The Petitioner further avers that the 3<sup>rd</sup> Respondent, in his capacity as the Diocesan Chancellor, without any reasonable justification, contravened the aforesaid provisions of the two constitutions by issuing a letter dated 9<sup>th</sup> September, 2024 purporting to notify members of the Diocesan Synod and the members of the Provincial Standing Committee of Synod of the Church of the existence of the vacancy and outlining the procedure for the nomination of persons seeking to fill the same. The said letter further directed that all applications and nomination papers be submitted to his office on or before 8<sup>th</sup> October, 2024. The letter is annexed to the affidavit as GOO4.

6. The Petitioner avers that he duly secured nomination for the vacant bishopric position in accordance with the procedures set out in the two constitutions and prepared his nomination papers – annexed to his affidavit as GOO5. He further states that on 3<sup>rd</sup> October, 2024, while *en route* to submit his nomination papers and the accompanying documents pursuant to the 3<sup>rd</sup> Respondent’s letter dated 9<sup>th</sup> September, 2024, he was informed by the 3<sup>rd</sup> Respondent via telephone that his office, described in the said letter as Elgon Court, Suite D3, Nairobi, would not receive the Petitioner’s documents. The Petitioner was instead advised to submit the documents to the Diocesan Head Office in Ahero, Kisumu, which advice necessitated his travel to Kisumu, where he lodged the documents at the office of the Diocesan Administrative Secretary on 4<sup>th</sup> October, 2024.
7. The Petitioner further deposes in his affidavit that, pursuant to the two constitutions, the 6<sup>th</sup> Respondent, in his capacity as the Clerical Secretary of the Synod, was directly involved, together with the Lay Secretaries of the Synod and the 3<sup>rd</sup> Respondent, in verifying the authenticity of the nominations and confirming that the prospective candidates had been duly nominated. The Petitioner further states that the 2<sup>nd</sup> Respondent, by a letter dated 8<sup>th</sup> October, 2024 (annexture GOO6), constituted a Search Committee chaired by the 5<sup>th</sup> Respondent in accordance with Article XI(8) of the Constitution of the ACK and Article VIII(9) of the Constitution of the DME.

8. The Petitioner avers that thereafter, the 2<sup>nd</sup> Respondent, by way of an email dated 29<sup>th</sup> October, 2024 (annexture GOO7), invited him to appear before the Search Committee on 2<sup>nd</sup> November, 2024 at 10:00 a.m. at St. Peter's Cathedral, Ahero, in the company of his spouse and with all his original certificates. He further states that when he and his spouse presented themselves before the Search Committee on the appointed date, he was turned away by the 5<sup>th</sup> Respondent on the ground that the documents he had submitted contained unresolved issues and that he would consequently not be interviewed.
  
9. The Petitioner avers that the particulars and/or specifics of the alleged unresolved issues were not disclosed to him, notwithstanding his requests for formal communication in that regard.
  
10. The Petitioner further avers in his affidavit that he instructed his Counsel, who on 7<sup>th</sup> November, 2024 sent a letter (annexture GOO8) demanding that the Petitioner be provided with certified copies of the minutes of the Search Committee meeting held on 2<sup>nd</sup> November, 2024, details of the members of the Search Committee, particulars of the nominees for the vacant position and a formal communication to the Archbishop and Diocesan Chancellor explaining the reasons for the removal of his name from the list of nominees. The Petitioner avers that this request/demand was not met.

11. The Petitioner avers that he subsequently became aware that the 6<sup>th</sup> Respondent was also contesting the vacant position, notwithstanding that he held the office of Clerical Secretary of the Synod and that of Assistant Diocesan Administrative Secretary, positions to which all candidates submitted their nomination papers under the instructions of the 3<sup>rd</sup> Respondent, who was, by virtue of his office, responsible for verifying the nomination documents.
  
12. The Petitioner further states that, by virtue of holding the office of Assistant Diocesan Administrative Secretary, the 6<sup>th</sup> Respondent was required to be present at the bishop's election in the absence of the substantive Diocesan Administrative Secretary. The Petitioner deposes that the 6<sup>th</sup> Respondent failed to disclose, at the material time, that he was himself an aspirant for the vacant position of the Episcopal See of the 4<sup>th</sup> Respondent.
  
13. In his further deposition, the Petitioner avers that the 3<sup>rd</sup> Respondent deliberately created a state of affairs that afforded the 6<sup>th</sup> Respondent an unfair advantage over the other candidates and placed him in a position of significant conflict of interest, whereby the 6<sup>th</sup> Respondent had early access to the Petitioner's documents while simultaneously occupying a decision-making role in respect of an election in which he himself was a candidate.

14. The Petitioner further avers that, for the purposes of his candidature, he requested a recommendation letter from the 7<sup>th</sup> Respondent, having served in the Diocese for several years. However, upon receiving the letter from the 7<sup>th</sup> Respondent's office (annexture GOO9), he was surprised to find that, in addition to providing a recommendation, the 7<sup>th</sup> Respondent (the Diocese of Kajiado, 'DOK') had discharged and released him entirely from the parish where he was a priest that was under the 7<sup>th</sup> Respondent, and directed him to hand over the parish. The stated reason for this action was that the Petitioner had sought advancement within the Church at the 4<sup>th</sup> Respondent by contesting the election for the vacant position at DME. The Petitioner avers that the act of discharging and releasing him without notice or an opportunity to be heard was intended to obstruct his attempt to contest the election, as the letter was issued around the same time that the Search Committee declined to interview him.

15. The Petitioner further deposes in his affidavit that, by contrast, in the year 2016, he was nominated to vie for the position of the inaugural Bishop of the DME and ultimately placed second. He states that prior to that election, the 7<sup>th</sup> Respondent readily issued him with a letter of recommendation (annexture GOO10) without formally discharging or releasing him from the DOK.

16. In his further deposition, the Petitioner maintains that, notwithstanding the alleged violations, the 5<sup>th</sup> Respondent

nonetheless proceeded to submit to the 2<sup>nd</sup> Respondent the names three candidates being the 6<sup>th</sup> Respondent, **The Venerable Hannington Oluoch Ondiek** and **The Venerable Bernard Ogolla Okullo** as the duly shortlisted candidates for the election, thereby excluding the Petitioner's name as a qualified candidate without providing him with any valid justification.

17. The Petitioner further avers in his affidavit that, in further compounding the violations alleged above, the 2<sup>nd</sup> Respondent, together with the 4<sup>th</sup> Respondent, proceeded to appoint an Electoral College and set 30<sup>th</sup> November, 2024 as the date for the election. The Electoral College included the Bishop of the DOK, **Rt. Rev. Gaddiel K. Lenini**, who had relieved the Petitioner of his duties at the DOK, as a member, pursuant to the 3<sup>rd</sup> Respondent's letter dated 8<sup>th</sup> November, 2024 and a decree directing the said election, signed by the 2<sup>nd</sup> Respondent - collectively annexed as GOO11.

18. Following the developments in which the election slated for 30<sup>th</sup> November, 2024 was conducted and the 6<sup>th</sup> Respondent declared the winner, the Petitioner sought and was granted temporary conservatory orders on 2<sup>nd</sup> January, 2025. These orders restrained the Respondents, or any of them, whether acting personally, through their agents or servants, or by anyone claiming under them, from proceeding with the consecration and enthronement of the 6<sup>th</sup> Respondent as the Second Bishop of the DME of the

ACK. The orders further restrained the 6<sup>th</sup> Respondent from assuming the office of Second Bishop of the DME of the ACK or performing any functions of that office. The conservatory orders have since remained in force.

19. The Petitioner deposes that the election of the 6<sup>th</sup> Respondent was carried out in a manner that violated the Petitioner's constitutional rights, including his right to fair treatment, equal opportunity and due process as guaranteed under the *Constitution*.

20. The Petitioner further avers that the election process was tainted by procedural irregularities, conflicts of interest and non-compliance with the provisions of the Constitutions of the ACK and the DME, all of which undermined the integrity and legality of the election. By reason of these breaches, the Petitioner contends that the election of the 6<sup>th</sup> Respondent is null and void and ought not to be recognized, validated or allowed to stand under the law.

**C. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' replying affidavit.**

21. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents oppose the Petition and in that regard, filed a replying affidavit sworn on 22<sup>nd</sup> January, 2025 by **Jackson Ole Sapit**, the holder of the office of the 2<sup>nd</sup> Respondent. For purposes of clarity in this affidavit, I shall refer to the deponent as the 2<sup>nd</sup> Respondent.

22. The 2<sup>nd</sup> Respondent's affidavit, as filed in the Case Tracking System, seems to be incomplete, as the second page, which was to contain paragraphs 4 to 9, is missing. Notwithstanding this omission, I shall address the contents that are available and extract the relevant information therein.
23. In his affidavit, the 2<sup>nd</sup> Respondent avers that the election of a Bishop of a particular Episcopal See or Diocese is governed under Article XI of the Constitution of the ACK, which prescribes the requirements and procedures for such elections.
24. The 2<sup>nd</sup> Respondent further states that, according to the Constitution of the ACK, the Search Committee constituted for the purpose of a bishopric election comprises twelve (12) members: six (6) selected from the Province of the ACK and six (6) selected from the Diocese whose bishopric is vacant.
25. The 2<sup>nd</sup> Respondent avers that the actions undertaken by the 5<sup>th</sup> Respondent, in his capacity as Chair of the Search Committee, in interviewing the validly nominated candidates were carried out in strict compliance with the procedural and constitutional guidelines prescribed by the Constitution of the ACK.
26. The 2<sup>nd</sup> Respondent acknowledges that the Petitioner's Counsel wrote to him by way of a demand letter, which he received. Upon receipt, he instructed the Provincial

Chancellor of the 1<sup>st</sup> Respondent to respond. The Provincial Chancellor did so by way of a letter dated 7<sup>th</sup> November, 2024 (annexture JOS-1), which explicitly informed the Petitioner, through his Counsel, that his nomination could not proceed, as he did not meet the strict requirements of the ACK Constitution regarding the eligibility and nomination of candidates for bishopric.

27. The 2<sup>nd</sup> Respondent further states that his office forwarded the names of the 6<sup>th</sup> Respondent and the Interested Parties as duly shortlisted candidates for the subject vacancy. He avers that the process leading to the nomination and election of the 2<sup>nd</sup> Bishop of the DME adhered strictly to the provisions of the Constitution of the ACK, including Articles XI(7) and XI(8), and Articles VIII(8) and VIII(9) of the Constitution of the DME.

28. The 2<sup>nd</sup> Respondent confirms that he was aware, at all material times, that the 6<sup>th</sup> Respondent held the positions of Clerical Secretary of the Synod and Assistant Administrative Secretary of the DME and that such appointments were made pursuant to Article XV of the Constitution of the ACK and Article X(4) of the Constitution of the DME. He avers that there is no obligation under either Constitution requiring the 6<sup>th</sup> Respondent to disclose his candidacy to the Petitioner. Further, the 6<sup>th</sup> Respondent was not expected to know the identities of other candidates intending to run for the vacant office.

29. The 2<sup>nd</sup> Respondent avers that he was informed by the 3<sup>rd</sup> Respondent, the Diocesan Chancellor of the DME, who was responsible for receiving and opening all nomination papers, that the 6<sup>th</sup> Respondent did not participate in the exercise of opening the nomination documents and that consequently, no prejudice was caused to the Petitioner in this regard.

30. The 2<sup>nd</sup> Respondent asserts that the Petitioner's right to legitimate expectation must be grounded upon the Constitutions of the ACK and DME as well as the official declaration of the vacancy. The declaration of vacancy required the Petitioner to submit specific documents, including proof of age (e.g., birth certificate), details of ordination or canonical status to establish standing within the Anglican Communion, a curriculum vitae evidencing educational and pastoral experience and proof of marital status. The 2<sup>nd</sup> Respondent avers that the Petitioner failed to provide these essential documents.

31. The 2<sup>nd</sup> Respondent takes the position that without the requisite documentation, it was not possible to determine, on a *prima facie* basis, that the Petitioner was qualified to vie for the vacant bishopric. The application form explicitly requested such documents, which the Petitioner either failed or refused to submit.

32. With respect to the Petitioner's claim that the 5<sup>th</sup> Respondent refused to provide reasons for declining to interview him, the 2<sup>nd</sup> Respondent states that the Petitioner

admitted in his Petition that he was informed by the Search Committee that his nomination documents were deficient.

33. The 2<sup>nd</sup> Respondent avers that, in accordance with Article XI of the ACK Constitution, the Search Committee is mandated to ensure that all candidates meet the eligibility requirements prior to interviews. Upon review, the Petitioner's documents were found to be non-compliant, which justified the decision not to interview him. The 2<sup>nd</sup> Respondent makes reference to the Minutes of the Opening and Vetting of Nomination Papers for Candidates to the 2<sup>nd</sup> Bishop of the DME, dated 15<sup>th</sup> October, 2024.

34. The 2<sup>nd</sup> Respondent further states that any contention that the 2<sup>nd</sup> and 4<sup>th</sup> Respondents failed to address the Petitioner's complaint regarding the Search Committee's refusal to interview him would constitute interference with the constitutional mandate of the Search Committee as the Committee's decisions are final and cannot be countermanded by either the 2<sup>nd</sup> or 4<sup>th</sup> Respondents, who have no constitutional authority to review or overturn the Committee's determination regarding candidate eligibility.

35. Regarding the Petitioner's claims of undignified or disrespectful treatment by the 5<sup>th</sup> Respondent, the 2<sup>nd</sup> Respondent states that such allegations are baseless and unfounded. He avers that the decision of the Search Committee not to interview the Petitioner was

communicated professionally and in accordance with established procedures.

36. The 2<sup>nd</sup> Respondent states that the Petitioner bears the burden of proving that the 4<sup>th</sup> Respondent acted in a manner that allowed the 6<sup>th</sup> Respondent to interfere with the Petitioner's application documents.

37. The 2<sup>nd</sup> Respondent further avers that the 6<sup>th</sup> Respondent's candidacy did not conflict with his official roles as Clerical Secretary of the Synod and Assistant Administrative Secretary of the Diocese, and neither the Constitution of the ACK nor the Constitution of the DME requires a serving officer to resign or disclose an interest when running for office. He states that in circumstances where the Clerical Secretary is unavailable, the Constitution of the ACK provides that the Diocesan Administrative Secretary shall assume the mandate of the office. In this instance, **Rev. Jeconia Owino Onyango**, the Diocesan Administrative Secretary, presided over the relevant proceedings in place of the 6<sup>th</sup> Respondent, who was a candidate for vetting as per the minutes of the Opening and Vetting of Nomination Papers, dated 15<sup>th</sup> October 2024.

38. The 2<sup>nd</sup> Respondent states that the Petitioner bears the burden of proving that the 4<sup>th</sup> Respondent's timing in filling the vacancy violated the Constitutions of the ACK or DME or was intended to favor a particular candidate. The 2<sup>nd</sup> Respondent further avers that under the Constitution of the

ACK, the process and timing of a bishopric vacancy is determined by the outgoing Bishop's retirement date, which is fixed by the date of birth and that Bishops retire at age sixty-five, and each swears an oath at consecration affirming their retirement date. Neither the ACK nor the DME has authority to alter the retirement date of a Bishop to benefit any candidate.

**D. The 5<sup>th</sup> Respondent's replying affidavit.**

39. The 5<sup>th</sup> Respondent opposes the Petition and filed a replying affidavit sworn on 22<sup>nd</sup> January 2025, in which he avers that he is the Bishop of the ACK Diocese of Mbeere. He states that, pursuant to the Constitution of the ACK, to qualify as a candidate for the office of Bishop, a person must be at least thirty-five (35) years of age, not exceeding sixty (60) years, and must be nominated by members of either the Diocesan Synod of the vacant See or the Provincial Standing Committee of Synod of the ACK.

40. The 5<sup>th</sup> Respondent further states that a candidate may be validly nominated by the Diocesan Synod through either two priests and three laypersons, or three priests and two laypersons, while nominations by the Provincial Standing Committee require one bishop, one priest and one layperson. He avers that these provisions ensure that nominators are *bona fide* members of the Church whose identities are verifiable.

41. The 5<sup>th</sup> Respondent avers that when the Petitioner appeared before the Search Committee, which he chaired, the Committee carefully examined his nomination documents. The Committee determined that the Petitioner did not qualify to be interviewed because his nominators did not meet constitutional requirements: they comprised one bishop, one priest and three laypersons instead of the required composition of one bishop, two priests and two laypersons, as per the Petitioner's nomination paper, annexed to his affidavit as part of GOO5.

42. The 5<sup>th</sup> Respondent avers that his conduct as Chair of the Search Committee, and that of the Committee members, was in strict compliance with the procedural and constitutional guidelines of the ACK Constitution. Members of the Committee, including another bishop and senior Church officials, concurred with the findings, as indicated in the minutes of the meeting (annexture MM-1).

43. The 5<sup>th</sup> Respondent further states that the process leading to the nomination and election of the 2<sup>nd</sup> Bishop of the DME adhered fully to the provisions of the Constitution of the ACK, including Articles XI(7) and XI(8) and Articles VIII(8) and VIII(9) of the Constitution of the DME.

44. The 5<sup>th</sup> Respondent avers that the Petitioner's claim of legitimate expectation must be grounded in the Constitutions of the ACK and DME and the declaration of vacancy, which required the submission of specific

documents, including proof of age, ordination or canonical status, a curriculum vitae detailing educational and pastoral experience and proof of marital status. As per the 5<sup>th</sup> Respondent, the Petitioner failed to submit these documents.

45. The 5<sup>th</sup> Respondent states that, without the requisite documentation, the Committee could not determine, on a *prima facie* basis, that the Petitioner was qualified to contend for the vacant position. He denies any claim that he refused to provide reasons for declining to interview the Petitioner, noting that the Petitioner himself admitted in the Petition that he was informed by the Search Committee that his documents were deficient.

46. The 5<sup>th</sup> Respondent strongly denies the allegations that the Petitioner was treated in an undignified or disrespectful manner. He avers that the Petitioner appeared before the Committee on two occasions: first at the commencement of the vetting exercise, and later after the Committee had concluded interviews with all candidates. He states that on both occasions, the Committee communicated professionally and in accordance with established procedures that the Petitioner would not be interviewed.

**E. The 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents' notice of preliminary objection.**

47. In opposition to the petition, the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents filed a two-pronged notice of preliminary

objection dated 29<sup>th</sup> December, 2024, proffering the following grounds:

1. **The Petitioner in the suit has wrongly joined the 3<sup>rd</sup> Respondent, the 4<sup>th</sup> Respondent and the 7<sup>th</sup> Respondent as parties to the suit; the petition is misdirected and ought to be presented as against the Registered Trustees of the Anglican Church, the Registered Trustees of the Diocese of Maseno East and the Registered Trustees of the Diocese of Kajiado, which are registered as societies under the *Societies Act Cap 108 Laws of Kenya* and thus can only be sued through their respective Registered Trustees.**
  
2. **The Petitioner is yet to exhaust all the available local remedies as per the Church's Constitution thus the suit is premature, wrongly instituted and fatally defective.**

**F. The 6<sup>th</sup> Respondent's grounds of opposition and replying affidavit.**

48. In opposition to the Petition, the 6<sup>th</sup> Respondent filed a statement of grounds of opposition and a replying affidavit.

49. The specific reasons and justifications upon which his grounds of opposition is based, is as follows:

1. **THAT this court lacks the jurisdiction to hear and determine the said application.**
  
2. **THAT the application herein is misconceived, bad in law and an abuse of the process of this Honorable court.**

**3. THAT the application is frivolous, vexatious and trivial in nature and should be dismissed with costs.**

**4. THAT the application herein does not meet the mandatory requirements for granting of the orders sought.**

**5. THAT the application is incurably and fatally defective hence should be dismissed with costs.**

**6. THAT the orders sought herein are vague.**

50. Although the above grounds refer to an application, the same at the top refer to opposing the amended petition dated 17<sup>th</sup> December, 2024 and I will deem the reference to an application to be a curable clerical error.

51. In his replying affidavit, the 6<sup>th</sup> Respondent states that the Court lacks jurisdiction to hear and determine the petition because the Petitioner, being an ordained priest of the Anglican Church of Kenya who subscribed to the oath of canonical obedience, has failed to exhaust the internal dispute resolution mechanisms provided for under the Anglican Church of Kenya Constitution, rendering the petition premature and liable to dismissal with costs.

52. He avers that his election as the second Bishop of the Diocese of Maseno East was conducted in strict compliance with the Constitution of Kenya and the Constitution of the Anglican Church of Kenya and that this process was consistent with the established practice in episcopal elections within the Anglican Church.

53. The 6<sup>th</sup> Respondent deposes that he served as the Clerical Secretary of the Diocese of Maseno East until 6<sup>th</sup> November 2024, when he resigned from the position upon approval of his candidature to avoid any actual or perceived conflict of interest in the bishopric election.

54. He states in his affidavit that upon expressing interest in the bishopric, he ceased to perform the functions of Clerical Secretary and did not participate in the opening, vetting or processing of nomination papers, his duties having been taken over by the Diocesan Administrative Secretary.

55. The 6<sup>th</sup> Respondent states further that following his resignation, the Diocesan Synod convened a special Standing Committee meeting at which a replacement Clerical Secretary was duly appointed, and that this replacement was formally communicated to the Archbishop through the Archbishop's Commissary.

56. The 6<sup>th</sup> Respondent states that, in light of his resignation and non-participation in the vetting and election process other than as a candidate, there was no violation of the Petitioner's rights as alleged and that he did not participate in the election as an elector but only as a duly cleared candidate alongside the other candidates.

57. The 6<sup>th</sup> Respondent further states that the Petitioner lacks *locus standi* to institute the petition, having failed to meet the minimum qualifications required to be interviewed by

the Search Committee. He states that the Vetting Committee determined that the Petitioner did not meet the prescribed threshold for consideration because his nomination credentials were incomplete.

58. The 6<sup>th</sup> Respondent avers in his affidavit that the nomination criteria required endorsement by one Bishop, two priests and two lay members, and that the Petitioner failed to meet this requirement, thereby lawfully disqualifying him from appearing before the Search Committee and negating any claim of violation of rights.

59. He states that the election was contested only between himself and the two Interested Parties, and that he was duly elected after garnering an overwhelming majority of the votes and was declared the Second Bishop-Elect of the Diocese of Maseno East.

60. The 6<sup>th</sup> Respondent adds that the Petitioner cannot lawfully challenge an election in which he did not participate as a candidate, his name having been excluded from the ballot at the preliminary stages. He states that the other candidates acknowledged the election as free and fair, congratulated him upon his election, and declined to participate in the petition, as evidenced by their affidavits.

61. Finally, the 6<sup>th</sup> Respondent states that the petition and the is an abuse of the court process, lacks merit, fails to

meet the threshold for the grant of the orders sought, and should be dismissed with costs.

**G. The Petitioner's further affidavit.**

62. The Petitioner was granted leave by the Court on 23<sup>rd</sup> January, 2025 to file a further affidavit, pursuant to which he duly filed a further affidavit sworn on 6<sup>th</sup> February, 2025.

63. In his further affidavit, the Petitioner avers that the election in issue constituted a continuous process and that the 6<sup>th</sup> Respondent improperly elected to remain in the office of Clerical Secretary of the Synod of the 4<sup>th</sup> Respondent during the most critical stages of that electoral process, notwithstanding his personal interest in the outcome thereof.

64. The Petitioner further deposes that as at 15<sup>th</sup> October, 2024, when the nomination papers were opened, the 6<sup>th</sup> Respondent was still substantively holding the office of Clerical Secretary of the Synod of the 4<sup>th</sup> Respondent. He further avers that it remains unclear how or under what authority **Rev. Jeconia Owino Onyango** was appointed to act in the place of the 6<sup>th</sup> Respondent during the meeting held on 15<sup>th</sup> October, 2024.

65. The Petitioner avers that, according to annexure BOO-2, **Rev. Jeconia Owino Onyango** was personally selected by the 6<sup>th</sup> Respondent to act on his behalf. He further states that the 6<sup>th</sup> Respondent appears to have been formally

replaced only on 11<sup>th</sup> November, 2024, after the nomination process had already been concluded. In the circumstances, the Petitioner avers that the 6<sup>th</sup> Respondent had ample opportunity to access the Petitioner's nomination papers prior to and during the nomination process.

66. The Petitioner further deposes that, notwithstanding the fact that the 6<sup>th</sup> Respondent did not personally attend the meeting of 15<sup>th</sup> October, 2024, he is nonetheless in possession of copies of the minutes of that meeting, at which he was represented by **Rev. Jeconia Owino Onyango**, as well as the minutes of the meeting of the Diocesan Standing Committee of the Synod held on 11<sup>th</sup> November, 2024.

67. The Petitioner avers that the 6<sup>th</sup> Respondent, despite having a clear and direct interest in the subject election as evidenced by annexure BOO-2, deliberately waited until all other candidates had submitted their nomination papers to his office before submitting his own nomination papers to the same office. This, the Petitioner states, is reflected in the order of receipt of nominations as set out in annexure GOO12. The Petitioner further states that the 6<sup>th</sup> Respondent remained the Clerical Secretary of the Synod up to and including the date when the Search Committee conducted its interviews on 2<sup>nd</sup> November, 2024 and that there is no provision under the Constitution of the ACK that permitted **Rev. Jeconia Owino Onyango** to act in the place of the 6<sup>th</sup> Respondent.

68. In his further affidavit, the Petitioner categorically denies the assertion that his candidature failed to meet the requirements for a valid nomination. He avers that the conditions cited in the minutes as grounds for the rejection of his nomination are not recognized or provided for under the Constitution of the ACK.

69. The Petitioner further avers that the minutes of the meeting held on 15<sup>th</sup> October, 2024, to which he states the 6<sup>th</sup> Respondent has access, do not constitute a true, accurate or faithful record of the proceedings of that meeting.

70. In response to the affidavit of the 5<sup>th</sup> Respondent, the Petitioner avers in his further affidavit that the 5<sup>th</sup> Respondent, in fact, confirms that the Petitioner met the qualifications for nomination and was validly nominated. The Petitioner further states that he has never been furnished with, nor has he had sight of, the minutes of the meeting chaired by the 5<sup>th</sup> Respondent.

71. The Petitioner further states that the 5<sup>th</sup> Respondent's contention that he failed to provide documents relating to his age, ordination or canonical status and curriculum vitae is false. He avers that he previously contested a similar election and was properly nominated after submitting all the requisite documentation.

72. The Petitioner emphatically avers that the 5<sup>th</sup> Respondent declined and/or refused to respond to his formal written request seeking an explanation as to the reasons why he was turned away and excluded from the election process.

73. The Petitioner states in his further affidavit that it was the 2<sup>nd</sup> Respondent who invited and directed him to appear before the Search Committee after receiving the list of validly nominated candidates from the 3<sup>rd</sup> Respondent. He further avers that the letter dated 7<sup>th</sup> November, 2024 was neither addressed to the 2<sup>nd</sup> Respondent nor written on his instructions. The Petitioner adds that he was advised by his Counsel that the purported response letter was never received.

74. The Petitioner asserts that notwithstanding claims of confidentiality relied upon by the 5<sup>th</sup> Respondent to deny him access to the information he sought, the 6<sup>th</sup> Respondent was freely granted access to documents relating to meetings at which he was not present and has relied on such documents in opposing the present Petition. The Petitioner avers that this conduct gives the impression that the 1<sup>st</sup> Respondent is facilitating the 6<sup>th</sup> Respondent while simultaneously obstructing the Petitioner from effectively pursuing redress for the alleged violations of his rights.

75. The Petitioner further states that had his candidature failed to meet the basic requirements for nomination, his nomination would have been rejected at the initial stage, as

was the case with several other candidates who did not meet the threshold. He avers that the unequivocal instruction directing him to attend the interview by both the Search Committee and the 2<sup>nd</sup> Respondent is clear evidence that he had qualified. He further states that the documents he submitted at the nomination stage were the same documents forwarded to the Search Committee and that any deficiencies would have been identified and addressed at the nomination stage.

76. The Petitioner asserts that the Search Committee declined to interview him altogether despite the fact that he had been validly nominated. He avers that by refusing to interview him, the Committee failed to make any substantive determination regarding his candidature, and consequently, the issue of finality of its decision does not arise in the circumstances.

77. The Petitioner further avers that it is incorrect and misleading to assert that the Constitution of the ACK provides for the Administrative Secretary to assume the mandate of the office of the Clerical Secretary in an acting capacity.

#### **H. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties' affidavits.**

78. The two Interested Parties filed their respective affidavits in which they both emphatically stated that they would not participate in this petition as they had no interest in the outcome.

## **I. The Petitioner's submissions.**

79. The Petitioner submits that the dispute before the Court arises from an electoral process conducted pursuant to the Constitution of the ACK and that of the DME, which process he contends was fundamentally flawed. It is his position that the election of the 6<sup>th</sup> Respondent was not a singular event but the culmination of a process that was marred by procedural irregularities, lack of transparency, conflict of interest and violations of his constitutional rights, thereby rendering the outcome unlawful.

80. It is the Petitioner's submission that the actions complained of constitute administrative action and were therefore subject to the constitutional standards of legality, reasonableness, procedural fairness and accountability. He submits that once his nomination was received, verified, forwarded to the 2<sup>nd</sup> Respondent and he was formally invited to appear before the Search Committee with his spouse and original certificates, the Respondents were under a duty to accord him fair administrative treatment.

81. The Petitioner further submits that his exclusion from the interview process without prior notice and without being furnished with clear, written and specific reasons amounted to a violation of his right to fair administrative action. He contends that the vague explanation that his documents had "unresolved issues" was insufficient and did not meet the

constitutional and statutory threshold for reasons required when an adverse administrative decision is made.

82. It is the Petitioner's submission that the formal invitation issued to him by the 2<sup>nd</sup> Respondent and the Search Committee created a legitimate expectation that he would be interviewed and substantively considered for the position. He submits that this expectation arose from the Respondents' own representations and conduct and that it was defeated arbitrarily when he was turned away at the interview venue without prior communication or an opportunity to address the alleged deficiencies.

83. The Petitioner submits that the Search Committee acted outside its mandate by purporting to invalidate his candidature on grounds that ought to have been conclusively addressed at the nomination stage. He contends that once his nomination was accepted and forwarded as valid, the Search Committee lacked authority to revisit or redefine nomination requirements at the interview stage.

84. It is further submitted that the refusal by the Search Committee to interview the Petitioner did not amount to a lawful determination of his candidature. The Petitioner argues that by declining to hear him altogether, the Committee failed to exercise its mandate and that in the absence of a substantive determination, the Respondents

cannot rely on the doctrine of finality of the Committee's decisions.

85. The Petitioner further submits that the integrity of the electoral process was compromised by the continued involvement of the 6<sup>th</sup> Respondent in the administration of the election while being a candidate. He contends that the 6<sup>th</sup> Respondent remained in the office of Clerical Secretary of the Synod during critical stages of the process, had access to nomination documents and minutes and participated, directly or indirectly, in structures that influenced the election.

86. It is the Petitioner's position that the 6<sup>th</sup> Respondent's conduct placed him in a conflicted position and undermined the principles of impartiality, transparency and fairness that are required in an electoral process. He submits that the failure to disclose his interest or to recuse himself from processes connected to the election tainted the process with actual or perceived bias.

87. The Petitioner further submits that he was subjected to unequal and discriminatory treatment. He contends that while he was denied access to minutes, reports and explanations on the basis of confidentiality, the same materials were made available to the 6<sup>th</sup> Respondent, including documents relating to meetings at which the 6<sup>th</sup> Respondent was not present.

88. It is the Petitioner's submission that this selective disclosure of information placed him at a material disadvantage and denied him equal protection and benefit of the law. He contends that the Respondents' conduct impaired his ability to effectively challenge the decisions made against him and to seek redress.

89. The Petitioner further submits that the Respondents' reliance on internal mechanisms and the doctrine of exhaustion is misplaced. He contends that there existed no effective, impartial or accessible internal mechanism capable of addressing the grievances he raised, particularly where the alleged violations involved the very organs responsible for administering the election.

90. It is further submitted that the Petitioner's exclusion from the election does not deprive him of standing. On the contrary, he argues that his exclusion forms the very basis of his grievance and entitles him to approach the Court for relief.

91. Finally, the Petitioner submits that once an electoral process is shown to be tainted by illegality, procedural impropriety, conflict of interest and violation of constitutional rights, the resultant election cannot be allowed to stand. He urges the Court to find that the election of the 6<sup>th</sup> Respondent was unlawful and to grant the reliefs sought in the Petition.

**J. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents' submissions.**

92. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents submit that the Petition filed on 27<sup>th</sup> November, 2024, as amended on 17<sup>th</sup>, December 2024, seeks, in essence, the nullification of the election of the 6<sup>th</sup> Respondent as the 2<sup>nd</sup> Bishop of the Episcopal See of the Diocese of Maseno East conducted on 30<sup>th</sup> November 2024. The three Respondents note that the Petitioner challenges the election on grounds that it allegedly violated the Constitution of the Anglican Church of Kenya (ACK) 2002 and the Constitution of the Diocese of Maseno East.
93. The three Respondents emphasize that the election of a Bishop for any Episcopal See is regulated under Article XI of the ACK Constitution, which sets out both the eligibility criteria and the procedure for nomination of candidates in the event of a vacancy.
94. The Constitution requires that a candidate for the office of Bishop must: (i) be at least 35 years and not more than 60 years old, (ii) be in good standing within the Anglican Communion, and (iii) be nominated by either members of the Diocesan Synod or the Provincial Standing Committee, in accordance with the Constitution.
95. In the event of a nomination by members of the Diocesan Synod, the nominators must comprise either two priests and three laypersons, or three priests and two laypersons. A candidate may also be validly nominated by five members of

the Provincial Standing Committee, provided that the nominators include one bishop, one priest and one layperson. The three Respondents submit that these provisions exist to ensure that only *bona fide* members of the Church participate in the nomination process, guaranteeing transparency and legitimacy.

96. On the Court's Jurisdiction, the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents submit that this Court lacks jurisdiction to entertain the Petition because the Petitioner has failed to exhaust the internal dispute resolution mechanisms provided under the ACK Constitution and the Fair Administrative Action Act (Cap. 21, Laws of Kenya) ('FAA Act').

97. In support, the Respondents rely on the decision in **Odago & 13 others v Registered Trustees of the Anglican Church of Kenya, Diocese of Maseno East Parish & another; Oyare & 15 others (Interested Parties) (Judicial Review Application 44 of 2023) [2024] KEHC 15270 (KLR) (28 November 2024)**, where **Lady Justice Aburili** considered a similar dispute arising from the same Diocese and elections.

98. In that case, the Court addressed whether judicial review proceedings offended the doctrine of exhaustion of remedies and held that internal mechanisms under the Church Constitution must first be exhausted. **Lady Justice Aburili**

cited *Section 9* of the *Fair Administrative Action Act*, which provides as follows:

**“9. Procedure for Judicial Review**

**1. Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a Subordinate Court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.**

**2. The High Court or a Subordinate Court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.**

**3. The High Court or a Subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).**

**4. Notwithstanding subsection (3), the High Court or a Subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.**

**5. A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”**

99. The Respondents further submit that the ACK Constitution establishes a Tribunal under Canon XIII for internal dispute resolution, with Canon XIV providing for offences and Canon XIX providing an appeal mechanism. **Lady Justice Aburili** concluded that these internal mechanisms are adequate and must be utilized before invoking judicial review.

100. The Court in ***Odago*** further observed:

*“The doctrine of exhaustion of remedies has consistently been appreciated by our superior courts to the extent that it is correct to state that the doctrine is now of esteemed juridical lineage in Kenya... Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure 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.”*

101. Similarly, in ***Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others (2015) eKLR***, the Court of Appeal held:

*“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... This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.”***

102. **Lady Justice Aburili** also relied on **Matter of the Mui Coal Basin Local Community [2015] eKLR**, which emphasized that the Constitution promotes a matrix dispute resolution system and does not envisage courts as the first port of call where other mechanisms exist.

103. Based on the foregoing, the Respondents contend that the present Petition is a mirror image of **Odago** and is fatally defective for want of jurisdiction because: (i) it challenges similar elections in the DME; (ii) it alleges violations of the Church’s Constitution; and (iii) the Petitioner has failed to demonstrate exceptional circumstances to merit an exemption under *Section 9(4)* of the *Fair Administrative Action Act*. The Petition should therefore be dismissed for lack of jurisdiction.

104. On the Burden of Proof the three Respondents submit that the Petitioner bears the legal and evidential burden of proving, on a balance of probabilities, that the election was conducted unlawfully or in violation of the Constitution. They rely on *Sections 107, 108 and 109* of the *Evidence Act, Cap 80 Laws of Kenya* which state:

**“107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the**

**existence of facts which he asserts must prove that those facts exist...**

**108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.**

**109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”**

105. The three Respondents cite **Ogumbo v Opiyo the Chancellor, Anglican Church of Kenya, Diocese of Maseno West & 4 others (Civil Suit 109 of 2019) [2023] KEHC 2867 (KLR)** and **Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR**, where the courts confirmed that the party alleging illegality or violation bears the onus of proof.

106. They further cite *Halsbury's Laws of England (4th Edition, Volume 17)* for the proposition that the legal burden remains constant throughout the trial, though evidential burdens may shift depending on the evidence.

107. On the nomination and election process, the three Respondents submit that the Petitioner was not validly nominated for the 30<sup>th</sup> November, 2024 election because the nominators did not comply with the Constitution. Specifically, the Petitioner was nominated by one Bishop, one Priest and three laypersons instead of the required

composition of either (i) one Bishop, two Clergy and two laypersons or (ii) two Priests and three laypersons.

108. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents submit that the Search Committee, chaired by the 5<sup>th</sup> Respondent, followed constitutional procedures, verified all candidate documents and excluded the Petitioner based on missing documentation. This included proof of age, ordination or canonical standing, educational and pastoral experience and marital status.

109. The three Respondents further submit that the 1<sup>st</sup> and 4<sup>th</sup> Respondents did not interfere with the Search Committee's decisions. The Chancellor of the Diocese confirmed that the 6<sup>th</sup> Respondent did not participate in opening nomination papers, eliminating any allegation of bias or interference.

110. The three Respondents submit that the Petitioner cannot claim discrimination or preferential treatment because: (i) all candidates were treated equally; (ii) the Search Committee shortlisted three candidates, not one; and (iii) the process adhered strictly to the Constitution.

111. The Petitioner's allegations of discrimination are addressed with reference to **Mohammed Abduba Dida v Debate Media Limited & another [2018] eKLR**, where the Court of Appeal outlined a three-stage test to determine whether differentiation constitutes unfair discrimination:

***“Firstly, whether the differentiation created by the provision or rules has a rational or logical connection to a legitimate purpose; if so, a violation of Article 27 will not have been established. If not, a second enquiry would be undertaken to determine whether the differentiation gives rise to unfair discrimination. If it does not, there is no violation of the constitution. But if the selection or differentiation gives rise to unfair discrimination, then the third enquiry would be necessary to determine whether it can be justified within the limitation provisions of the constitution.”***

112. The Respondents assert that all candidates, including the Petitioner were subject to the same rules, and the differentiation was rational and constitutional and that there was no evidence of a preferred candidate or manipulation of the election process.

113. The three Respondents submit that the Petitioner has: (i) failed to demonstrate exceptional circumstances to bypass internal dispute resolution mechanisms; (ii) failed to discharge the legal and evidential burden of proving that the election was conducted unlawfully; and (iii) failed to demonstrate discrimination or any other violation of the Constitution.

114. In light of the foregoing, the Respondents pray that the Petition be dismissed with costs.

**K. The 3<sup>rd</sup> 4<sup>th</sup> and 7<sup>th</sup> Respondents’ submissions.**

115. The 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents filed written submissions in support of a preliminary objection raised on points of law, challenging the competence and validity of the Amended Petition dated 17<sup>th</sup> December 2024. They urge the Court to strike out or dismiss the petition *in limine* with costs, contending that it is fatally defective both procedurally and jurisdictionally.

116. The three Respondents submit that the preliminary objection is premised on two principal grounds. First, that the Petitioner has improperly joined the 4<sup>th</sup> and 7<sup>th</sup> Respondents as parties to the suit, contrary to settled law governing the capacity of registered societies to sue or be sued. Second, that the Petitioner has failed to exhaust the internal dispute resolution mechanisms available under the Constitutions of the ACK and the DME, thereby rendering the suit premature.

117. Flowing from the pleadings and the preliminary objection, the Respondents identify three issues for determination by the Court, namely: whether the preliminary objection is properly before the Court; whether there is misjoinder of parties; and whether the Petitioner has exhausted all available local remedies prior to instituting the present proceedings.

118. As to whether the preliminary objection is properly before the Court the three Respondents submit that the preliminary objection raises pure points of law capable of

disposing of the suit without the necessity of calling evidence. They argue that the objection is properly placed before the Court as it concerns questions of *locus standi*, legal capacity and exhaustion of remedies, all of which go to the jurisdiction and competence of the Petition.

119. In support of this position, the Respondents rely on the decision of the Supreme Court in **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR**, where the Court explained the rationale and purpose of a true preliminary objection, emphasizing that it serves both to protect parties from unnecessary litigation costs and to preserve scarce judicial time for deserving disputes.

120. The Respondents further place reliance on the classical authority of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, where the Court held that a preliminary objection consists of a pure point of law which, if successfully argued, may dispose of the suit. They submit that the objection raised herein meets this threshold, as it is based on undisputed facts apparent on the face of the pleadings.

121. As to whether there is misjoinder of parties, the three Respondents submit that the 4<sup>th</sup> and 7<sup>th</sup> Respondents are not legal persons capable of suing or being sued in their own names. They argue that both the Diocese of Maseno East and the Diocese of Kajiado are registered societies under

the *Societies Act, Cap 108, Laws of Kenya* and can only be sued through their registered trustees.

122. The three Respondents contend that the Petitioner's failure to sue the registered trustees renders the suit incurably defective. They submit that this defect is not a mere technicality but goes to the root of the Court's jurisdiction and the enforceability of any orders that may issue.

123. In this regard, reliance is placed on **Registered Trustees of the Catholic Diocese of Murang'a & another v James Mwangi & 2 others [2014] eKLR**, which affirmed the principle that churches and societies must be sued through their trustees. The Court therein adopted the position stated in the decision of **Nairobi Civil Suit No. 2824 of 1997 (OS) Jane Nyambura Joshua v Apostolic Faith Church**, that a church, not being a legal person, can only sue or be sued through its trustees.

124. The three Respondents further cite **Trustees Kenya Redeemed Church & Another v Samuel M'obuya Morara & 5 Others (2011) eKLR**, where the Court reiterated that a society registered under the *Societies Act* lacks legal personality and can only litigate through its duly authorized office holders.

125. Additional reliance is placed on **Pius Watene D. Maina (Suing for and on behalf of the Baptist Convention of**

**Kenya) v Director General Kenya Urban Roads Authority & 5 others [2020] eKLR**, where the Court underscored that even trustees must act strictly in accordance with the society's constitution and cannot act *ultra vires*. The Respondents submit that, similarly, the present petition is fatally flawed for having been instituted against entities lacking capacity.

126. As to whether all available local remedies have been exhausted, the three Respondents submit that the Petitioner has failed to invoke or exhaust the internal dispute resolution mechanisms provided for under the Constitution of the ACK and that of the DME. They contend that the Church Constitution establishes comprehensive mechanisms, including disciplinary tribunals and appellate processes, under Canons XIV, XV, XVII and XIX.

127. The 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents argue that *Article 159(2) (c)* of the *Constitution of Kenya, 2010* obligates courts to promote alternative dispute resolution mechanisms and to respect internal processes established by institutions, including religious bodies. They rely on the case of **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, where the Court held that where a clear procedure for redress is prescribed by law, that procedure must be strictly followed. They submit that the Petitioner has not demonstrated any attempt to pursue the remedies provided under the Church Constitution.

128. The three Respondents further cite the case of **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR**, in which the Court of Appeal emphasized that courts should be fora of last resort and that disputes should first be addressed through existing alternative mechanisms.

129. Additional reliance is placed on **Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others [2015] eKLR**, where the Court explained that the Constitution envisages a matrix of dispute resolution mechanisms and discourages premature recourse to courts where other suitable forums exist.

130. The Respondents also refer to the case of **Odago** (supra) in which the High Court held that disputes arising within the Anglican Church must first be subjected to the internal mechanisms provided under the Church Constitution, unless an exemption is granted under *Section 9(4)* of the *Fair Administrative Action Act*. They submit that no such exemption has been sought or obtained by the Petitioner and that the petition therefore offends both statutory law and binding judicial precedent on exhaustion of remedies.

131. In conclusion, the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents submit that the preliminary objection is merited in law. They argue that the petition is incompetent due to misjoinder of parties, as some of the Respondents sued lack legal capacity, and

further that the Petition is premature for failure to exhaust internal dispute resolution mechanisms.

**L. The 6<sup>th</sup> Respondent's submissions.**

132. The 6<sup>th</sup> Respondent submits that the DME conducted episcopal elections on 30<sup>th</sup> November 2024, at which he was duly elected as the second Bishop of the Diocese. He states that his consecration and enthronement were stayed by the Court following the filing of the present petition.

133. The 6<sup>th</sup> Respondent states that, as a consequence of the stay orders, a congregation of over one million Christians within the DME has remained without a Bishop for a period exceeding three months, thereby being deprived of spiritual leadership and pastoral services.

134. The 6<sup>th</sup> Respondent identifies the issues arising for determination as: a. whether the individual rights claimed by the Petitioner supersede the rights and interests of the wider congregation; b. whether the failure by the Search Committee to interview the Petitioner amounted to a constitutional violation; and c. whether the Petitioner exhausted the internal dispute resolution mechanisms provided for under the ACK Constitution prior to instituting the petition.

135. The 6<sup>th</sup> Respondent submits that he filed grounds of opposition and a replying affidavit in response to the petition. He notes that the Petitioner, in his further affidavit,

alleged that the 6<sup>th</sup> Respondent's documents, specifically the minutes of the Vetting Committee, were forged and that the 6<sup>th</sup> Respondent's access to such documents demonstrated bias.

136. In his further assertion in his submissions, the 6<sup>th</sup> Respondent contends that the Petitioner's allegation of bias is inconsistent and untenable, as the Petitioner himself annexed internal church documents, including the nominal roll for receipt of nomination papers. The Sixth Respondent submits that the Petitioner failed to explain how he obtained these documents, thereby adopting contradictory positions and shifting goalposts.

137. The 6<sup>th</sup> Respondent submits that the petition does not meet the constitutional threshold required for the grant of the reliefs sought. He states that the petition is replete with narratives and factual verbosity but fails to plead, with precision, the specific constitutional provisions alleged to have been violated, the manner of such violation and the jurisdictional basis for the claims. In this regard, he relies on the decision in ***Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154***, where the High Court held that a party seeking constitutional redress must set out, with reasonable precision, the constitutional provisions alleged to be infringed and the manner of infringement. He further relies on ***Mumo Matemu v Trusted Society of Human Rights Alliance [2014] eKLR***, where the Court of Appeal

reaffirmed the ***Anarita Karimi*** principle and held that a petition which fails to meet this threshold is incompetent.

138. The 6<sup>th</sup> Respondent submits that the Petitioner has not demonstrated how the 6<sup>th</sup> Respondent or any other Respondent violated his constitutional rights, and on that basis alone, the petition lacks merit and ought to be dismissed with costs.

139. On the issue of public interest, the 6<sup>th</sup> Respondent submits that the petition presents a direct conflict between the Petitioner's individual interests and the collective interests of over one million faithful within the Diocese. He notes that the Petitioner does not challenge the outcome of the election itself, but rather raises personal grievances relating to his exclusion from the Search Committee process.

140. The 6<sup>th</sup> Respondent submits that the Court ought to be guided by the public interest in determining whether conservatory orders should issue. He relies on ***Gatirau Peter Munya v Dickson Mwenda Kithinji & Others [2014] eKLR***, as cited in ***Eric Cheruiyot v Independent Electoral and Boundaries Commission & 3 Others [2017] eKLR***, where the Supreme Court held that conservatory orders are grounded in public law principles and should be granted based on public interest, constitutional values and proportionality, rather than

private considerations such as likelihood of success or irreparable harm.

141. Applying the above principles, the 6<sup>th</sup> Respondent submits that the interests of over one million Christians in having a Bishop outweigh the individual interests of the Petitioner, who was neither shortlisted nor a candidate in the election.

142. On the doctrine of exhaustion, the 6<sup>th</sup> Respondent submits that the Petitioner is an ordained priest who took an oath of canonical obedience, declaration of assent, and submission to the jurisdiction of the Anglican Church of Kenya's internal dispute resolution mechanisms as provided under the Provincial Constitution.

143. The 6<sup>th</sup> Respondent states that, by virtue of his ordination, the Petitioner was obligated to seek redress through internal church structures before approaching the Court, and that priesthood demands conduct consistent with obedience to ecclesiastical authority and procedure.

144. In support of this position, the 6<sup>th</sup> Respondent relies on **Charles Nechio Lutah v Anglican Church of Kenya [2017] eKLR**, where the Court dismissed a petition on the basis that internal dispute resolution mechanisms under the Anglican Constitution had not been exhausted. The Court held that it should be slow to interfere with church matters and that failure to exhaust internal procedures renders a petition premature.

145. The 6<sup>th</sup> Respondent further relies on **Hinga & Another v PCEA through Rev. Dr. Njoya & Another**, where the Court held that judicial intervention in church affairs should be limited, particularly where the church's internal mechanisms have not been exhausted.

146. The 6<sup>th</sup> Respondent also cites **Rev. Daniel Michael Juma v Anglican Church of Kenya, All Saints Cathedral (Nairobi Commercial ELRC No. 368 of 2016)**, in which the Court emphasized that ordained clergy must first exhaust the dispute resolution mechanisms provided under the church constitution before invoking the Court's jurisdiction.

147. The 6<sup>th</sup> Respondent submits that these authorities conclusively settle the requirement that disputes relating to episcopal elections within the Anglican Church must first be addressed through internal mechanisms, which the Petitioner failed to do.

148. On the Petitioner's claim that his rights were violated by being denied an opportunity to appear before the Search Committee, the 6<sup>th</sup> Respondent submits that this claim is unfounded. He states that the purported email invitation relied upon by the Petitioner did not originate from the Archbishop's office.

149. The 6<sup>th</sup> Respondent further submits that the Petitioner's name was deleted at the nomination stage for failure to

meet the prescribed threshold, and that reasons for such deletion were duly communicated to the Petitioner's advocates, as evidenced in the Replying Affidavits on record.

150. The 6<sup>th</sup> Respondent further submits that, having failed to meet the nomination criteria, the Petitioner was unqualified to appear before the Search Committee, and allowing him to do so would have constituted a breach of the election process.

151. The 6<sup>th</sup> Respondent states that the episcopal election was conducted strictly in accordance with the Constitution of Kenya and the Constitution of the Anglican Church of Kenya, and that there was no deviation from the prescribed procedures. He notes that the Interested Parties filed affidavits confirming that the election process was free, fair, and transparent, and that they were satisfied with the outcome.

152. The 6<sup>th</sup> Respondent submits that the Petitioner cannot logically challenge an election in which he was not a candidate, as his name did not appear on the ballot.

153. On constitutional supremacy, the 6<sup>th</sup> Respondent urges that *Article 2 of the Constitution* establishes the supremacy of the *Constitution*, and that the ACK Constitution is congruent with constitutional principles of fairness, openness, equality and democratic participation.

154. In this regard, the 6<sup>th</sup> Respondent relies on **Ogumbo v Opiyo, Chancellor, Anglican Church of Kenya, Diocese of Maseno West & 4 Others (Civil Suit No. 109 of 2019) [2023] KEHC 2867 (KLR)**, where the Court upheld the elaborate episcopal election process under Article XI and Canon V of the Anglican Constitution and dismissed a challenge to the election of a diocesan Bishop. He submits that the detailed process outlined by the Court in **Ogumbo v Opiyo** was fully complied with during his election as Bishop of Maseno East.

155. The 6<sup>th</sup> Respondent further submits that he resigned from the position of Clerical Secretary prior to the vetting process to avoid any conflict of interest, and that his replacement was lawfully appointed by the Standing Committee of the Synod and duly communicated to the Archbishop. He contends that his resignation demonstrates transparency and the absence of bias, contrary to the Petitioner's allegations and that this is supported by the minutes of the Vetting Committee and the Standing Committee of the Synod.

156. The 6<sup>th</sup> Respondent submits that there is no provision under either the *Constitution of Kenya* or the ACK Constitution that prohibits a Clerical Secretary from expressing interest in the office of Bishop.

157. In conclusion, the 6<sup>th</sup> Respondent submits that the petition should be dismissed with costs on the grounds that the Petitioner failed to exhaust internal dispute resolution mechanisms, failed to plead constitutional violations with precision as required by law, that public interest outweighs the Petitioner's individual claims and that the petition does not meet the threshold for the grant of the orders sought.

**M. Issues for determination.**

158. This Petition challenges the process leading to the nomination and election of a bishop of the DME. The Petition raises multiple questions touching on jurisdiction, internal dispute resolution, administrative law, qualifications and procedural compliance with both the Constitution of Kenya, the constitution of the ACK and that of the DME.

159. It is necessary to set out the issues for determination that arise from the pleadings. The Court identifies the following issues:

1. Whether this Court has jurisdiction to hear and determine the petition in light of the doctrine of exhaustion of internal dispute resolution mechanisms.

2. Whether the Petitioner has demonstrated exceptional circumstances to warrant exemption from the doctrine of exhaustion.
3. Whether the petition meets the constitutional threshold for pleadings in constitutional litigation.
4. Whether the Petitioner has *locus standi* to institute and maintain the petition.
5. Whether there was misjoinder of parties or lack of legal capacity by some Respondents.
6. Whether the episcopal nomination and election process constitutes “administrative action” under *Article 47* of the *Constitution* and the *Fair Administrative Action Act*.
7. Whether the Petitioner was validly nominated and qualified to appear before the Search Committee.
8. Whether the failure to interview the Petitioner amounted to a violation of the right to fair administrative action or legitimate expectation.
9. Whether any conflict of interest existed in the participation of the 6<sup>th</sup> Respondent in the electoral process.

10. Whether the electoral process complied with the *Constitution of Kenya* and the Constitutions of the ACK and the DME.
11. Whether public interest considerations affect the disposition of the petition.
12. Whether any constitutional violations have been proved by the Petitioner.
13. What orders should issue.

**N. Analysis and findings.**

160. The first issue is whether this Court has jurisdiction to hear and determine the petition in light of the doctrine of exhaustion of internal dispute resolution mechanisms.

161. This Petition challenges the process leading to the nomination and election of a Bishop of the DME. The process in question is not a secular electoral process but an ecclesiastical one, governed by the Constitution of the ACK and that of the DME. In particular, Articles XI of the ACK Constitution and Article VIII of the DME Constitution establish the procedural, institutional and decisional framework within which episcopal elections are conducted.

162. Article XI(7) of the ACK Constitution expressly mandates the Diocesan Chancellor, upon receipt of nomination papers, to transmit the list of valid nominations to the Archbishop and Provincial Chancellor and, importantly to state reasons

for deleting the name of any person from the list of those validly nominated. Article VIII(8) of the DME Constitution has a similar provision, albeit slightly differently worded.

163. The Archbishop and Provincial Chancellor are thereafter required to satisfy themselves as to the validity of the nominations before forwarding the list to the Search Committee.

164. Article XI(8) of the ACK Constitution and Article VIII(9) of the two Constitutions establish the Search Committee, prescribe its composition and designates its Chairperson and Secretary. Article XI(9) of the ACK Constitution and Article VIII(10) of the DME Constitution both further provide that all candidates validly nominated shall appear personally before the Search Committee, which is mandated to interview and evaluate such candidates and recommend up to three candidates for election. Both Constitutions are explicit that the decision of the Search Committee shall be final.

165. These provisions demonstrate that the ACK and DME Constitutions establish comprehensive, hierarchical and self-contained mechanisms for the nomination, vetting, shortlisting and election of a Bishop.

166. The jurisdiction of this Court is derived from *Article 165* of the *Constitution*. *Article 165(3)(b)* grants the High Court jurisdiction to determine questions relating to the violation

or infringement of rights and fundamental freedoms. However, that jurisdiction is not absolute and must be exercised in conformity with other constitutional and statutory limitations, including the doctrine of exhaustion.

167. *Article 159(2)(c)* of the *Constitution* obligates courts to promote alternative forms of dispute resolution, including mechanisms established by institutions themselves. This constitutional imperative is given statutory effect by *Section 9* of the *Fair Administrative Action Act*, which provides that a court shall not review an administrative action unless internal mechanisms for appeal or review have first been exhausted.

168. *Section 9(2)* of the *Fair Administrative Action Act* is couched in mandatory terms. It removes jurisdiction from the Court in circumstances where internal remedies exist and have not been exhausted, unless the Court is satisfied that exceptional circumstances exist under *Section 9(4)*.

169. The doctrine of exhaustion is now firmly entrenched in our jurisprudence.

170. In ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR***, the Court of Appeal held:

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

171. In **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR**, the Court of Appeal emphatically stated that courts are fora of last resort and that parties must first exhaust alternative dispute resolution mechanisms before invoking judicial intervention. The Court explained that premature resort to courts undermines institutional autonomy and orderly dispute resolution.

172. The High Court in Matter of the **Mui Coal Basin Local Community & 15 Others v Permanent Secretary, Ministry of Energy & 17 Others [2015] eKLR** further elaborated that the Constitution establishes a matrix of dispute resolution mechanisms and discourages a singular, court-centric approach to justice where other effective mechanisms exist.

173. These principles apply with equal, if not greater, force to disputes arising within religious institutions, which enjoy constitutional protection under *Article 32* of the *Constitution* and are entitled to regulate their internal affairs in accordance with their doctrines and constitutions.

174. In **Rev. Daniel Michael Juma v Anglican Church of Kenya, All Saints Cathedral [2016] eKLR**, the Court held that ordained clergy, having taken oaths of canonical obedience, are bound by the internal disciplinary and

dispute resolution processes of the Church and must exhaust those processes before seeking judicial redress.

175. Of particular relevance is the decision in **Odago & 13 Others v Registered Trustees of the Anglican Church of Kenya, Diocese of Maseno East Parish & Another; Oyare & 15 Others (Interested Parties) [2024] KEHC 15270 (KLR)**. In that case, arising from episcopal elections within the same Diocese as in the instant case, the High Court held that disputes concerning the conduct of episcopal elections must first be subjected to the internal mechanisms established under the ACK Constitution and that failure to do so deprived the Court of jurisdiction.

176. The Court in **Odago** specifically held that *Section 9* of the *Fair Administrative Action Act* bars judicial intervention unless internal remedies have been exhausted or exceptional circumstances are demonstrated. The Court found that the existence of internal tribunals and appellate mechanisms under the ACK Constitution rendered the proceedings premature.

177. Applying the positions in the above decisions to the present petition, it is evident that the grievances raised by the Petitioner arise directly from the ecclesiastical processes established ACK Constitution and that of the DME. The Petitioner challenges decisions relating to nomination, vetting and shortlisting, matters squarely within the Church's constitutional framework.

178. The Petitioner has not demonstrated that he invoked, pursued or exhausted any of the internal dispute resolution mechanisms available under the ACK Constitution and as espoused in similar circumstances in the persuasive decision of ***Odago***.

179. In the absence of such demonstration, this Court is would be statutorily barred from assuming jurisdiction, unless the Petitioner satisfies the second limb of demonstrating the existence of exceptional circumstances warranting exemption.

180. That then brings me to the next issue, which is whether the Petitioner has demonstrated exceptional circumstances to warrant exemption from the doctrine of exhaustion.

181. We have seen that under *Section 9(4)* of the *Fair Administrative Actions Act*, the High Court may, in exceptional circumstances, exempt a party from the obligation to exhaust any remedy.

182. The Court of Appeal and High Court jurisprudence have articulated that exceptional circumstances must be circumstances that are well outside the normal run of administrative disputes and which render it inappropriate or unjust to require invocation of internal mechanisms before judicial review.

183. In *Republic v Kenya Revenue Authority, Commissioner Ex parte Keycorp Real Advisory Limited, Judicial Review Application No. 448 of 2018*, the High Court explained that the circumstances must be such that an internal remedy would not be effective, or that its pursuit would be futile and thereby justify immediate court intervention. As the court in that case stated:

***“The Fair Administrative Action Act ... interprets exceptional circumstances to mean circumstances that are out of the ordinary and that render it inappropriate for the court to require an applicant first to pursue the available internal remedies.”***

184. In the present case, the Petitioner’s grievance arises out of a complex ecclesiastical nomination and electoral process governed by the constitutions of the ACK and the DME, which also impose internal dispute resolution procedures under Canon XIII and Canon XIX of the ACK Constitution.

185. The Petitioner alleges multiple violations of constitutional rights which go to the heart of his personal rights, directly affect his ability to seek and obtain ecclesiastical office and do so in a procedurally final forum (the episcopal election) that cannot be readily reinstated or undone by internal mechanisms.

186. A *prima facie* assessment of the available internal mechanisms under the ACK and DME constitutions shows that they are designed primarily to resolve disputes within

the ecclesiastical context and do not provide for immediate, independent judicial oversight of key stages of an election once concluded.

187. Given that an episcopal election is a one-off, time-specific process, and that the election date had passed and the result declared, requiring the Petitioner to first exhaust potentially lengthy and procedural internal avenues would likely have rendered any relief unenforceable or moot. This aligns with the jurisprudential principle that internal remedies may be overridden where their pursuit would be ineffective to protect substantive rights or is futile, or where the internal mechanism does not offer meaningful redress.

188. The rationale underpinning the doctrine of exhaustion is to allow administrative or organizational bodies the first opportunity to correct their own errors, if any, or to apply their own rules, a principle particularly salient in institutional contexts like ecclesiastical governance.

189. However, the doctrine is not rigid or absolute. As recognized in *Exceptional* circumstances arise where the pursuit of internal remedies would not serve the values of justice, would be futile or would fail to provide effective relief, especially where time-bound rights and constitutional interests are at stake.

190. Notably, the fact that the Constitution of the church provides that the outcome of the election shall be final means that no meaningful outcome can reasonably be

expected from the established internal dispute mechanism. Applying this position to the facts of this case, the Petitioner in my view has satisfied the second limb of *Section 9(4)* of the *Fair Administrative Action Act* in that he has identified circumstances out of the ordinary that render the internal avenues inadequate or ineffective in protecting his constitutional rights. He has therefore demonstrated that the exemption is in the interest of justice.

191. The Petitioner's alleged exclusion from the election at a point where no effective internal appeal could reverse the election result (because the election had already occurred and its outcome is under the Church's constitution final), are circumstances that justify the Court's intervention.

192. In conclusion, having regard to the statutory framework in *Section 9* of the *Fair Administrative Action Act*, this Court finds that the Petitioner has indeed demonstrated exceptional circumstances to warrant an exemption from the doctrine of exhaustion of internal remedies. Accordingly, the issue is resolved in the affirmative.

193. The third issue framed for determination is whether the petition meets the constitutional threshold for pleadings in constitutional litigation. This question is principally informed by the constitutional and statutory requirements for framing constitutional petitions and the settled jurisprudence on the minimum standards for pleadings in constitutional cases.

194. *Article 22(1)* of the *Constitution* permits any person who alleges that a right or fundamental freedom in the Bill of Rights has been violated, infringed or threatened to file a petition in the High Court seeking redress. *Article 23(1)* expressly recognizes that the High Court has jurisdiction to hear petitions concerning violation of rights in the Bill of Rights.

195. However, the exercise of constitutional jurisdiction is not unfettered. There are procedural thresholds to ensure that constitutional petitions are properly pleaded, articulate legal claims with clarity and identify the specific constitutional provisions alleged to have been violated along with the factual basis for those allegations. This requirement facilitates fair response by respondents and assists the Court in identifying the real issues in dispute.

196. The seminal authority in this jurisdiction on the minimum threshold for constitutional pleadings is ***Anarita Karimi Njeru v Republic (No.1) [1979] KLR 154***. Although decided under the pre-2010 legal regime, the principles in ***Anarita Karimi*** have been endorsed and applied post-2010 and remain good law. The Court in ***Anarita Karimi*** held:

***“...before constitutional relief can be granted, the petition must disclose with reasonable precision the provisions of the Constitution alleged to have been violated and the manner of infringement...”***.

197. The Court emphasized that a constitutional petition must clearly set out what right is alleged to have been violated, how it was violated and the factual matrix that supports the claimed violation.

198. The principle in ***Anarita Karimi*** was reaffirmed and applied in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 2 Others [2014] eKLR***. In ***Mumo Matemu***, the Supreme Court stated the essence of constitutional pleadings as follows:

***“...A constitutional petition that fails to set out, with reasonable precision, the constitutional provisions alleged to have been violated and the manner of such violation is incompetent and liable to be struck out...”***.

199. This principle requires not only that the petition identify the violated constitutional provisions but also explain, with particularity, the manner of violation, linking the alleged conduct to constitutional text.

200. In ***Mumo Matemu***, the Supreme Court expounded that constitutional jurisprudence under the Constitution of Kenya is intended to advance substantive justice and public accountability. However, the need for clear pleadings is indispensable because it frames the issues for trial and safeguards fair hearing. It is therefore inappropriate to entertain vague or generic assertions of constitutional violation without detail.

201. In the petition before this Court, the Petitioner has anchored multiple reliefs on alleged violations of specific constitutional rights including: freedom of association under *Article 36*, right to fair administrative action under *Article 47*, right to access to information under *Article 35*, inherent dignity under *Article 28*, freedom from discrimination under *Article 27(5)* and *Article 10* and implied procedural fairness under *Article 47*.

202. On its face, the petition identifies several constitutional provisions. However, the mere listing of rights in a prayer for relief does not, by itself, satisfy the **Anarita Karimi** and/or **Matemu** threshold. The more pertinent inquiry is whether the petition reasonably and precisely articulates how the Respondents' conduct violated those specific rights and links the allegations to discernible constitutional text.

203. For example, the Petitioner alleges that the Respondents' failure to conduct elections within specified timelines violated the freedom of association *Article 36*. The petition further alleges that refusal to interview the Petitioner constituted undignified treatment under *Article 28* and a breach of fair administrative action under *Article 47*. These assertions do articulate claimed constitutional violations.

204. The Petition also claims that failure to provide reasons and access to information violated *Article 35* and that differential treatment in access to documents amounted to discrimination contrary to *Article 27(5)* and the national

values under *Article 10*. Such linking of factual conduct (denial of information) to specific constitutional protections generally meets the requirement of identifying the relevant provisions and alleged manner of infringement.

205. Nonetheless, constitutional jurisprudence requires more than just articulation of constitutional rights in the abstract. It requires that the petition specify the factual basis for each violation, for instance, the exact conduct complained of, the decision-maker, the date and manner of decision and the causal link to the contravention of the constitutional provision. A constitutional petition that merely lists provisions without connecting them to concrete facts is liable to be struck out or dismissed.

206. In the present petition, the Petitioner has extensively set out a factual narrative spanning the conduct of nomination, alleged refusal to interview, denial of information, alleged procedural irregularities and assertion of conflict of interest. These factual matrixes are then tied to the claimed constitutional violations in the reliefs sought.

207. While the petition is factually long and narrative-driven, it does, in my view, articulate specific allegations against identifiable Respondents and connects those allegations to enumerated constitutional provisions. It does not rely on vagueness or boilerplate assertions. It sets out dates, correspondence and specifics of exclusion from the electoral process.

208. The fact that the petition may cover multiple rights and multiple Respondent actions does not, in itself, render it incompetent. What matters is that each claimed constitutional breach is linked to facts and to the purported constitutional provision, enabling the Respondents to know the case they have to meet.

209. This approach was encapsulated in **Eric Muchangi v Registered Trustees of the Gikuyu, Embu and Meru (GEM) General Council of the Presbyterian Church of East Africa & 3 Others [2019] eKLR**, where the High Court observed that constitutional petitions must clearly articulate the interplay between the factual circumstances and the constitutional right alleged to have been infringed. The Court held that:

***“...A constitutional petition must identify the rights violated, describe the conduct alleged to have violated them, and link the conduct to the constitutional text. Mere assertion of vague rights without clear factual nexus is insufficient.”***

210. On the above authorities, the petition in this matter, although lengthy, does identify specific constitutional protections and links them to the factual circumstances surrounding the alleged irregular nomination and election process. It is more than a generalized narrative as it articulates clear factual allegations that form the basis for the claimed constitutional breaches.

211. The question of whether certain allegations are ultimately proved at trial is distinct from the threshold inquiry at the pleading stage. At the pleading stage, the Court must determine whether the petition, taken as a whole, discloses a plausible claim for constitutional relief with reasonable precision.

212. In this case, the petition meets the constitutional threshold because it: (a). identifies each constitutional provision alleged to have been violated, (b). sets out the factual basis upon which each alleged violation is founded, and (c). links those facts to the specific constitutional text, meeting the requirements articulated in **Anarita Karimi** and **Mumo Matemu**.

213. Accordingly, this Court finds that the petition meets the constitutional threshold required for pleadings in constitutional litigation and is not incompetent on that ground.

214. The fourth issue for determination is whether the Petitioner has *locus standi* to bring the present petition. The issue is fundamentally whether the Petitioner is sufficiently connected to the subject matter of the petition to seek the reliefs claimed and whether the law recognizes his right to approach this Court.

215. *Article 22(1)* of the *Constitution* permits any person acting on their own behalf, or for the benefit of others or in

the public interest to bring a constitutional petition alleging violation of rights in the Bill of Rights.

216. In ***Mumo Matemu***, the Supreme Court held:

***“...Article 22 plainly and purposively widens the class of persons who can bring a constitutional petition beyond the classical restrictive common law criteria. Any person who alleges that a fundamental right or freedom in the Bill of Rights has been infringed has locus standi to institute a constitutional petition...”***

217. The Court further clarified that a Petitioner must demonstrate a real and substantial interest in the matter. Mere intellectual interest or abstract concern is insufficient, but a person whose rights are directly affected or whose interests are legitimately engaged has *locus standi*.

218. The Supreme Court in ***Mumo Matemu*** distilled the test for *locus standi* into two principal limbs: a). whether the Petitioner has a sufficient interest in the subject matter of the petition; and b). whether the Petitioner’s rights or interests are directly affected by the conduct complained of.

219. The Court emphasized that a broad reading of *Article 22* is necessary to uphold the spirit and purpose of the *Constitution*, which seeks to enhance access to justice and protection of rights.

220. In this petition, the Petitioner alleges that his constitutional rights under *Articles 27(5), 28, 35, 36, 47*

were violated by the Respondents' conduct in the nomination, vetting and election processes for the vacant Bishopric of the DME.

221. To determine *locus standi*, it must first be established whether the Petitioner has a sufficient interest in the subject matter. The Petitioner is an ordained priest of the ACK and contends that he was validly nominated to be considered for the position of Bishop of the DME. He asserts exclusion from the interview stage and denial of access to information, which he claims violated his rights.

222. Unlike traditional civil suits, where *locus standi* is strictly limited to parties with proprietary or contractual rights, constitutional claims are evaluated primarily on whether an individual alleges a violation of his or her own rights or interests. In this regard, the allegations directly touch on the Petitioner's personal rights and prospects of participation in an ecclesiastical election.

223. The Petitioner's case therefore goes beyond a mere abstract or intellectual concern with the electoral process. He asserts that the Respondents' conduct impaired his legitimate expectation, denied him fair administrative treatment and frustrated his rights under multiple constitutional provisions. These are real, concrete grievances as opposed to generalized complaints.

224. In ***Mumo Matem***, the Supreme Court reiterated that:

**“...A constitutional petition may be brought by any person who alleges that a fundamental right or freedom in the Bill of Rights has been violated, and the threshold is one of demonstrating a real and substantial interest...”.**

225. The conduct impugned in this petition of allegedly excluding the Petitioner from the interview, refusing to provide reasons or access to information, alleged discriminatory treatment are specific acts which, if proved, have the capacity to affect the Petitioner’s rights in a direct and substantial way.

226. Some of the Respondents have argued that the Petitioner lacked *locus standi* because he was allegedly not a valid candidate, or because his name did not appear on the ballot. However, even if the Petitioner’s nomination was later rejected, the *locus standi* inquiry does not require that the Petitioner must have ultimately succeeded or appeared on a ballot paper. The question is whether his rights were legitimately engaged by the process.

227. In **Centre for Rights Education and Awareness (CREAW) & another v Attorney General & another [2016] eKLR**, the High Court reiterated that determination of *locus standi* must be made with reference to *Article 22* and must not be fettered by rigid common law restrictions. The Court stated:

**“...Article 22 expands the class of persons that may bring constitutional petitions. A Petitioner’s locus standi should be determined with reference to the extent to which the alleged violation affects the Petitioner’s own constitutional rights.”**

228. The fact that the Petitioner alleges infringement of his own rights under the *Constitution*, and not the rights of third parties, affirms his *locus standi*. The petition, on its face, discloses a real and substantial interest in the matters raised.

229. Moreover, the Petitioner’s status as an ordained priest and as a nominee in the electoral process further strengthens his *locus standi*. His grievances arise from actions alleged to have been taken against him individually, not from abstract disagreements over the conduct of the election generally.

230. Having considered the constitutional provisions, the jurisprudence from the Supreme Court and High Court, and the factual matrix of this petition, this Court finds that the Petitioner has *locus standi* to institute and maintain the petition.

231. The fifth issue for determination concerns whether certain Respondents were improperly joined in this petition, or whether some Respondents lack legal capacity to be sued in their own names.

232. This issue arises from the preliminary objection filed by the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents, who contend that they are not legal persons capable of being sued in their own names and that the petition has improperly joined them, rendering it fatally defective.

233. The question of capacity to sue and be sued is fundamental to the competence of any civil proceeding. The law distinguishes between natural persons, legal persons (such as companies, statutory bodies, associations that have distinct legal personality) and entities that lack independent legal personality but are represented by legal persons (such as trustees or officeholders).

234. Under the *Societies Act, Cap 108 Laws of Kenya*, societies registered under the Act generally do not acquire independent legal personality separate from their trustees. As the Court explained in **Registered Trustees of the Catholic Diocese of Murang'a & another v James Mwangi & 2 others [2014] eKLR:**

***“...A church or society registered under the Societies Act does not have legal personality. It can only sue or be sued through its registered trustees.”***

235. In this Petition, the named Respondents include individuals and entities drawn from the governance structures of the ACK and the DME.

236. The preliminary objection contends that the 4<sup>th</sup> and 7<sup>th</sup> Respondents, being dioceses that are registered as societies under the *Societies Act*, lack independent legal personality and therefore cannot sue or be sued in their own names. Instead, the properly constituted parties should be the registered trustees of those societies.

237. A church, lacking independent legal personality, cannot initiate or face legal action on its own. Any legal proceedings must be directed against the church's duly registered trustees. The rationale is that society registration under the *Societies Act* does not confer corporate status akin to a company under the *Companies Act*. As long as that legal position remains, parties lacking juristic personality cannot be sued.

238. Accordingly, the 4<sup>th</sup> and 7<sup>th</sup> Respondents, being dioceses registered under the *Societies Act* and not incorporated legal entities with independent juristic personality, cannot be sued in their own names. The petition is then defective as against them for lack of capacity. However, the 3<sup>rd</sup> Respondent, being an individual officeholder (the Diocesan Chancellor), clearly has legal personality and can be sued personally.

239. The Respondent's reliance on **Pius Watene D. Maina (Suing for and on behalf of the Baptist Convention of Kenya) v Director General, Kenya Urban Roads**

**Authority & 5 others [2020] eKLR** reinforces this principle.

240. Consequently, there is misjoinder and lack of legal capacity with respect to the 4<sup>th</sup> and 7<sup>th</sup> Respondents who are not natural persons and who are not juristic persons capable of being sued in their own names. The Petition, therefore, suffers from a procedural defect in that regard.

241. The petition as against the 4<sup>th</sup> and 7<sup>th</sup> Respondents is in the premises struck out. I will later on in this judgement address the issue of costs in that regard,

242. The sixth issue for determination is whether the episcopal nomination and election process constitutes “administrative action” under *Article 47* of the *Constitution* and the *Fair Administrative Action Act*.

243. This issue requires the Court to determine whether the acts and decisions undertaken in the nomination and election process of the Bishop of the DME, including the alleged refusal to interview the Petitioner, the vetting by the Search Committee and the conduct of the election itself, fall within the scope of “administrative action”.

244. *Article 47(2)* of the *Constitution* guarantees that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

245. The *Act* expressly applies to all state and non-state agencies, including any person or body whose action, omission or decision affects the legal rights or interests of any person. This means administrative action is not exclusively confined to state entities but may, depending on the facts, encompass actions by non-state entities where those actions affect individual rights or interests.

246. The core question is whether the decisions taken in the nomination and election process by the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents and others were administrative action within the meaning of *Article 47* and the *Act* and whether they affected the legal rights or interests of the Petitioner.

247. It is not in dispute that the Petitioner alleged that his legal rights were affected by the Respondents' actions specifically, his alleged exclusion from the interview stage, failure to be given reasons and alleged discriminatory treatment, all actions that, if established, would have put him at a substantive disadvantage in seeking an ecclesiastical office that carries legal and canonical effects.

248. While some acts in the episcopal election process may be of a religious nature, the fact that they produce legal consequences is crucial. Administrative action under *Article 47* and the *Act* attaches where an act has a legal effect on someone's rights or interests. For example, deciding that a nominee will not be interviewed directly affects that nominee's ability to pursue the position. That is

an act affecting legal rights or interests within the breadth of the statutory definition.

249. Administrative action must be examined in context. If the action affects substantive rights or interests, the courts will consider whether fair administrative standards apply.

250. For these reasons, the Court finds that the nomination and election process, insofar as it involves decisions affecting the Petitioner's legal rights or interests, falls within the definition of "administrative action" under the *Constitution* and the *Fair Administrative Action Act*.

251. This finding does not prejudice whether those actions were lawful or fair. It only establishes that the conduct in question constitutes administrative action subject to *Article 47* and the *Act*. The substantive compliance with those standards will be determined in later stages of this judgement.

252. I now turn to the seventh issue, which is whether the Petitioner was validly nominated and qualified to appear before the Search Committee.

253. The Petitioner asserts that he was duly nominated to vie for the vacant Episcopal See of the DME and that he was therefore entitled to be interviewed by the Search Committee. The Respondents counter that his nomination did not meet the constitutionally prescribed requirements, that the Search Committee retained a mandate to reject

non-compliant nominations and that only three qualified candidates could be forwarded for election.

254. The requirement that only three names be forwarded in my view implies that the Search Committee has authority not only to interview but also to evaluate and exclude nominations that did not comply with the established rules. This is a power that was conferred by the governing constitutional instrument of the ACK and DME.

255. Although much of available case law on nomination relates to statutory electoral systems, the underlying principles are transferable. In **Wambui & another v Law Society of Kenya & 2 others [2024] KEHC 1565 (KLR)**, the High Court upheld the Ad Hoc Elections Board's decision to invalidate nominations for the Law Society of Kenya Council where nominators failed to meet prescribed qualifications, specifically, where one of the nominators did not meet the requirement to practice in the relevant jurisdiction and another lacked the requisite experience. The Court affirmed that compliance with nomination requirements is mandatory. The decision states, in part:

***“...The Board found that Shadrack’s nominator... did not meet the qualification requirement... and thus his nomination was invalid. The court upheld that determination.”***

256. This decision reinforces the general legal principle that failure to meet prescribed nomination requirements renders

a nomination invalid. Once the Constitution sets eligibility or procedural criteria, bodies mandated to enforce those criteria must apply them strictly. The authority reflects the broader legal principle that eligibility for nomination is a gateway to participation.

257. Applying these principles to the present case, the constitutions of the ACK and DME set out criteria for valid nomination which include (i). the proper composition of nominators as prescribed; and (ii). compliance with procedural steps, after which the Search Committee is empowered to vet and determine whether nominees qualify. The Committee's power to reject non-compliant candidates is, in my view inherent in the constitutional text, which limits the Committee to recommending only three candidates.

258. An examination of the nomination form submitted by the Petitioner reveals that the candidate's nomination was supported by a total of five individuals. Specifically, the documentation indicates that among these five nominators there was one bishop, one priest and three lay members.

259. A careful review of the details provided on the nomination paper confirms that this composition was accurately recorded and that the required information regarding the identity and roles of each nominator was duly completed.

260. On the proper combination of nominators, the Constitution of the ACK, in Article XI(4) provides that:

**“Any 5 members of the Diocesan Synod of the vacant See or any 5 members of the Provincial Standing Committee of Synod may nominate any Bishop or Priest who has attained the age of 35 years and who is not over 60 years of age from any part of the Anglican Communion to be a candidate for the vacant See PROVIDED THAT the 5 members of the Diocesan Synod shall include 2 priests, 2 laymen and the 5 members of the Standing Committee of Synod shall include 1 Bishop, 1 Priest and 1 Layman”.**

261. The Constitution of the DME, on the other hand provides as follows under Article 8(4):

**“Any 5 members of the Diocesan Synod and any 5 members of the Provincial Standing Committee of Synod may nominate any Bishop or Priest who has attained the age of 35 and who is not over 60 years of age from any part of the Anglican Communion to be a candidate for the vacant See PROVIDED THAT the 5 members of the Diocesan Synod shall include 2 priests and 2 laypersons and the 5 members of the Provincial Standing Committee of Synod shall include 1 bishop, one priest and 1 layperson.”**

262. One will note that in the ACK constitution, the word “*or*” is used while in the DME constitution, the word “*and*” is used. The distinction between “*or*” and “*and*” in constitutional drafting is not cosmetic. It goes to the

structure of the nominating power itself and makes the whole difference.

263. In legal and grammatical interpretation, the word “*and*” is conjunctive because it joins words, phrases or clauses in a way that requires all the connected elements to be taken together, meaning that each condition or requirement must be satisfied collectively. By contrast, the word “*or*” is disjunctive because it separates alternatives and indicates that any one of the listed options may be sufficient, depending on the context.

264. In statutory drafting and interpretation, this distinction is important because “*and*” typically imposes cumulative obligations, while “*or*” provides alternative possibilities.

265. My interpretation of the above provisions is that under the ACK Constitution, a candidate for a vacant bishopric may be nominated by either of two groups acting independently. One option is for five members of the Diocesan Synod to make the nomination, provided that among these five there are two priests and two laypersons; the fifth member can be any member of the Synod. Alternatively, the nomination may come from five members of the Provincial Standing Committee of Synod, provided that among them there is one bishop, one priest and one layperson, with the remaining two members drawn from any category.

266. In either case, under the ACK constitution, the total number of nominators required is five and only one of the two groups needs to act for the nomination to be valid. This makes the ACK process relatively flexible, allowing a single body to initiate a nomination.

267. In contrast, my interpretation of the DME Constitution is that the above provision requires a nomination to be made jointly by both groups. A valid nomination must therefore involve five members of the Diocesan Synod, including two priests and two laypersons and five members of the Provincial Standing Committee of Synod, including one bishop, one priest and one layperson. This means that the total number of nominators required under the DME Constitution is ten, with both bodies participating together. One group acting alone cannot make a valid nomination, making the process more restrictive but ensuring broader representation in the decision.

268. The key difference between the two constitutions lies in the threshold and flexibility of nomination. Under the ACK Constitution, only five nominators from either body are needed, so a candidate can be put forward by a single group. Under the DME Constitution, a nomination requires ten nominators from both bodies combined, making it a more stringent and collective process.

269. The composition requirements for clergy and laity are the same in both constitutions, but the number of participants

and whether the bodies act independently or jointly distinguishes the two provisions.

270. I will make a further explanation.

271. If a candidate is nominated by one bishop, one priest and three laypersons, this nomination qualifies under the ACK Constitution but not under the DME Constitution. Under the ACK Constitution, there are two independent routes for nomination. One of these is through the Provincial Standing Committee of Synod, which requires a total of five nominators, including one bishop, one priest and one layperson. In this scenario, the nomination has exactly five members, including one bishop, one priest and three laypersons, so it satisfies the required composition. The extra laypersons do not invalidate the nomination, and because this body alone can nominate under the ACK Constitution, the candidate is eligible.

272. In contrast, under the DME Constitution, a valid nomination requires both groups acting together: five members from the Diocesan Synod, including two priests and two laypersons and five members from the Provincial Standing Committee, including one bishop, one priest and one layperson. The total number of nominators must therefore be ten and both bodies must participate.

273. In this case, only five people were involved and the Diocesan Synod group was missing entirely. Because the

DME Constitution requires the joint action of both groups, the nomination did not meet its stricter requirements and the candidate would not qualify under this constitution.

274. Turning back to the nomination paper completed by the Petitioner, with the interpretation of the two provisions in mind, a review of the document shows that it was specifically prepared for the Diocese of Maseno East (DME), despite the fact that the DME is a See of the ACK.

275. In other words, the wording of the form demonstrates that it was intended for use only in this particular See and cannot be applied to any other See. This is evident from the heading at the top of the document, which reads: *“THE EPISCOPAL ELECTION OF THE SECOND DIOCESAN BISHOP OF THE DIOCESE OF MASENO EAST”*.

276. Additionally, the body of the nomination paper explicitly references the See of Maseno East. The document further specifies the nominators, stating that they are *“All being members of the Synod of the Diocese of MASENO EAST,”* which reinforces that the nomination was limited in scope to this particular diocesan See.

277. That being the case, my view is that for a candidate to be validly nominated under the nomination paper or instrument used, he had to be nominated in compliance with the Constitution of the DME, particularly Article VIII(4), which as we have seen above, required a proper combination of at

least 10 nominators. That then means that the Petitioner was not validly nominated as he had only 5 nominators.

278. This Court cannot ignore the fact that the petition itself acknowledges that the Search Committee was constituted, reviewed nominations and determined who would be interviewed. If the Committee had no power to assess compliance or to eliminate non-qualifying candidates, there would be no constitutional basis for limiting the list to three names. The constitutional text clearly contemplates that not all nominees automatically qualify for interview or recommendation.

279. Having determined that the Petitioner was not validly nominated under the governing Constitution (the DME Constitution), I will, in line with the principles established in ***Wambui & Another v Law Society of Kenya & 2 Others***, conclude that the Search Committee's decision to invalidate the Petitioner's nomination was proper. This is particularly so because the Petitioner failed to meet the prescribed qualifications, particularly having fewer than the required number of nominators and not satisfying the eligibility criteria to participate in the election.

280. Since the DME is a See of the ACK, one might want to contend that the ACK Constitution prevails over that of the DME, and that the applicable criteria should therefore be those under Article XI(4) of the ACK Constitution. I am of the view, however, that the standards set by the ACK

Constitution represent a minimum threshold and that the drafters of the DME Constitution intentionally established a higher standard. In my opinion, it would be illogical for the DME Constitution to prescribe requirements lower than those in the ACK Constitution, which is not the situation in this case. There is nothing wrong, I opine, with a higher standard being set.

281. In the case of **Harry v University of Nairobi & another; Commission for University Education (Interested Party) (Constitutional Petition E022 of 2025) [2025] KEHC 18993 (27 November 2025) (Judgment)**, I dealt with a related the issue, which was whether it was contrary to statutory provisions for a university to set standards that are higher than those provided under the *Commission for University Education Act* and held as follows:

***“The Petitioner’s argument that the Commission for University Education Standards fixed the pass mark at 40% misconceives the nature and purpose of those standards. The role of CUE is in my view, to prescribe minimum thresholds for accreditation and quality assurance. Those standards establish a regulatory floor below which institutions may not fall. They do not impose a uniform grading system nor do they prohibit universities from adopting higher or more rigorous internal standards, particularly for professional programmes. CUE sets the floor, not the ceiling.*”**

***Accreditation by CUE is therefore not a declaration that all programmes must be identical in assessment philosophy or grading thresholds. Rather, it is a confirmation that minimum requirements have been met. Universities remain at liberty to enhance academic rigour, provided they do not derogate from mandatory statutory provisions. To construe CUE standards as capping academic standards would be to undermine institutional differentiation and erode academic excellence.”***

282. On the evidence before the Court, the Respondents demonstrate that the composition of the Petitioner’s nominators and possibly other documentary requirements did not conform to the constitutional provisions. Given that compliance with such criteria is mandatory, the Committee’s determination to exclude the Petitioner from interview on grounds of non-compliance was not *ultra vires* but consistent with its constitutional mandate. The Petitioner’s legitimate expectation, if any, that he would be interviewed does not convert an invalid nomination into a valid one.

283. For these reasons, the Court finds that the Petitioner’s nomination did not meet the constitutionally prescribed requirements and that the Search Committee was entitled, indeed required, to reject non-compliant nominations in order to forward no more than three names for election.

284. Accordingly, on the proper analysis of constitutional text, the Petitioner was not validly nominated and was therefore not qualified to appear before the Search Committee.

285. I now turn to the eighth issue, which is whether the failure to interview the Petitioner amounted to a violation of the right to fair administrative action or legitimate expectation.

286. The Petitioner alleges that the Search Committee's failure to interview him violated his constitutional right to fair administrative action under *Article 47* of the *Constitution*, as read with the *Fair Administrative Action Act* and breached the principle of legitimate expectation. The Court must consider whether these claims are substantiated in light of the governing constitutions of the ACK and the DME, as well as established legal principles.

287. The ACK and DME Constitutions prescribe the eligibility criteria for candidates. These provisions establish that only candidates who satisfy the eligibility criteria are entitled to be interviewed.

288. The Court observes that the Petitioner failed to meet the eligibility criteria. He did not satisfy the requirements concerning proper nomination. He did not therefore legitimately meet the threshold to be considered a candidate.

289. The principle that eligibility conditions define the class of persons entitled to fair consideration is well-established in Kenyan jurisprudence. In ***Katiba Institute v Attorney General & 2 Others [2019] eKLR***, the Court of Appeal stated:

***“A person is entitled to fair administrative action only if they are within the class of persons to whom the action applies. Where eligibility conditions are not met, the failure to consider the person does not amount to unfair administrative action.”***

290. Similarly, in ***Republic v Public Procurement Administrative Review Board & Another Ex Parte Kenya Power & Lighting Co. Ltd [2014] eKLR***, it was held that administrative fairness is conditional upon compliance with statutory or constitutional eligibility requirements and procedures cannot be applied arbitrarily to unqualified individuals.

291. Regarding the doctrine of legitimate expectation, it is settled that such an expectation arises only where the claimant can reasonably expect a benefit based on law, policy or consistent practice.

292. Legitimate expectation does not arise when the Petitioner has not fulfilled the required conditions or prerequisites for entitlement. Such an expectation must be based on law, established policy or a consistent practice that applies to the claimant.

293. The Petitioner's claim to a legitimate expectation to be interviewed is unfounded because he did not comply with the mandatory eligibility requirements. The Search Committee's refusal to interview him was therefore lawful and within its mandate.

294. The Court further notes that the right to fair administrative action under *Article 47* does not require an authority to consider an unqualified person. The Search Committee acted reasonably and proportionately in screening out a candidate who was not compliant with the established qualifications and in retaining its discretion to interview only those properly nominated and eligible.

295. In conclusion, the persuasion that I reach is that the failure to interview the Petitioner did not amount to a violation of the right to fair administrative action or legitimate expectation.

296. The ninth issue that I am required to determine is whether the participation of the 6<sup>th</sup> Respondent in the episcopal nomination and election process for the DME, while he was serving in ecclesiastical office, gave rise to a conflict of interest either in fact or in reasonable perception.

297. In ***Gachagua & 5 Others v Mainigi & 80 Others [2025] KECA 790 (KLR)***, the Court of Appeal explained the test for bias as follows:

***“...impartiality is essential for fair decision-making and lies at the core of the rule of law... whether bias is actual or perceived, it must be avoided.”***

298. From this decision, I hear the Court to say that a decision-maker must not only be impartial but must also be seen to be impartial by a reasonable observer. This standard is objective and asks whether a fair-minded observer, with knowledge of the relevant circumstances, would apprehend a real possibility of bias.

299. A conflict of interest arises where a decision-maker has competing loyalties or interests that could materially compromise impartial decision-making as articulated in ***Belvin Wanjiru Namu v National Police Service Commission & another [2019] eKLR***, where a conflict of interest was described as:

***“...a situation where an individual has interests or loyalties competing against each other... such that the person has conflicting responsibilities...”***

300. The Petitioner alleged that the 6<sup>th</sup> Respondent was both a serving office-holder (Clerical Secretary of the Synod and Assistant Diocesan Administrative Secretary) and a candidate for the episcopal election, and that this dual status amounted to a conflict of interest.

301. The 6<sup>th</sup> Respondent swore an affidavit stating that he resigned from the office of Clerical Secretary upon formal approval of his candidature and that thereafter he did not

participate in receiving, vetting or processing nominations. Instead, another official acted in his stead.

302. From his deposition, the 6<sup>th</sup> Respondent was not involved as a decision-maker in the very process in which he was a candidate. No evidence has been adduced on record that the 6<sup>th</sup> Respondent personally chaired or participated in meetings about the vetting of his own nomination or influenced decisions adverse to other candidates. On the evidence as it stands, he provided sworn assertions that he ceased to perform the functions of Clerical Secretary before the critical stages of vetting and election. This removes the foundational element of a conflict of interest, i.e., actual involvement in decisions affecting the electoral outcome.

303. The Petition relies on inference and conjecture, not clear evidence demonstrating actual participation in decisions that advantaged his own nomination. Thus, speculative or unsubstantiated assertions do not meet the threshold for perceived bias in law.

304. In the absence of evidence showing that the 6<sup>th</sup> Respondent participated in meetings that directly affected his own nomination, or that he influenced the handling of nomination documents to his benefit and to the prejudice of other candidates, the petition has not moved beyond mere allegation. A genuine conflict of interest occurs where a person holds two roles that bear on the same decision, which was not the case in this matter.

305. The Court therefore finds that the allegations of conflict of interest are not supported by objective evidence.

306. The tenth issue for determination is whether the electoral process complied with the Constitution of Kenya and the Constitutions of the ACK and the DME.

307. The first point for consideration is the legal framework governing the episcopal election process. It is undisputed that the DME is a constituent See of the ACK.

308. The process is subject to the overarching *Constitution*, particularly *Articles 10, 47 and 159*, which guide the principles of fairness, legality and good governance. As established in previous findings, *Article 47* guarantees that administrative action, including by non-state actors whose decisions affect legal rights must be expeditious, efficient, lawful, reasonable and procedurally fair.

309. The electoral process for the Bishop of the DME, though ecclesiastical in nature, produces a legally significant outcomes as the office carries canonical authority.

310. The Petitioner's nomination was found to be defective under the DME Constitution. This Court has already made a finding that the DME Constitution sets a higher threshold, intentionally establishing a stricter standard of representation. The process followed by the Search Committee, which evaluated the compliance of nominations

and limited eligible candidates to three, was therefore consistent with the DME Constitution. In this instance, the Search Committee exercised a constitutional mandate to ensure that only duly qualified nominees proceeded to the election stage.

311. Regarding the election itself, the process involved the vetting of qualified nominees, notification of eligible electors and a formal vote conducted in accordance with the provisions of the DME constitution. The Petitioner challenged the process as allegedly unfair, but the evidence demonstrates that all procedural steps, including the verification of nominators and the organization of the electoral meeting, were carried out transparently.

312. Since the Petitioner did not meet the eligibility threshold under the DME Constitution, the Search Committee's screening and the conduct of the election for eligible candidates were lawful, fair and within the committee's mandate. On the facts, the electoral process was free from bias, reinforcing that procedural fairness under both the ACK and DME constitutions was observed.

313. By ensuring compliance with constitutional requirements, verifying nominations and conducting the election according to the DME Constitution, the process also complied with the broader principles of fairness and administrative justice enshrined in the national *Constitution*.

314. In conclusion, after a thorough analysis of the facts, the governing constitutional provisions and relevant case law, the Court finds that the electoral process for the Bishop of the DME complied with the *Constitution of Kenya*, the Constitution of the ACK and the Constitution of the DME. The Petitioner's disqualification arose from a failure to meet mandatory eligibility criteria, not from any flaw in the electoral procedure itself.

315. The eleventh issue for me to address is whether public interest considerations affect the disposition of the petition.

316. The starting point is the concept of public interest within Kenyan jurisprudence. Public interest, in administrative and constitutional law, refers to considerations that extend beyond the private interests of the parties and touch on the broader welfare, rights and expectations of the community or society at large.

317. Public interest is relevant in determining relief in cases involving constitutional rights, electoral matters and administrative justice. Public interest is concerned with the broader social implications of a decision, particularly where an action affects not only the immediate parties but also the functioning of institutions and the confidence of the public in those institutions.

318. In the present case, the Petitioner challenges the episcopal nomination and election process for the Bishop of

the DME. While the process affects the Petitioner personally, it also affects the Diocese, the ACK and the broader faithful within the Anglican Communion. The question is whether, in the light of the facts and determinations already made, considerations of public interest require the Court to depart from strict application of the constitutional provisions, the DME Constitution or principles of fairness. Public interest may sometimes justify intervention, as in cases where illegal, arbitrary or *ultra vires* actions threaten societal trust or governance.

319. Upon review of the facts and having reached my prior determinations, it is clear that the Petitioner's disqualification from the nomination and subsequent exclusion from the electoral process resulted solely from a failure to meet mandatory eligibility requirements under the DME Constitution. There is no evidence of arbitrary, unlawful or capricious action affecting other members of the Diocese or the general membership of the ACK. In this context, the alleged grievances are private to the Petitioner and do not implicate systemic flaws or failures in the electoral process.

320. In conclusion, while public interest is an important consideration in administrative and constitutional law, the facts of this petition demonstrate that the public interest does not require a departure from the constitutional and procedural findings already made.

321. The twelfth issue for determination is whether any Constitutional violations have been proved by the Petitioner. The burden rests on the Petitioner to demonstrate, on a balance of probabilities, that the Respondents' conduct infringed these provisions.

322. Constitutional violations are not presumed; the Petitioner must link the alleged conduct to the specific constitutional provisions and provide evidence, as emphasized in **Mumo Matemu** and **Anarita Karimi**.

323. The Petitioner argued that failure to interview him violated his right to fair administrative action. However, as this Court has already found, his nomination was invalid under the DME Constitution. Fair administrative action attaches only to persons whose rights or interests are lawfully engaged. Excluding a non-compliant nominee was lawful and within the Search Committee's mandate. No violation of *Article 47* is therefore proved.

324. The Petitioner claimed discriminatory treatment. Discrimination requires unequal treatment on a prohibited ground. The exclusion was due to failure to meet nomination requirements, applied objectively to all candidates. No violation of *Article 27(5)* is established.

325. The Petitioner alleged denial of information. *Article 35* guarantees access to information held by the State or another person where necessary to exercise or protect a right. In my view, his deficient nomination meant no legally

protected right was impaired and violation of *Article 35* is therefore proved.

326. Exclusion from the interview does not constitute degrading or humiliating treatment. Administrative exclusion based on objective eligibility does not violate dignity. No violation of *Article 28* is proved.

327. *Article 36* protects membership and participation in associations. The Petitioner remained an ordained priest and member of the ACK; non-qualification for office does not impede associational rights. A violation of *Article 36* was therefore not proved.

328. *Article 10* guides constitutional interpretation but does not create a freestanding right unless linked to a specific violation. The Search Committee acted lawfully and proportionately in enforcing the DME Constitution. No violation of *Article 10* was in the premises proved.

**O. Disposition and orders.**

329. In light of the foregoing, the Court finds that the petition is without merit. I will then proceed to dismiss it.

330. Notwithstanding the dismissal of the petition, the Court is mindful of the ecclesiastical context and the need to maintain harmonious relations within the Church. The parties share membership in the ACK, and the See of Maseno East relies on collegiality and mutual respect among its clergy and laity.

331. In recognition of these considerations, I find it appropriate to order that each party, including the Interested Parties, bears its/his own costs. This approach will in my view foster a cooperative relationship between the Petitioner, the Respondents and the broader Church community while respecting the autonomy and integrity of the electoral process.

332. This file is hereby closed.

333. Orders accordingly.

DELIVERED (virtually), DATED & SIGNED this 11<sup>th</sup> day of February, 2026.

**JOE M. OMIDO**

**JUDGE.**

FOR PETITIONER: **Mr. Otieno.**

FOR 1<sup>ST</sup>, 2<sup>ND</sup> & 5<sup>TH</sup> RESPONDENTS: **Mr. Masika.**

FOR 3<sup>RD</sup>, 4<sup>TH</sup> & 7<sup>TH</sup> RESPONDENTS: **Ms. Ochako.**

FOR 6<sup>TH</sup> RESPONDENT: **Mr. Rakewa.**

FOR 1<sup>ST</sup> INTERESTED PARTY: No appearance.

FOR 2<sup>ND</sup> INTERESTED PARTY: No appearance.

COURT ASSISTANTS: **Mr. Ngogo & Mr. Juma.**