



REPUBLIC OF KENYA



**KENYA LAW**  
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**Anuri & another v Borabu Sub-County Co-operative Officer & 2 others (Petition E006 of 2025) [2026] KEHC 2860 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PETITION E006 OF 2025  
TW CHERERE, J  
FEBRUARY 5, 2026**

**BETWEEN**

**NICODEMUS ONG'ERA ANURI ..... 1<sup>ST</sup> PETITIONER**

**WILFRED GICHANA OGATO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**BORABU SUB-COUNTY CO-OPERATIVE OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER TRADE AND COOPERATIVES NYAMIRA  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**KAMASEGA FARMERS CO-OPERATIVE SOCIETY LTD ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This Petition concerns the conduct of elections of officials of Kamasega Farmers Co-operative Society Ltd, allegedly held on 28<sup>th</sup> September 2021. The Petition dated 04<sup>th</sup> May 2025 invokes Articles 10, 23, 27, 35 and 47 of *the Constitution* of Kenya, 2010.
2. The Petitioners seek the following reliefs,
  1. A declaration that the decision by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to convene a meeting and conduct an election for the officials of the 3<sup>rd</sup> Respondent on 28<sup>th</sup> September 2021 at Nyagacho Grounds, a location different from the officially published venue of Mwangori Farmers Co-operative Society Grounds, was arbitrary, unfair, unconstitutional and unlawful, and violated the constitutional principles of openness and transparency espoused under Article 10 of *the Constitution*, thereby infringing the Petitioners' right to access correct information under Article 35 of *the Constitution* and their right to fair administrative action under Article 47 of *the Constitution*, and is therefore null and void.



2. A declaration that the Petitioners' right to fair administrative action under Article 47 of *the Constitution* was violated.
  3. An order of certiorari to issue removing into this Honourable Court the decision by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents recognising a meeting allegedly held on 28<sup>th</sup> September 2021 at Nyagacho Grounds, and the resultant names of officials of the 3<sup>rd</sup> Respondent allegedly elected therefrom, for purposes of being quashed.
  4. An order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be condemned to pay the costs of the Petition.
3. The Petition is opposed by all the Respondents. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents rely on a Replying Affidavit sworn on 16<sup>th</sup> September 2025 by Moenga W. Momanyi and written submissions dated 04<sup>th</sup> November 2025. The 3<sup>rd</sup> Respondent relies on a Replying Affidavit sworn by Samuel Obaga Ayore and written submissions dated 23<sup>rd</sup> October 2025.

### **The petitioners' case**

4. The Petitioners aver that they are nominees and beneficiaries of deceased original members of the 3<sup>rd</sup> Respondent Society and are therefore entitled to participate in its affairs.
4. They state that by a Notice dated 06<sup>th</sup> September 2021, an Annual General Meeting of the Society was convened for 28<sup>th</sup> September 2021 at Mwangori Farmers Co-operative Society Grounds, with elections forming part of the agenda.
4. According to the Petitioners, no meeting or elections took place at Mwangori Grounds. They contend that elections were instead conducted at Nyagacho (Kamasega) Grounds without notice to them.
4. They argue that the alleged change of venue was arbitrary and lacked transparency, that non-members and deceased persons participated in the meeting at Nyagacho Grounds, and that the recognition of officials arising therefrom violated Articles 10, 35 and 47 of *the Constitution*.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' case**

8. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents contend that the dispute concerns internal affairs of a co-operative society —membership, meetings and elections and falls within the statutory dispute resolution mechanism under the *Co-operative Societies Act* (Cap. 490).
8. They argue that the Petition is barred by the doctrine of exhaustion, that the elections complained of occurred in 2021 and have since been overtaken by several subsequent annual election cycles, and that no constitutional violation has been demonstrated.

### **The 3<sup>rd</sup> Respondent's case**

8. The 3<sup>rd</sup> Respondent states that the Petitioners are nominees of deceased members and therefore members of the Society, but maintains that a valid meeting and elections were conducted and disputes the legality of any parallel meeting.

### **Issues for determination**

11. The Court identifies the following issues for determination:
  1. Whether the dispute falls within section 76(1) of the *Co-operative Societies Act*;
  2. Whether the Petition is barred by the doctrine of exhaustion;



3. Whether the dispute has been overtaken by events;
4. Whether any constitutional violation under Articles 10, 23, 27, 35 and 47 has been demonstrated;
5. Whether the Petitioners are entitled to the reliefs sought.

### **Analysis and determination**

#### **Statutory Jurisdiction and Exhaustion**

12. The substance of the Petitioners' grievance concerns the conduct of meetings and elections of a co-operative society, including issues of venue, quorum, participation and recognition of officials.
12. Section 76(1) of the *Co-operative Societies Act* mandates that disputes concerning the business of a co-operative society between members and the society or its officers shall be referred to the Co-operative Tribunal.
12. The Petitioners claim through deceased members and direct their grievance against the Society and its officers in relation to the conduct of elections, a matter that goes to the core business of a co-operative society. The dispute therefore falls squarely within section 76(1) of the *Co-operative Societies Act*.
12. Jurisdiction flows from *the Constitution* or statute and cannot be implied where none is expressly conferred. In *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others*, Supreme Court Application No. 2 of 2011 [2012] eKLR, the Supreme Court affirmed that a court's jurisdiction flows from either *the Constitution* or legislation and cannot be assumed or expanded by judicial interpretation. The Petitioners did not demonstrate that they invoked or attempted to invoke the Co-operative Tribunal, nor did they establish any exceptional circumstances warranting bypass of the statutory mechanism.
12. The Petition is therefore barred by the doctrine of exhaustion. This position accords with settled jurisprudence that where statute provides a clear procedure for redress, that procedure must be followed before recourse to court. The Court of Appeal has consistently affirmed this doctrine, including in *Mutanga Tea & Coffee Company Ltd v Shikara Ltd & Another* [2015] eKLR, *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR, and more recently in *Nyaoga v Chairman, Kisii County Assembly & 3 Others* [2023] KECA 1540 (KLR), where the Court underscored that courts should be approached as a forum of last resort after available statutory and administrative remedies have been exhausted.

#### **Whether the Dispute Has Been Overtaken by Events**

12. It is trite that a court cannot issue orders in vain. As observed by Ojwang, J. (as he then was) in *B v Attorney General* [2004] 1 KLR 431, a court must not make orders in vain, as to do so would expose the judicial process to ridicule and undermine the rule of law.
12. In the present case, the elections complained of were conducted in September 2021. The Petitioners have not disputed the Respondents' averments that several subsequent annual election cycles have since taken place.
13. In those circumstances, any orders quashing elections held in 2021 would serve no practical purpose and would amount to an academic exercise. This Court therefore declines to grant reliefs that would be devoid of practical utility.



## **Alleged Constitutional Violations**

19. The Petitioners invoked Articles 10, 23, 27, 35 and 47 of *the Constitution*. The Court considers each in turn.
19. Article 10 sets out national values and principles of governance. It does not operate as a stand-alone cause of action. The Petitioners' complaint arises from statutory processes governing co-operative societies. Petitioners did not demonstrate how the alleged irregularities amounted to a distinct constitutional violation beyond a statutory grievance.
19. Article 23 is remedial in nature and does not create substantive rights. In the absence of proof of a substantive violation of the Bill of Rights, Article 23 cannot independently sustain the Petition.
19. Article 27 guarantees equality and freedom from discrimination. The Petitioners did not plead or prove any differential treatment on a prohibited ground. Exclusion from a meeting, without more, does not constitute discrimination within the meaning of Article 27.
19. Article 35 guarantees the right of access to information. The Petitioners did not demonstrate that they made a request for specific information and that such request was denied. Alleged failure to receive notice of a meeting does not, of itself, meet the constitutional threshold under Article 35.
20. Article 47 guarantees the right to fair administrative action. While the actions of public officers may attract the application of Article 47, that Article cannot be invoked to bypass a clear statutory framework providing a specialised dispute resolution mechanism, absent exceptional circumstances. None were demonstrated in this case.
21. The Court therefore finds that no constitutional violation has been established.

## **Disposition**

26. Prayer (1) of the Petition sought a declaration impugning the decision to convene and conduct elections of the 3rd Respondent at Nyagacho Grounds and alleged violations of Articles 10, 35 and 47 of *the Constitution*. As already found, the substance of the dispute concerns the conduct of elections and governance of a co-operative society, matters that fall squarely within the ambit of section 76(1) of the *Co-operative Societies Act*. The Petition is further barred by the doctrine of exhaustion and, in any event, the impugned elections have been overtaken by subsequent election cycles. The Court has also found that no independent constitutional violation was demonstrated. In those circumstances, there is no basis for granting the declaratory relief sought, and Prayer (1) is thus declined.
26. Prayer (2) of the Petition sought a declaration that the Petitioners' right to fair administrative action under Article 47 of *the Constitution* was violated. As analysed above, Article 47 cannot be invoked to bypass a clear statutory framework providing a specialised dispute resolution mechanism, absent exceptional circumstances. No such circumstances were established and Prayer (2) is therefore declined.
26. Prayer (3) of the Petition sought an order of certiorari to quash the recognition of officials allegedly elected on 28<sup>th</sup> September 2021. The Court has found that the impugned elections took place in 2021 and that several subsequent annual election cycles have since occurred. An order of certiorari in those circumstances would be issued in vain and Prayer (3) is therefore declined.
26. Prayer (4) of the Petition sought costs against the 1st and 2nd Respondents. Costs ordinarily follow the event, unless the Court, for good reason, orders otherwise. The Petition having failed in its entirety, there is no basis for departing from that principle. Prayer (4) is therefore declined.



26. From the foregoing analysis, I have come to the conclusion that this Petition does not meet the threshold of a Constitutional Petition and it is dismissed.

26. It is trite that costs follow the event and a successful litigant ought to be fairly reimbursed for the costs that have been incurred. This court determines that this Petition is frivolous and condemns the Petitioner to pay costs to the Respondents.

**DELIVERED AT NYAMIRA THIS 05<sup>TH</sup> DAY OF FEBRUARY 2026**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Hilda

For Petitioners - Mr. Nyamweya for E.N.Mogusu & Associates

For 1<sup>st</sup> and 2<sup>nd</sup> Respondents – Mr. Maronga for Office of the County Attorney

For 3<sup>rd</sup> Respondent - Mr. S.M.Sagwe & Company Advocates

