



**Gaitho & 6 others v Ruiru Sports Club & 4 others (Constitutional Petition  
E012 of 2025) [2026] KEHC 2567 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CONSTITUTIONAL PETITION E012 OF 2025**

**TW OUYA, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**VINCENT GICHURU GAITHO ..... 1<sup>ST</sup> PETITIONER  
GIDEON GACHIRI GATHARA ..... 2<sup>ND</sup> PETITIONER  
DOMINIC CHEGE NDUNG’U ..... 3<sup>RD</sup> PETITIONER  
GABRIEL MUINDI MUTHWALE ..... 4<sup>TH</sup> PETITIONER  
MATTHEW CIIRA KIIYUKIA ..... 5<sup>TH</sup> PETITIONER  
LUCY MUTHONI WAHITO KWENDO ..... 6<sup>TH</sup> PETITIONER  
THOMAS NJINO MWAURA ..... 7<sup>TH</sup> PETITIONER**

**AND**

**RUIRU SPORTS CLUB ..... 1<sup>ST</sup> RESPONDENT  
JESSY NDEGWA ..... 2<sup>ND</sup> RESPONDENT  
ELIUS GITONGA KARIUKI ..... 3<sup>RD</sup> RESPONDENT  
JOHN GITAU MWANGI ..... 4<sup>TH</sup> RESPONDENT  
RUTH G KAMAU ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioners filed the instant application vide a Notice of Motion dated 10<sup>th</sup> April seeking conservatory orders to restrain the Respondents, their officials, servants, agents, members or any other persons acting under their authority from enforcing, implementing or otherwise giving effect to letters dated 16<sup>th</sup> March 2025 purporting to suspend or restrict the Petitioners, membership access to the



- club, and also from publishing disparaging remarks against the Petitioners in any forum, including WhatsApp or any other digital platform.
2. The application was brought on grounds on its face as well as the affidavit of Vincent Gichuru Gaitho in support of the application where it was deponed that despite the petitioners being bona fide registered members of the 1<sup>st</sup> Respondent, the 4<sup>th</sup> Respondent conspired with the 2<sup>nd</sup> to 5<sup>th</sup> Respondents to unlawfully suspend them from club membership.
  3. The Respondents raised a preliminary objection dated 6<sup>th</sup> June 2025 challenging the jurisdiction of this honourable court to determine the dispute as the Petitioners have failed to exhaust internal remedies available to them pursuant to Section 9 (2) and (3) of the *Fair Administrative Action Act*. The 1<sup>st</sup> Respondent has internal remedies for resolving any disputes arising between the 1<sup>st</sup> Respondent and the Petitioners. Therefore, the application is an abuse of the court process.
  4. The court directed that the Preliminary Objection be canvassed through written submissions.
  5. The Petitioner submitted that the Respondents Preliminary Objection is misplaced, premature and fatally flawed as it is anchored on disputed facts, presumes contentions not pleaded or admitted, and seeks to prematurely curtail the Petitioners' constitutional right to be heard.
  6. It is further submitted that the jurisdiction of this honourable court has been properly invoked as Article 165 of the *constitution* vests the High Court with original unlimited jurisdiction on all civil and criminal matters, including the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
  7. The Petitioner further submitted that despite section 9 (2) of the *Fair Administrative Actions Act* that requires exhaustion of internal remedies, Section 9 (4) thereof empowers the High Court to exempt a person on application from the obligation to exhaust any remedy. Therefore, the facts of the instant case deserve the exercise of the exception as the *constitution* of the 1<sup>st</sup> Respondent has no clause on dispute resolution nor any credible internal appellate mechanism. In the alternative, the disciplinary committee allegedly created by the 1<sup>st</sup> Respondent is neither impartial, independent nor properly constituted and any referral thereto would amount to subjecting the Petitioners to further procedural injustice.
  8. The Petitioners therefore prayed that the PO be dismissed as the Petition raises a reasonable cause of action to the threshold enunciated in *Anarita Karimi Njeru v The Republic* [1979] and *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR.
  9. I have considered the issues raised herein. This being a decision on a preliminary objection, the Court ought to set out the principles guiding the raising of such objections. In NBI High Court (Civil Division) Civil Case No 102 of 2012 - *Cberaik Management Limited v National Social Security Services Fund Board of Trustees & Another* this Court expressed itself, *inter alia*, as follows:

“ Ordinarily, a preliminary objection should be based on the presumption that the pleadings are correct. It may also be based on agreed facts. It, however, cannot be entertained where there is a dispute as to facts for example where it is alleged by the defendant and denied by the plaintiff that a condition precedent to the filing of the suit such as the giving of a statutory notice was not complied with, unless the fact of nongiving of the notice is admitted so that the only question remaining for determination is the legal consequence thereof. It may also not be entertained in cases where the Court has discretion whether or not to grant the orders sought for the simple reason that an exercise of judicial discretion depends largely on the facts of each particular case which facts must be established before a Court



may exercise the discretion...In this case both parties have adopted the unusual mode of arguing the preliminary objection by filing affidavits in support and in opposition thereof respectively. Accordingly, part of the Court's task would be to determine what are the agreed facts contained therein whether expressly or by legal implication."

10. I therefore find that an issue of jurisdiction and improper institution of proceedings can perfectly form the basis of preliminary objections as long as the facts relied upon are not in dispute.

11. The issue of jurisdiction is central to these proceedings and any legal proceedings, as was stated by Nyarangi JA in *The Owners of Motor Vessel "Lillian S" v. Caltex Oil Kenya Limited* (1989) KLR 1:

"Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".

12. It therefore behoves this Court to consider and determine whether or not it has jurisdiction to entertain the instant proceedings. Section 76 of *Co-operative Societies Act* provides:

(1) If any dispute concerning the business of a co-operative society arises—

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between members, past members or deceased members, and the society, its committee or any officer of the society; or
- (c) between the society and any other co-operative society, it shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include—

- (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
- (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

13. In this case, it is clear that with respect to the suspension from club membership, the dispute is between the members or some of them on one hand and the Co-operative Society and its officials on the other and therefore falls squarely within the purview of section 76(1)(b) of the *Act*. If that is the dispute before the Court, this Court would have no jurisdiction to entertain these proceedings. This was the position in *Adero & Another v. Ulinzi Sacco Society Ltd* [2002] 1 KLR 577, where Ringera, J (as he then was) held that:

"As the subject matter of the suit was a dispute between a registered Co-operative Society and its members, the dispute should not have been filed in the High Court by dint of the provisions of Section 76 of the Cooperative Societies Act, 1997. The forum with



jurisdiction is the Co-operative Tribunal. The High Court has no jurisdiction to entertain a dispute between a society and its members concerning the business of the society.”

14. The doctrine of exhaustion is addressed in the case of *Nyaoga v Chairman Kisii County Assembly & 3 Others* [2023] KECA 1540 (KLR), where the court held that:

“The doctrine of exhaustion of remedies was created by courts in order to promote an efficient justice system and autonomous administrative state. It is a principle that requires parties to exhaust all available local administrative remedies before seeking redress in a court of law on a constitutional issue. An aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand. The reason for this is to allow administrative agencies to address and to potentially resolve the issue before escalating the same to the courts”.

15. The Petitioner’s fear that the Respondent lacks internal mechanisms to handle the dispute is unfounded since the cooperative tribunal has mechanisms for dealing with such disputes.

16. In my view, although the orders which the applicants seek from this Court can be granted by this Court, there being a provision giving such power to the Cooperative Tribunal, this court will exercise restraint and defer the dispute to the Tribunal to enable the Petitioners exhaust the internal remedies.

17. In *William Odhiambo Kamogo & 3 Others V Attorney General & 4 Others* [2020] eKLR, the Court of Appeal stated:

“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 a party is, first of all, diligent in the protection of his own interest within the mechanism in place for resolution outside the courts.”

18. Whereas the Court has original unlimited jurisdiction in all matters, where there is a dispute between members of a cooperative society and the cooperative society, the proper forum to ventilate and address the issue is the Cooperative tribunal.

19. The upshot of the matter is that the Preliminary Objection succeeds and the suit is struck out. Each party to bear its costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. T. W. OUYA**

**JUDGE**

For Petitioner/Respondent.....Ng’ang’a

For Applicant.....Ndeda h/b Juma

Court Assistant.....Brian

