

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E588 OF 2025

THOMAS N.G. MAOSA T/A MAOSA & CO.
ADVOCATES.....PETITIONER

VERSUS

OFFICE OF THE CHIEF JUSTICE &
PRESIDENT OF THE SUPREME COURT OF KENYA.....
...1ST RESPONDENT

JUDICIAL SERVICE
COMMISSION.....2ND RESPONDENT

ATTORNEY
GENERAL.....3RD
RESPONDENT

R U L I N G

Introduction

1. The Petition dated 9th September 2025 challenges the manner in which Hon. Justice Alexander M. Muteti has been handling **Nairobi High Court Civil Case No. E063 of 2024**. The Petitioner thus seeks the following reliefs:

- i. A declaration that the Petitioner's rights have been violated in the manner in which the High Court at Millmani is handling the trial of Nairobi HCC No. E/E063 of 2024.***

- ii. A Declaration that the institution of the above suit together with the complaint at the Advocates Disciplinary Tribunal on the part of the Plaintiff have denied the Petitioner his secure protection of the law, protection against deprivation of his liberty, right against double jeopardy and the arbitrary denial of access to Justice.**
 - iii. A Declaration that disagreements between Advocates and Clients are resolved by the Advocates Disciplinary Tribunal duly established under the Advocates Act.**
 - iv. A mandatory order compelling the termination of the said suit Mllimani HCCC NO. E063 of 2024.**
 - v. A mandatory order compelling the Respondents to process and hear the Petitioner's Complaint against Justice Alexander Muteti on a priority basis.**
 - vi. Any other Order(s) which the Court may deem fit and just to grant**
2. This ruling thus relates to the Petitioner's Notice of Motion Application dated 9th September 2025 and the 3rd Respondent's Notice of Preliminary Objection dated 17th September 2025.

The Application

3. The Petitioner filed a Notice of Motion Application dated 9th September 2025 wherein he seeks orders that:

- i. Spent.**
- ii. Pending the hearing and determination of the present Motion and the Petition thereto the Court be pleased to issue Conservatory Orders suspending the pending trial of the above suit before the Hon. Mr. Justice Alexander Muteti scheduled for delivery of Judgment on 17th September 2025.**
- iii. The entire record and file pending before the said Justice Muteti be recalled for scrutiny and verification of the abuses and constitutional Violations complained of by the Petitioner.**
- iv. During the pendency of the present Motion and the Petition thereto the Court be pleased to issue conservatory Orders and/or Injunction restraining the trial Judge from further handling of the above suit against the Petitioner herein.**
- v. The entire record and file pending before the said Justice Muteti be recalled for scrutiny and verification of the abuses and constitutional violations complained of by the Petitioner.**
- vi. Due to the Petitioners plea that the present trial Judge has denied him his rights enshrined in the Constitution and the same therefore being a substantial question under Article 165(4) of the Constitution: it's the Petitioner's prayer that a Three Judge Bench be constituted for purposes of hearing the present Petition.**
- vii. The Costs of the petition be provided for.**

4. The Application is supported by the Petitioner's affidavit sworn on even date and the grounds on the face of the Application.
5. He depones that the subject matter of this suit is **Nairobi High Court Civil Case No. E063 of 2024** which is pending before Hon. Justice Alexander M. Muteti and is due for judgment.
6. He asserts that the Hon. Judge in setting the matter for Judgment has blatantly disregarded all the pending interlocutory applications. He adds that the Hon. Judge has failed to halt further proceedings owing to the pending appeals at the Court of Appeal, against a number of his decisions on interlocutory applications.
7. He avers that there are several complaints against the Hon. Judge due to the alleged unfair handling of the Trial, which are yet to be addressed by the 1st and 2nd Respondents.
8. He as well decries that the Hon. Judge has proceeded to hear the matter despite the Advocates Disciplinary Tribunal issuing its Judgment on the same on 10th February 2025. He notes that the Tribunal affirmed his right to tax the advocate Bill of Costs which the Hon. Judge in the Ruling dated 15th August 2025 ignored.

9. For context, he depones that the Hon. Judge was issued with Civil Case No. E063 of 2024 during the Rapid Results Initiative in 2024 upon his appointment. He avers that the Hon. Judge did not however surrender the file at the expiry of the period to the High Court Civil Division.
10. He argues that the Hon. Judge's actions in relation to the Trial are in breach of his rights under Articles 25(c), 47 and 50(1) of the Constitution. He informs that his Petition raises substantial issues concerning abuse and violation of his rights.
11. He emphasizes that every judicial officer is accountable to the Constitution and therefore any abuse of authority must be checked and halted. He therefore asserts that unless conservatory orders are issued the Hon. Judge will proceed to render his Judgment in the matter. In view of the foregoing, he contends that his Petition should be heard.

1st Respondents' Case

12. This party's responses and submissions to the Application are not available in the Court File and Court Online Platform (CTS).

2nd Respondent's Case

13. In response to the Application and Petition the 2nd Respondent filed a Notice of Preliminary and Grounds of Opposition dated 6th October 2025 as follows:

Preliminary Objection

- i. *This Court has no jurisdiction whatsoever to hear, consider, look into, entertain, consider entertaining any complaint against a sitting judge of the High Court or any superior Court for that matter.*
- ii. *This Court lacks jurisdiction to stay, suspend, enquire, entertain, interfere with proceedings or sit on appeal on a matter emanating or currently pending hearing and determination from a judge of the High Court of Kenya or any other superior court.*
- iii. *The Notice of Motion dated 9th September 2025 greatly offends Article 168 of the Constitution which gives the 2nd Respondent the sole powers to initiate, receive and consider a complaint or Petition against a judge of the High Court or any other superior court.*
- iv. *Paragraph 2, 3,4, 5 & 10(page 17-19) of the Petitioner's supporting affidavits all dated 9th September 2025 in support of both Notice of Motion applications dated 9th September 2025 show that the Petitioner seeks to have this court oust the jurisdiction of the 2nd Respondent on matters of handling complaints against judges thus making the application fatally and incurably defective.*
- v. *Without prejudice to the foregoing, this Court lacks jurisdiction to consider and grant prayer E at page 46 of the Petition.*

Grounds of Objection

- vi. *There is no evidence that the Petitioner has filed any complaint with the 2nd Respondent against the learned Justice Muteti and in the event he has, this Court lacks the jurisdiction to interfere with the 2nd*

Respondent's power to handle complaints against judges and magistrates.

- vii. The Petition (paragraphs 26,27,28 @page 45) in its form, structure, letter, word and context offends Article 160(5) of the Constitution which protects judges from liability in any action or suit in anything done or omitted to be done in good faith in the lawful performance of a judicial function.*
- viii. The Petition is an abuse of the court process and is only meant to embarrass and vex the entire judiciary and judicial service including and especially the learned judge.*
- ix. The Court is called upon to exercise the doctrine of constitutional avoidance.*
- x. The Petitioners have not demonstrated to this Court how the any Respondent has violated any of his Constitutional rights or abdicated its responsibility as alleged.*
- xi. There is no cause of action whatsoever against the 2nd Respondent.*
- xii. The real intention of the Petition is forum shopping which cannot be countenanced by this court.*
- xiii. Allowing the present Notice of Motion application and the Petition will open floodgates to collateral attacks against judges during ongoing proceedings and will erode and undermine the integrity and independence of the judiciary contrary to Articles 160 and 172 of the Constitution.*
- xiv. The Petition does not meet the constitutional threshold for a violation of rights, having failed to plead with reasonable precision the rights*

allegedly violated, the manner of violation, and by whom.

- xv. *The Petition, if allowed or entertained will amount to the High Court supervising a court of equal jurisdiction.*
- xvi. *The Notice of Motion and Petition ought to be treated with contempt, dismissed at the preliminary stage and the Petitioner ordered to pay costs based on the value of the subject matter.*

3rd Respondent's Case

14. In opposition to the Application the 3rd Respondent filed Grounds of Opposition dated 13th October 2025 on the basis that:

- i. *The Petition and the accompanying Notice of Motion are incompetent, misconceived, bad in law, and an abuse of the Court process as they impermissibly seek to invoke the supervisory jurisdiction of the High Court over another superior court of record, contrary to Article 165(6) and (7) of the Constitution of Kenya, 2010, which expressly excludes superior courts from the High Court's supervisory ambit.*
- ii. *The High Court's supervisory jurisdiction extends only to subordinate courts and persons, bodies, or authorities exercising judicial or quasi-judicial functions, and does not apply to superior courts such as the High Court itself, as affirmed in **United States International University (USIU) v. Attorney General & 2 Others [2012] eKLR** and **Republic v. Karisa Chengo & 2 Others [2017] eKLR**, where it was held that superior courts of equal status cannot superintend, supervise, or review one another.*

- iii. *Judgment in Milimani HCCC/E063 of 2024 has already been delivered by the trial court, rendering the prayers sought, particularly those seeking suspension or conservatory orders pending delivery of judgment moot, overtaken by events, and incapable of being granted.*
- iv. *This Court cannot issue orders to stay, suspend, or reverse the judgment of another High Court Judge through a parallel constitutional petition.*
- v. *The appropriate recourse for any party aggrieved by the decision or conduct of a Judge of the High Court is by way of appeal to the Court of Appeal in accordance with the established appellate hierarchy, or by making a formal complaint to the Judicial Service Commission in the case of alleged misconduct.*
- vi. *The Petitioner's reliance on pending appeals against interlocutory rulings in the underlying suit does not automatically operate as a stay of proceedings or execution, as provided under Rule 5(2) of the Court of Appeal Rules, 2022, which states that the institution of an appeal shall not suspend any sentence or stay execution unless the Court expressly orders so; mere filing of a notice of appeal is insufficient to halt the trial court's processes.*
- vii. *The allegations of bias, collusion, lack of impartiality, and constitutional violations against Hon. Mr. Justice Alexander Muteti are unsubstantiated, scandalous, and without evidentiary support, constituting mere conjecture intended to scandalize the court and undermine judicial independence, and do not meet the*

threshold for constitutional relief under Articles 22 and 23 of the Constitution.

- viii. The Petitioner's averments regarding the trial judge's handling of the file, disregard of directions from other judges, and alleged manipulation of dates are baseless and fail to demonstrate any violation of constitutional rights, as judicial case management and allocation are administrative functions within the judiciary's discretion, and any grievances should be pursued through appropriate appellate channels rather than collateral attacks via petition.*
- ix. The request for a three-judge bench under Article 165(4) of the Constitution is unwarranted, as the Petition does not raise substantial questions of law requiring such empanelment; the issues raised are ordinary procedural grievances that can be addressed through appeals or reviews in the ordinary course of litigation, rather than elevating them to constitutional dimensions.*
- x. The Petition and Notice of Motion constitute forum shopping and an attempt to circumvent the appellate process, thereby abusing the court's process and wasting judicial resources, and should be dismissed in limine with costs.*

The Preliminary Objection

15. The 3rd Respondent in its Notice of Preliminary Objection opposes the Petition on the grounds that:

- i. This Court lacks jurisdiction to entertain and/or determine this matter to the extent that it seeks to invoke the supervisory***

jurisdiction of the High Court over a superior court of record, contrary to Article 165 (6) and (7) of the Constitution.

- ii. The Petition is incompetent, bad in law and an abuse of the Court process as the supervisory jurisdiction of the High Court extends only to subordinate courts and persons, bodies or authorities exercising judicial or quasi-judicial functions and not to superior courts.**
- iii. In United States International University (USIU) v. Attorney General & 2 Others (2012) eKLR, the Court held that the Industrial Court is a superior Court of record with the Status of the High Court. The High Court therefore cannot exercise supervisory jurisdiction over the Industrial Court.**
- iv. Similarly, in Republic v. Karisa Chengo & 2 Others (2017) eKLR, the Supreme Court affirmed that the High Court, the Environment and Land Court, and the Employment and Labour Relations Court are superior courts of equal status. None has jurisdiction to superintend, supervise, direct, shepherd or review the other.**
- v. Consequently, this Court is divested of jurisdiction to hear and determine the Petition and the Notice of Motion Application and the same ought to be struck out in limine with costs.**

Petitioner's Submissions

16. Maosa and Company Advocates for the Petitioner filed two set of submissions dated 13th October 2025 and 18th December 2025 in relation to the Notice of Motion Application and 3rd Respondent's Preliminary Objection.
17. Counsel submitted that the Petitioner in the affidavit had established a prima facie case owing to the propositions demonstrating infringement of his rights by the Respondents in view of Hon. Justice Muteti's alleged conduct in the impugned civil suit.
18. Counsel stressed that the right to a fair hearing cannot be limited hence the need for its protection from biased judicial officers. Counsel stressed that the Hon. Judge had ignored the tenets of fairness in handling the dispute between the Petitioner and the Plaintiff in Civil Suit No. E063 of 2024. Considering this, Counsel asserted that Petitioner is a victim of judicial impunity.
19. Reliance was placed in **Bellevue Development Company Ltd v Gikonyo & 3 others [2020] KESC 43 (KLR)** where it was held that:

“On the issue of judicial immunity, the learned judge held that under article 160(5) of the Constitution, judges and judicial officers are immunized from any suits arising from their performance or decisions made in good faith and within the law. In so doing, he went further to pronounce thus:

"I think that even though Judges are fallible human beings like everybody else, a mechanism does exist in our laws for correcting whatever errors they may commit in the discharge of their juridical functions. Aggrieved parties are at liberty to appeal as a matter of course and that appellate system suffices to deal with ordinary errors of law and fact so that at the end of the day justice is served. I also harbor no doubts that where a Judges conduct consists of egregious illegalities, violation of the Judicial oath or outright Illegalities and criminality, a mechanism for removal does exist and can be triggered in the appropriate cases. I am satisfied that those mechanisms suffice to guard the integrity of the Judicial process, and to protect the rule of law and the rights of the litigant. They ensure that Judicial Immunity, which is laudable and necessary for the protection of Judicial independence doe, not morph Into Judicial impunity or some form of Frankenstein tyranny against the law and the people."

20. Counsel further argued that the Respondents had failed to undertake their constitutional mandate to overseeing the exercise of judicial powers by the Hon. Judge owing to the Petitioner's complaints against him. On this premise, Counsel urged that the Petitioner had met the threshold for grant of the sought orders. Reliance was placed in **Millmani Constitutional & Human Rights Division Petition No. E291/2021-Algare Distillers Ltd-V-Kenya Revenue Authority** where it was held that:

"A prima fade case in a civil application includes but is not confined to a "genuine and arguable case." It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by

the opposite party as to call for an explanation or rebuttal from the latter."

21. Parallel reliance was placed in **Centre For Rights Education and Awareness (CREAW) & 7 others v Attorney GENERAL (2011) KEHC 4297 (KLR)** and **Gatirau Peter Munya -Vs-Dickson Mwenda Githinji & 2 Others SCK [2013] eKLR.**

22. Counsel further argued that the Petition is predicated on a novel subject matter in that it challenges the misuse of judicial independence by judicial officers without any form of accountability. More so when the same is exacerbated by the omissions of the 1st and 2nd Respondents to discharge their constitutional duties. Accordingly, Counsel argued that the Petition meets the threshold for empaneling of a multiple judge bench.

23. Dependence was placed in **Attorney General v Okiya Omtatah Okoiti another 2019KECA774(KLR)** where it was held that:

"A substantial question of law is one which is of general public importance or which directly and substantially affects the rights of the parties and which have not been finally settled by the Supreme Court, the Privy Council or the Federal Court or which is not free from difficulty or which calls for discussion of alternative views. If the question is settled by the Highest Court or the general principles to be applied in determining the questions are well settled and there is a mere question of applying those principles or that the

plea raised is palpably absurd, the question would not be a substantial question of law.”

24. Turning to the preliminary objection Counsel submitted that it is not merited. Counsel submitted that the objection seeks to divert the Court’s attention from the substantive constitutional issues raised in the Petition. Counsel further argued that the objection raises issues that have not been pleaded in the Petition such as the supervisory jurisdiction of this Court. Counsel stressed that a preliminary objection must solely focus on the issues raised in the pleadings.
25. Equally Counsel argued that the objection touches on issues that need to be ascertained by the Court. In Counsel’s view the preliminary objection is misconceived, legally untenable and filed in bad faith.
26. To buttress this point reliance was placed in **Catherine Kawira v Muriungi Kirigia [2016] eKLR** where it was held that:

“It is now well-settled principle that a preliminary objection should be a point of law that is straightforward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application.”

27. Similar reliance **Somoni v Muangi [2025] KEHC 9582 (KLR), Nyaga in Kanampiu & another v Marithi [2025]**

KEHC 7699 (KLR), Wabuke & another v Munialo (Miscellaneous Civil Application 35 of 2022) [2024] KEHC 301 (KLR) and Omondi vs National Bank of Kenya Ltd & Others [2001] KLR 579; [2001] 1 EA 177.

28. Further to this, Counsel submitted that the Petitioner invoked the jurisdiction of the Constitution and Human Rights division within the capacity provided for in the Constitution under Article 165 (3). That is, the jurisdiction to address whether a fundamental right or a freedom has been breached.
29. Reliance was placed in **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR** where it was held that:
- “A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law.”*
30. Parallel reliance was placed in **Kabui v Teacher Service Commission & 2 others [2025] KEHC 2868 (KLR).**

2nd Respondent's submissions

31. The 2nd Respondent's Counsel, Martin Machira filed submissions dated 6th October 2025.

32. Counsel underscored that the key issue pertains to the High Court's jurisdiction to entertain a Petition challenging decisions and actions emanating from another Judge of the High Court. Counsel submitted that the Petitioner's call to have the Hon. Judge removed from office or investigated is offensive to Article 168 of the Constitution. Counsel emphasized thus that this Court lacks jurisdiction to entertain the Petition.
33. Counsel outlining the essence of judicial independence as envisaged under Article 160(5) of the Constitution as read with Section 6 of the Judicature Act accentuated that this principle has global application and is widely accepted as a fundamental means of ensuring the fair administration of justice and upholding of the rule of law in any society.
34. Equally, Counsel submitted that the Court in **Judicial Service Commission v Speaker of the National Assembly & Another [2013] eKLR** affirmed the principle of judicial independence, emphasizing that no other arm of government or Court can unduly interfere with the judiciary's functions. Counsel noted that one of the elements of judicial independence is judicial immunity which was discussed in **Maina Gitonga vs. Catherine Nyawira Maina & Another [2015] eKLR** as follows:

"It is undoubted that under the established doctrine of judicial immunity, a judicial officer is absolutely immune

from a criminal or civil suit arising from acts taken within or even in excess of his jurisdiction...Judicial immunity is necessary for various policies. The public interest is substantially weakened if a judge or a magistrate allows fear of a criminal or civil suit to affect his decisions. In addition, if judicial matters are drawn into question by frivolous and vexatious actions, 'there never will be an end of causes: but controversies will be infinite...I agree with Bosire J that judicial officers should not be put in a position which forces them to look over their backs every time they make a decision. Whenever a judicial officer has to make a decision, he should make such a decision in good faith and without fear that he will be taken to court for making the decision. Whenever a party wants to challenge the decision of a judicial officer by way of a judicial review, he should not make the judicial officer who made the decision a respondent. ..."

35. Like dependence was placed in **Sirros vs Moore (1975) 1 Q.B.**
36. To this end, Counsel argued that the motion and Petition are devoid of merit and thus amount to an abuse of the Court process. Further to this, Counsel argued that the Petitioners had failed to demonstrate how the Respondents had violated their constitutional rights. Counsel added that the Petitioner had also not established any cause of action against the 2nd Respondent.
37. Counsel relied in **Muchanga Investments Ltd v. Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR** where it

was held that an abuse of court process occurs when judicial processes are used in bad faith or for an improper purpose.

3rd Respondent's Submissions

38. In like manner, the 3rd Respondent through its Counsel Christopher Marwa filed submissions dated 9th October 2025 where he highlighted the issues for discussion as: *whether this Court has jurisdiction to entertain and determine the Petition and the accompanying notice of motion application in light of Articles 165(6) and (7) of the Constitution, whether the Petitioner has satisfied the legal threshold for the grant of conservatory orders and whether the Petition raises a substantial question of law under Article 165(4) of the Constitution warranting the empanelment of a three-judge bench to hear and determine the matter.*
39. On the first issue, Counsel submitted that this Court lacks jurisdiction to entertain the matter since as per Article 165 (6) and (7) of the Constitution, the High Court's supervisory jurisdiction only extends to subordinate courts and persons, bodies, or authorities exercising judicial or quasi-judicial functions and explicitly excludes superior courts.
40. Counsel submitted that the challenge in this matter stems from the proceedings in Civil Suit No. E063 of 2024 as presided over by Hon. Justice Muteti. As such, this being a Court of equal status, Counsel argued that this Court lacks

the jurisdiction to exercise supervisory powers over another division or judge of the High Court. Dependence was placed in **United States International University (USIU)** (supra) where it was held that:

“The Industrial Court is a superior Court of record with the Status of the High Court. The High Court therefore cannot exercise supervisory jurisdiction over the Industrial Court.”

41. Equal dependence was placed in **Republic v. Karisa Chengo** (supra), **Mureithi v Republic [2025] KEHC 3519 (KLR)**, and **Lariak Properties Limited v. Metro Pharmaceuticals Limited [2022] KEELC 15000**.
42. On the second issue, Counsel argued that the Court is incapable of issuing the sought conservatory orders as lacks jurisdiction to entertain the matter by virtue of Article 165(6) of the Constitution.
43. That said, Counsel informed that the application for conservatory orders is moot as the judgment in Civil Suit No. E063 of 2024, which the Petitioner seeks to suspend has already been delivered. Reliance was placed in **Katiba Institute v Parliament of the Republic of Kenya & Another [2025] eKLR** where it was observed that a matter is moot if further proceedings would have no practical effect or if events have rendered the issue beyond the reach of the law.

44. Like dependence was placed in **Okiya Omtatah Okiiti & 2 Others v Attorney General & 4 Others [2020] eKLR.**
45. Nonetheless, Counsel argued that even if the two aspects were non-existent, the Petitioner would still not be entitled to the orders sought as failed to meet the legal threshold for granting of conservatory orders. That is the Petitioner had not demonstrated a prima facie case, the irreparable harm to be suffered and a balance of inconvenience as set out in **Gatirau Peter Munya** (supra).
46. Similar dependence was placed in **Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR.**
47. Lastly, Counsel contended that the Petition does not raise a substantial question of law to warrant the empanelment of a bench to hear and determine the matter. This is since, the primary question in the Petition is whether this Court has supervisory jurisdiction over a superior court of record which is neither novel nor unsettled. Counsel stressed that the Supreme Court in **Karisa Chengo** (supra) in fact affirmed that the High Court, the Employment and Labour Relations Court, and the Environment and Land Court are courts of equal status, and none may exercise supervisory jurisdiction over the other.

48. To buttress this point reliance was placed in **Harrison Kinyanjui v Attorney General & Another [2012] eKLR** where it was observed that not every question of constitutional interpretation qualifies for empanelment, and that courts must guard against unnecessary references that only serve to delay justice.
49. Comparable reliance was placed in **Community Advocacy Awareness Trust & Others v Attorney General [2012] eKLR** and **Okiya Omtatah Okoiti v Cabinet Secretary for Health & 3 Others [2018] eKLR**.

Analysis and Determination

50. It is my considered opinion that the issues that arise for determination are:
- i. Whether the 3rd Respondent's Preliminary Objection is merited.***
 - ii. Whether the Court should allow the Petitioner's Application.***

Whether the 3rd Respondent's Preliminary Objection is merited.

51. The threshold of a Preliminary Objection was summarized in **Parbat Siyani Construction Limited v Kenyatta International Convention Centre [2023] KEHC 1603 (KLR)** where the Court citing with approval the celebrated

case of **Mukisa Biscuits v Westend Distributors** stated thus:

“54. This Court would wish to remind the parties that it is dealing with a preliminary objection. The validity of any preliminary objection is gauged against the requirement that it must raise pure points of law capable of disposing the dispute at once. It is, therefore, mandatory for a Court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence.

55. The foregoing nature of preliminary objections was discussed in Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd, (1969) EA 696 page 700 when the Court observed as follows: -

'So far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is

sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.'

56. In Civil Suit No 85 of 1992, Oraro vs Mbaja [2005] 1 KLR 141, Ojwang J, as he then was, cited with approval the position in Mukisa Biscuit -vs- West End Distributors (supra) and stated as follows on the operation of preliminary objection: -

'I think the principle is abundantly clear. A 'preliminary objection', correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.'

57. In Omondi -vs- National Bank of Kenya Ltd & Others {2001} KLR 579; [2001] 1 EA 177, it was observed that a Court in determining a preliminary objection can look at the pleadings and other relevant documents but must abide by the principle that the objection must raise pure points of law. It was held thus: -

'In determining (Preliminary Objections) the Court is perfectly at liberty to look at the

pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion..."

52. Furthermore, this Court in **Nthia v Kenyatta University** **[2025] KEHC 13220 (KLR)** summarized as follows:

"24. Going by the case law on what a Preliminary Objection entails, one deduces that a proper Preliminary Objection is identifiable by depiction of the following four major characteristics:

Must be on a pure point of law and not a contest of facts;

it is argued on assumption that what is pleaded by the opposite side is correct;

cannot be raised if any fact has to be ascertained by evidence or if what is sought is an exercise of judicial discretion;

If successful, it must be capable of disposing of the entire suit."

53. The 3rd Respondent's Preliminary Objection is principally anchored on Article 165(6) and (7) of the Constitution. This claim was equally made by the 2nd Respondent in its response. This Sub-Articles provide as follows:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) *For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.*

54. This being a jurisdictional issue, it is a pure point of law since if the Court determines it has no jurisdiction, it cannot delve into the merits of the substantive matter. The Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR)** guided as follows on jurisdiction:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.”

55. The 3rd Respondent’s objection challenges the Petition on the basis it challenges the unfairness of the proceedings being conducted by Hon. Justice Muteti’s proceedings in Nairobi High Court Civil Case No. E063 of 2024 by stating that this being a High Court has no supervisory jurisdiction over Courts of concurrent jurisdiction.
56. The Petitioner on the other hand, opposed this argument arguing that this Court is empowered under Article 165(3)

(b) of the Constitution to determine the question of violation of rights. For this reason, he argued that this Court has the inherent jurisdiction to preserve the integrity of the judicial process.

57. As expressly provided under Article 165 (6) & (7) of the Constitution, a High Court through its various divisions cannot supervise, review, direct or interfere with the decision of another High Court division. They are all Courts of concurrent and coordinate jurisdiction under Article 165 of the Constitution. The Constitutional and Human Rights Division is a High Court of concurrent jurisdiction with the High Court in the Civil Division and none can constitutionally supervise or direct the other as supervision, by dint of Article 165 (6) is only exercisable over subordinate courts and tribunals, not over Superior Courts. Entertaining such Petition would create anarchy in the administration of justice by encouraging forum shopping and undermine the integrity of judicial decision making. The finding of this Court is that it has no jurisdiction to entertain this matter. The Petitioner's recourse if dissatisfied by the decision of another superior Court is not to file a fresh suit challenging the decision but to lodge an appeal at the Court of Appeal against the decision or the order that he is dissatisfied with. The constitutional jurisdiction of this Court cannot be invoked as a substitute for an appeal.

58. Further, the Petition makes allegations of judicial misconduct. That is also not within the competence of this Court to handle as the Constitution, under Article 168, has provided a clear mechanism for judicial accountability.
59. The upshot is that this Court lacks jurisdiction to entertain this Petition. Having reached this finding, the Court must down its tools and take no further step in the matter. I therefore strike out this Petition.
60. Costs are awarded at the discretion of the Court. I make no orders as to costs.

Dated, signed and delivered virtually at Nairobi this 5th day of March, 2026.

.....
L N MUGAMBI

JUDGE