REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

HCCHRPET NO, E032 OF 2025

IN THE MATTER OF ARTICLES 10, 23 & 233 OF THE CONSTITUTION OF KENYA IN THE MATTER OF THE SPORTS ACT, 2013

AND

IN THE MATTER OF REGISTRAR'S RULES AND REGULATIONS OF 2016

BETWEEN

JULIUS RONOH ARUSEL……..PETITIONER

VERSUS

NATIONAL OLYMPIC COMMITTEEE OF KENYA….1st RESPONDENT

SPORTS REGISTRAR……..2nd RESPONDENT

JUDGMENT

1. Before me is a *'pro se'* constitutional petition dated 14th April 2025, while the motion as filed fails to strictly comply with the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules the Court nonetheless regards the same as a petition notwithstanding the 1st Respondents terming the same a mongrel.

2. The petitioner a retired athlete moves the Court that;

   a) *The management of the Olympics Committee of Kenya has been converted to a club of well-connected individuals and sidelining the Olympians of this country who sacrifice a lot to bring glory to this country.*

   b) *The constitution of the Olympics Committee doesn't recognize Olympians contrary to the Olympic Charter stipulated in the preamble chapter seven and in violation of the Sport Act and the Constitution of Kenya 2010 thus, violating their fundamental rights to vote in matters election.*

   c) *The 2nd Respondent who is a public servant (The Sport Registrar) has allowed the Olympics committee to conduct an election on 24th April 2025 without fully complying with Rule 16(1) of Registrar's Rules & Regulations of 2016.*

3. The Petitioner that sought the following relief(s);

   i. **SPENT**

   ii. **That all Olympians be recruited as individual members of the Olympics Committee of Kenya as captured by the Olympic Charter in the preamble quoted below.**

   "Preamble

   Modern Olympism was conceived by Pierre de Coubertin, on whose initiative the International Athletic Congress of Paris was held in June

1894. The International Olympic Committee (IOC) constituted itself on 23 June 1894. The first Olympic Games (Games of the Olympiad) of modern times were celebrated in Athens, Greece, in 1896. In 1914, the Olympic flag presented by Pierre de Coubertin at the Paris Congress was adopted. includes the five interlaced rings, which represent the union of the five continents and the meeting of athletes from throughout the world at the Olympic Games The first Olympic Winter Games were celebrated in Chamonix, France, in 1924,"

iii. That the Honourable Court be pleased to adopt the interim transitional committee individual listed as follows:-

a) President - Humphrey Kayange (Renown Rugby Player/Olympian)

b) Vice president- Triza Atuka- (Former Captain Malkia Strikers & Olympian)

c) Secretary - Moses Kiptanui- (Renown Kenyan Athlete & Olympian)

d) Vice secretary - Elizabeth Andiego (First Olympian female boxes)

e) Treasurer - Barnabas Korir- (Youth Development Chair Athletics Kenya)

MEMBERS

1. Joyce Chepchumba - Olympian (Athletics)

2. Catherine Ndereva - Olympian(Athletics)

3. Ezekiel Kemboi - Olympian(Athletics)

4. Christine Ongare - Olympian (Boxing women)

5. Joseph Akhasamba - Olympian (Boxing men)

6. Hamdan Bayusuf - Olympian (Swimming)

7. Emily Muteti - Olympian (Swimming)

8. Julius Yego - Olympian (Juveline)

9. Jarius Kipkosgei - (Volleyball Men)

10. Julius Kariuki-Olympian (Athletics)

4. The Court had declined granting and interlocutory order suspending *in limine* the scheduled elections for the 24th April 2025 and directed that the petition be heard and disposed-off by way of filed written submissions.

5. The 1st Respondent opposed the Petition by filing a Replying Affidavit by **Lt. Co. (Rtd) Nashon Randiek** and grounds of opposition evenly dated the 17th November, 2025.

<u>The Petitioner's Case</u>

6. It is the Petitioner's case that, since the commencement of the Sport Act in 2016, the 1st Respondent has never bothered to align its constitution with the Sport Act, its regulations of 2016 as well as the Promulgated 2010 Constitution of the Republic of Kenya.

7. The 1st Respondent's constitution disregards fundamental principal set out in the preamble found in Chapter 7 that state as follows;

> ***"it includes the five interlaced signs, which represent the union of the five continents and the meeting of the athletes from throughout the world at the Olympics games ".***

8. The 1st Respondent doesn't recognize Kenyan Olympians as primary constituents thus infringing their entitlement to vote in the said election as provided in the bill of rights entrenched in Chapter Four of the 2010 constitution.

9. The sporting federation constituting the National Olympians Committee of Kenya have fully not compiled with the Sport Act of 2013 and the Regulations of 2016 by the virtue of the sport people of this country.

10. The 1st Respondent's is not properly registered as a National Professional Multi-Sport Organization as per the guidelines of regulations 16(1) of Registrar's rules & regulations of 2016.

11. The Petitioner briefly submits that the 1st Respondent ultimately conducted the elections on the 21st July 2025 and the following office bearers were elected;

    i. **President: Shadrack Maluki**
    ii. **First Deputy President: Barnaba Korir**
    iii. **Second Deputy President: Colonel (Rtd) Nashon Randiek**

iv. **Secretary General: John Ogola**
v. **Deputy Secretary General: Francis Karugu**
vi. **Treasurer: Fred Chege**
vii. **Deputy Treasurer: Charles Mose**

12. That, none of the officials elected is known to have been an Olympian and Honorable Court be pleased to annul the elections.

13. The Petitioner contends that the fundamental rights of the Kenyan Olympians is in serious violation.

14. The Petitioner asserts that the 1st Respondent's constitution contravenes the fundamental human rights of the Kenyan Olympians and also a gross violation of the Constitution of Kenya 2010 and totally misplaced in the Sports Act of 2013.

1st Respondents Case

15. The 1st Respondent submits that, the application has been overtaken by events following the election of the National Olympic Committee of Kenya (NOCK) Executive Committee held on the 21st July, 2025 and conducted in accordance with the NOCK Constitution and pursuant to the directions issued by the Court in **Eldoret High Court Petition No. 21 of 2025 Joycelene Nyambura & 3 Others v Independence Electoral and Boundaries Commission (IEBC) & 6 Others**. That the said elections were duly conducted, concluded, and the new Executive Committee assumed office forthwith. Consequently, the subject matter of this petition is spent and no longer justiciable before this Court.

16. The 1st Respondent Secondly submits, that the application or the suit (as the case may be) is fatally defective and incurably incompetent. To begin with, the Applicant has erroneously invoked the jurisdiction of this Honourable Court by conflating distinct legal procedures and jurisdictions. The matter in substance falls within the realm of Judicial Review which is a special jurisdiction governed by **Order 53** of the Civil Procedure Rules and **Sections 8** and **9** of the Law Reform Act and which is neither civil nor criminal in nature. What is before Court is neither a Judicial Review nor a suit under **Section 2** of the Civil Procedure Act Cap.21 Laws of Kenya and that being the case, the litigation herein is fatally defective. It is a sort of "a mongrel". Its fate is that of striking out and/or dismissal. **Article 159(2)(d)** was not a panacea of the same.

17. The case of **Owners of Motor Vessel 'Lillian S' vs. Caltex Oil (Kenya) Limited (1989) KLR** is cited in fortification of the assertion of want of jurisdiction. That it is trite that where a Court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given.

18. That Regulation 7 of the Sports Registrar Regulations, 2016 provides for redress in an election dispute: -

> ***"(7) A person who is dissatisfied with the results of an election may appeal to the Tribunal within 30 days of the election. "***

19. The 1st Respondent asserts that, the Petitioner has not exhausted the internal dispute resolution mechanisms provided under the National Olympic Committee of Kenya (NOCK) Constitution, Regulations governing election disputes and the Sports Act. It is trite law that a litigant who seeks to challenge an election must first invoke and comply with the internal mechanisms expressly provided for under the governing instruments of the organization before approaching this Court. Accordingly, the Petition is premature, incompetent, and offends the doctrine of exhaustion. The Petitioner ought to have filed an Election Petition against it and/or to challenge the Nock Executive Committee Election of the 21st July, 2025 and that goes to the jurisdiction of the Court to hear and determine the instant application, suit or a petition (as the case may be).

20. That the **Black's Law Dictionary 10th Edition**, defines the **doctrine of exhaustion** as follows:

> ***"Exhaustion of remedies: The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the Courts and administrative agencies and to ensure that Courts will not be burdened by cases in which juridical relief is unnecessary"***

21. That, it is trite law where a question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks

redress from a Court of Law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.

22. Reliance is placed on the case of **Mokua v Nvasani & 4 others (petition 001 of 2024) KFHC 3213 (KLR)** Justice W.A Okwany stated as follows;

> ***".....In conclusion, I find that this Court finds that it lacks the jurisdiction to entertain the Petition and the Notice of Motion Application filed by the Petitioner as there exists other dispute resolution mechanism provided for under the FKF constitution and the Sports Act. I therefore find that the Preliminary Objection filed on 20th February 2024 is merited and I therefore allow it. Consequently, I strike out both the Petition and Application. I make no orders as to costs as the protagonists herein are members of the same organization....".***

23. That, Jurisdiction is everything in any litigation, the petitioner has skipped the appropriate avenues to air his grievances. The Sports Act is very clear that in any event an individual is aggrieved with the decisions of the sports organization NOCK herein may appeal to the tribunal within thirty days the election.

24. Further Reliance is placed on the case of **William Odhiambo Ramogi & 3 others v Attorney General & 4 others: Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR** the Court held as follows: -

> ***"The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts"***

25. The 1st Respondent relies on the well-established principle enunciated in **Speaker of the National Assembly Vs Njenga Karume [1992] KLR 21**. where the Court held that; where there is a clear procedure prescribed by law for redress of any particular grievance, that procedure should be strictly followed.

26. Further reference is made to the case of **Geoffrey Muthinla & Another vs. Samuel Muguna Henry & 1756 others 2015) KLR**, where the learned judges observed as follows:

> ***"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 the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts. This accords with Article 159 the. Constitution which commands Courts to encourage alternative means of dispute resolution."***

27. That it is trite law that it is imperative that where a dispute resolution mechanism exists outside Courts or in this case, outside the High Court, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within the Sports organizations as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts. This accords with **Article 159** of the Constitution which commands Courts to encourage alternative means of dispute resolution.

28. Further the Court is invited to enforce the doctrine of Constitutional avoidance. **Black's Law Dictionary, 10th Edition at page 377** defines the **doctrine of constitutional avoidance** as follows: -

> ***"The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion"***

29. Reliance is placed on the Supreme Court case in **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 144. 148 & 14C of 2014 of 2014] eKLR** thus: -

> ***"The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis"***

30. The 1st Respondent submits that, it is not the mandate or business of this Court to appoint or impose officials of the National Olympic Committee of Kenya (NOCK) as alleged by the Applicant. The NOCK Constitution expressly provides the procedures, guidelines, and mechanisms for the nomination, election, and appointment of its officials. Accordingly. the Court cannot interfere or substitute the powers and functions of the NOCK Constitution. Therefore the 1st Respondent is governed by the NOCK constitution and in its **Article 17** provides for the process of elections and the Nock Elections and Rules and Regulations, 2025. That procedure which was clearly set out and must be strictly followed.

31. The 1st Respondent urged with greatest respect that the application is a blatant abuse of the due process of this Court and ought to be struck out *in Limine*. It was frivolous, vexatious, and devoid of any *bona fide* cause of action, serving no purpose other than to harass the Respondents and undermine the proper administration of justice. This Court is therefore "urged to dismiss the same at the earliest opportunity to prevent further wastage of judicial time and resources

32. That in light of the foregoing, it is evident beyond a peradventure that the Petitioner has circumvented the clear statutory dispute resolution framework and prematurely invoked the jurisdiction of this Court. Upholding the doctrine of exhaustion not only preserves the integrity of our judicial hierarchy but also ensures that matters are first addressed by the competent bodies specifically established to handle them.

33. Finally, the 1st Respondent urges this Court to down its tools in line with the principle of jurisdiction articulated in **Owners of the Motor Vessel "Lillian" "S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** and adjudge that this petition is improperly before the Court and thereby strike it out in Limine and/or dismiss it with costs.

Analysis and Determination

34. This Court may entertain an allegation of infringement of a fundamental right or freedom, where it is demonstrated that, no other statutory mechanism exists that would address disputes arising or that the subsisting statutory mechanism is inadequate under the circumstances to redress the grievance.

35. The Primary dispute resolution forum in matters of sports is the Sports Disputes Tribunal (SDT) in Kenya, established under the Sports Act of 2013, with jurisdiction over sports-related conflicts, including appeals from national sports organizations, team selection disputes, and disciplinary actions. It also handles doping violations under the Anti-Doping Act of 2016 and disputes involving the 2nd Respondent-Registrar of Sports.

36. The 2nd Respondent on his part is bestowed with jurisdiction to monitor and supervise the management and administration of all registered sports organizations to ensure compliance with their constitutions, rules and the law. To discharge this duty, the office has power to inspect books, accounts and records of sports organizations oversee federation elections and ensure compliance with respective constitutions and the law.

37. The Sports Registrar Regulations 2016 provides for, registration of sports bodies, licensing of sports persons, division of sports organization's revenue, inspection of sports organization, elections in sports organizations and arbitration and mediation of sports disputes by the Registrar, among other miscellaneous matters.

38. In **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others Nairobi Constitutional Petition No. 453 of 2015 [2016] eKLR**, *Onguto J* stated:

> ***[27] Effectively, the justiciability dogma prohibits the Court from entertaining hypothetical or academic interest cases……. The Court is prevented from determining an issue when it is too early or is simply out of apprehension, hence the principle of ripeness. An issue before Court must be ripe, through a factual matrix for determination.***

39. The doctrine of constitutional avoidance, therefore, deals with instances where a Constitutional Court will decline to deal with a matter because there exists another remedy provided in law which the aggrieved party is yet to utilize. That is also referred to as **the doctrine of exhaustion.**

40. A 5-Judge Bench in ***Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 (2020) eKLR*** elaborately dealt with the doctrine of exhaustion. The Court stated as follows: -

> *52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the Constitution and was*

aptly elucidated by the High Court in ***R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR,*** *where the Court opined thus:*

42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in ***Speaker of National Assembly v Karume [1992] KLR 21*** *in the following oft-repeated words:*

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.

43. While this case was decided before the Constitution of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.

This is ***Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others [2015] eKLR,*** *where the Court of Appeal stated that:*

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

41. Returning to the case at hand, this Court whilst sitting as a Constitutional Court, ***must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies***.

42. No evidence of exhaustion of administrative redress mechanism located within the Sports Act, has been show-cased by the Petitioner and that, a logical deduction would lead one to conclude that, the Petition is premature before this Court. The 2nd Respondent has not been showed to have taken any decision in this matter or the Petitioner

have not detailed efforts made to get the 2nd Respondent to address the concerns giving rise to this petition.

43. The Petition fails to meet the threshold set out in **Anarita Karimi Njeru's** Case as it is trite that, ***a party seeking judicial review remedies in a constitutional petition must first satisfy jurisdictional threshold that, the petition seeks to uphold and enforce the Bill of Rights***. In this instance both petitions fail to articulate the fundamental right(s) or freedom(s) that is/are sought to be upheld or enforced.

44. With regards to litigation pre-empting the conduct of 1st Respondent's Elections 2024 on the allegation that, if the same is allowed it shall contravene his fundamental rights, this Court is of the view that an illegal or unlawful election result can be nullified *post-facto* and as such, redressing an impending illegal or unlawful association election in a constitutional petition remains unideal.

45. The Petitioner has failed to established the violation(s) of the constitutional rights by the Respondents and that, the doctrine of non-justiciability is applicable in this Petition. The Petitioner ought to have engaged with and exhausted the mechanism provided for, under the Sports Act before approaching this Court. This petition offends the doctrine of exhaustion of remedies. On this ground alone, the petitioners' petition fails.

46. The upshot of my analysis is that, the Petition dated 14th April 2025 by **Julius R. Arusei** has failed to satisfy the threshold test as set-out in the **Anarita Karimi Njeru** Case and that the doctrine of non-justiciability is applicable to the extent that an appropriate forum ought to have been utilized.

47. The Sports Act encourages the use of other alternative disputes resolutions mechanism and the Sports tribunal sits on Appeal against the decisions of the 2nd Respondent. Litigation and in a constitutional petition should be the last port of call and only in exceptional cases.

48. It should further be noted that the decisions by the Sports Tribunal are subject to judicial review.

49. Constitutional law litigation has more and more veered away from awarding costs orders to parties bearing their own costs and this Court conforms to the school of thought that, adverse cost orders can be made in exceptional cases and that the conducts of the party, prior, during the dispute and during the hearing may inform the decision. In this instance the wrangle is on the leadership and management of a membership association.

50. Any adverse cost orders made against the Respondents would be payable by the membership and the converse is that the Respondents are not without fault the Petitioner's grievances are in the wrong forum and the petitioner genuinely believe he could seek redress in a Constitutional Court an adverse cost order would not be ideal as the

intention was to ensure the strict observance to the association constitution and well-being of the association.

51. I accordingly cannot find in favour of any of the issues in consideration and the petition thus fails for want of merit.

This Petition is disallowed.

Orders

i. *Petition is hereby dismissed.*

ii. *The parties to bear their own costs.*

It is so Ordered.

Dated, signed and delivered at Nakuru
this 11th day of March 2026.

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Mohochi S.M.
JUDGE