

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E440 OF 2023

IN THE MATTER OF THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22,
23, 24, 27, 28, 33(1)(a), 47, 48, 50, 74, 232, 258, AND 259 OF THE CONSTITUTION
OF KENYA

AND

IN THE MATTER OF VIOLATION AND CONTRAVENTION OF CONSTITUTIONAL
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 36 OF THE
CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTIONALITY OF PART OF SECTION 12(1) OF THE
SURVEY ACT, CAP. 299

AND

IN THE MATTER OF THE CONSTITUTIONALITY OF PART OF REGULATION 15 OF
THE SURVEY REGULATIONS, 1994

BETWEEN

MIKE

KELVIN

MUTHUMBA.....PETITIONER

VERSUS

LAND SURVEYORS BOARD.....1ST RESPONDENT

INSTITUTION OF SURVEYORS OF KENYA.....2ND
RESPONDENT

HON. ATTORNEY GENERAL.....3RD
RESPONDENT

THE NATIONAL ASSEMBLY.....4TH RESPONDENT

JUDGMENT

INTRODUCTION

1. The Petitioner, Mike Kelvin Muthumba, describes himself as a Land Surveyor and an Advocate of the High Court of Kenya. He holds a Bachelor's degree in Land Surveying from the Technical University of Kenya (2015) and a Diploma in Land Surveying from the Kenya Institute of Surveying and Mapping (2010), with over twelve years of work experience. By his Amended Petition dated 29th November 2023, he challenges the constitutionality of certain provisions of the Survey Act, Cap 299, and the Survey Regulations, 1994, which require a person seeking to be licensed as a land surveyor to produce evidence of full membership of the Institution of Surveyors of Kenya (ISK).
2. This court is thus called upon to determine whether the impugned provisions, which compel membership in a professional association as a prerequisite for state licensing, violate the constitutional guarantee of freedom of association under Article 36 of the Constitution. The Petition raises fundamental questions about the permissible limits of state regulation of professions, the autonomy of professional bodies, and the balance between individual rights and the public interest in maintaining professional standards.

3. The Petitioner thus seeks the following reliefs from this court, verbatim:

“

- i. A DECLARATION THAT part of section 12(1) of the Survey Act Cap. 299 that reads“including evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors)” is unconstitutional with regard to Article 36 of the constitution on Freedom of Association and, therefore, invalid, null and void.
- ii. A DECLARATION THAT part of Regulation 15 of the Survey Regulations of 1994 that reads “and production of evidence of full membership of the Institution of Surveyors of Kenya, Chapter of Land Surveyors” is unconstitutional with regard to Article 36 of the constitution on Freedom of Association and, therefore, invalid, null and void.
- iii. A DECLARATION THAT part of section 12(1) of the Survey Act Cap 299 and Regulation 15 of the Survey Regulations, 1994 requiring the Petitioner to be a full member of the Institution of Surveyors’ of Kenya violates the Petitioner’s rights and freedom under Article 36 of the constitution and is invalid, null and void.
- iv. A DECLARATION THAT that the Land Surveyors’ Board has the Authority to license and regulate the land survey profession as outlined under Section 9 of the Survey Act, Cap.299 and that the Institution of Surveyors’ of Kenya has no mandate in Licensing Land Surveyors.
- v. The 1st and 2nd Respondents be and are hereby directed to bear the costs of this Petition jointly and severally.

vi. *Any other relief the court may deem just to grant.*”

BACKGROUND

4. The genesis of this dispute lies in the Petitioner's application to the 1st Respondent, the Land Surveyors' Board (LSB), for a land surveying license. By a letter dated 30th August 2023, the Petitioner applied for the license, attaching his academic certificates for consideration. In his application, the Petitioner represented that he had over twelve years of experience, held a Bachelor's degree in Land Surveying from the Technical University of Kenya (2015) and a Diploma from the Kenya Institute of Surveying and Mapping (2010), and had sat for and passed the Board's Land Law Examination in 2019.
5. In response, the Land Surveyors' Board, through its letter ref: AR7/VOL.41/30 dated 29th September 2023, did not expressly reject the application but rather forwarded to the Petitioner a comprehensive checklist of mandatory requirements that every surveyor pursuing a land survey license must fulfil. Among the listed requirements was the need for "Full membership of Institution of Surveyors of Kenya, with a certificate of good standing and up to date payment." The letter further indicated that this requirement was provided for under Section 12(1) of the Survey Act, Cap 299, and Regulation 15 of the Survey Regulations, 1994.
6. The Petitioner, taking the view that the requirement for ISK membership was unconstitutional, did not proceed to comply with the said requirement.

Instead, he lodged the instant Petition, contending that being compelled to join the 2nd Respondent as a precondition for obtaining a state license violates his right to freedom of association guaranteed under Article 36 of the Constitution.

7. According to the Petitioner, the Institution of Surveyors of Kenya was inaugurated by forty-four founding members on 17th April 1969 and subsequently registered on 12th August 1969 as a body corporate under the Societies Act. He contends that the ISK is not a creature of statute but a voluntary association of like-minded professionals, whose membership ought to be a matter of personal choice and not state compulsion.
8. The Petitioner further contends that the Land Surveyors' Board, established under Section 7 of the Survey Act, is the statutory body solely mandated with the licensing and regulation of land surveyors. He points to Section 9 of the Survey Act which outlines the duties of the Board, including conducting examinations for candidates, granting licenses, keeping a register of licensed surveyors, and taking disciplinary proceedings against licensed surveyors. He argues that the ISK has no statutory mandate in the licensing or regulation of the profession, and that its objects, as set out in its own Constitution and By-laws, do not include regulatory functions over the profession.
9. The Petitioner also raises a broader concern regarding the impact of the impugned provisions on the surveying profession in Kenya. He avers that as

a result of the requirement for ISK membership, the Land Surveyors' Board has only licensed 235 land surveyors since the inception of the profession in Kenya in 1903, with only about 109 surveyors in active practice. He contends that this requirement has locked out thousands of qualified surveyors from obtaining licenses, thereby stifling the profession and limiting public access to surveying services.

10. The Respondents, in their various responses, have stoutly defended the constitutionality of the impugned provisions and the role of the ISK in the broader regulatory framework for the surveying profession.

THE PETITIONER'S CASE

11. The Petitioner's case is founded on the contention that the requirement for compulsory membership in the Institution of Surveyors of Kenya, as a precondition for obtaining a license to practice as a land surveyor, constitutes a violation of his right to freedom of association under Article 36 of the Constitution. The Petitioner anchors his claim on several constitutional provisions, including Articles 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 47, 48, 50, 74, 232, 258, and 259 of the Constitution.
12. In his Amended Petition dated 29th November 2023, the Petitioner sets out the factual foundation for his claim. He avers that he holds a Bachelor's degree and a Diploma in Land Surveying with over twelve years of work experience. He made an application for a Land Surveying License to the 1st Respondent on 30th August 2023. In response, the 1st Respondent indicated

that among the requirements for licensing, the Petitioner must be registered as a full member of the Institution of Surveyors of Kenya.

13. The Petitioner contends that the Institution of Surveyors of Kenya was inaugurated by forty-four founding members on 17th April 1969 and subsequently registered on 12th August 1969 as a body corporate under the Societies Act. He argues that from 1969, the ISK carried out sensitization meetings where members lobbied surveyors to join the institution as a platform to raise concerns and uplift the profession, demonstrating its nature as a voluntary professional association rather than a statutory regulatory body.

14. The gravamen of the Petitioner's complaint is directed at part of Section 12(1) of the Survey Act Cap.299 and part of Regulation 15 of the Survey Regulations of 1994. Section 12(1) of the Survey Act provides for exemptions from the whole examination or from examination in any subject for persons who meet certain qualifications, and includes the requirement for "production of such evidence thereof as may be prescribed including evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors)." Regulation 15 of the Survey Regulations similarly provides that the Board may accept certain examinations in lieu of setting similar examinations, with the exception of a Trial Survey, a written paper on Kenya Land Law and production of evidence of full membership of the Institution of Surveyors of Kenya, Chapter of Land Surveyors.

15. The Petitioner argues that these provisions compel him to join an association of any kind, contrary to Article 36 of the Constitution. He contends that the ISK is not a creation of the law but an association of like-minded individuals registered under the Societies Act, and that it is a violation of the Constitution to have a provision in the Survey Act compelling persons to join an organization that is alien to statutes and whose objects do not include licensing and regulation of the profession.
16. The Petitioner places reliance on Section 9 of the Survey Act Cap.299, which outlines the duties of the Land Surveyors Board. These duties include conducting examinations of candidates for admission as licensed surveyors, granting licences, keeping a register of all licensed surveyors, taking disciplinary proceedings against licensed surveyors, hearing and determining disputes between licensed surveyors and their clients as to fees, hearing and determining disputes between the Director and a licensed surveyor as to the application of regulations, and advising the Director on all matters relating to cadastral surveys. From these functions, the Petitioner contends that it is clear that the Institution of Surveyors of Kenya has no statutory mandate in regulation of the profession, and the objects of the ISK also do not provide for the regulatory aspect of the profession.
17. The Petitioner invokes Article 24 of the Constitution, which provides that rights and fundamental freedoms shall not be limited except by law, and that any limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. He argues that the limitation of the

freedom of association under Article 36 is not reasonable and justifiable, as the Land Surveyors Board has all the legal mechanisms to regulate the profession as demonstrated through Section 9 of the Survey Act, and there are less restrictive means to achieve the purpose of regulation, such as the model provided in the Physical Planners Registration Act which requires registration of physical planners but allows them to be members of any approved association under Section 12 of that Act.

18. In his written submissions dated 26th February 2024, the Petitioner framed six issues for determination. On the first issue regarding whether the ISK is a statutory body established by an Act of Parliament, the Petitioner submits that the ISK was inaugurated by forty-four founding members on 17th April 1969 and registered on 12th August 1969 as a body corporate under the Societies Act. He contends that in the replying affidavit of Mr. Eric Nyadimo, the 2nd Respondent has not provided any legal framework establishing the ISK. He further submits that Section 3 of the Judicature Act identifies various sources of Kenyan law and a constitution of a society is not one of them.

19. On the second issue regarding whether the ISK has a role in licensing and regulation of land surveyors as per Section 9 of the Survey Act, the Petitioner submits that the ISK has no legal role in licensing and regulation of surveyors. He relies on the case of ***Eunice Nganga & another v Law Society of Kenya & another [2019] eKLR***, where the court observed that the legal profession is unique and it would be difficult to argue that advocates can join any other profession and still practice the profession because

advocates deal with clients and are accountable to the clients and the court. The Petitioner argues, by analogy, that he can be licensed by the Land Surveyors Board which is mandated by the Survey Act to license and regulate the land survey profession, and membership to the ISK has no legal basis in regulating land surveyors.

20. On the third issue regarding whether a limitation under Article 24 of the right to freedom of association under Article 36 is reasonable and justifiable, the Petitioner addresses each of the factors under Article 24(1). On the nature of the right, he submits that his right to freedom of association does not in any way affect the regulatory aspect of the profession, and the ISK has no statutory mandate in the licensing and regulation of the profession. On the importance of the purpose of the limitation, he submits that the limitation has no significant importance given that the Land Surveyors Board has all the statutory obligations under Section 9 of the Survey Act to license surveyors and regulate the profession. He cites *Olum and another v Attorney General [2002] EA*, where the court stated that to determine the constitutionality of a section of a statute, the court has to consider the purpose and effect of the impugned statute or section thereof.

21. On the need to ensure that the enjoyment of rights does not prejudice the rights and freedoms of others, the Petitioner submits that the ISK does not have a role in cautioning the public from the infiltration of quacks in the profession, as that responsibility is with the Land Surveyors Board. On the

relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose, the Petitioner submits that the ISK was formed by disgruntled surveyors who felt that the Board was too rigid in the licensing of surveyors and was meant to be a vehicle through which surveyors could voice their grievances. He contends that the Physical Planners Registration Act provides a less restrictive model by allowing physical planners to be members of any approved association under Section 12 of the Act.

22. On the fourth issue regarding whether the state has justified the limitation, the Petitioner submits that the state has not demonstrated that the ISK has any statutory role in regulation of the land surveying profession. He points to the replying affidavit of Mr. Eric Nyadimo, where the 2nd Respondent states that the Petitioner can alternatively sit for the examination for a license to practice as a surveyor and be registered as a licensed surveyor without having to be a full member of the Institution of surveyors of Kenya. From this statement, the Petitioner argues that it is clear that the ISK has no mandate in regulation of the land survey profession and that there is no relationship between limiting surveyors to be members of the ISK and the overall purpose of limitation.

23. On the fifth and sixth issues regarding whether the impugned provisions are unconstitutional and whether the Petitioner's right to freedom of association has been violated, the Petitioner submits that having examined the rights to freedom of association under Article 36 and the limitations under Article 24, it is clear that part of Section 12(1) of the Survey Act and

part of Regulation 15 of 1994 are unconstitutional, and that his right to freedom of association has been violated by these unconstitutional provisions.

24. The Petitioner thus urged this court to allow the Petition as prayed.

THE 2ND RESPONDENT'S CASE

25. The 2nd Respondent, the Institution of Surveyors of Kenya, opposes the Petition through a Replying Affidavit sworn by its President, Eric Nyadimo, on 17th January 2024, and through its written submissions dated 22nd May 2024.

26. In his affidavit, Mr. Nyadimo describes the 2nd Respondent as a non-political and non-profit making professional organization that brings together professionals in the land and real estate sector, established in 1969. He annexes a copy of the Institution of Surveyors of Kenya Constitution and By-laws which details the objects, membership categories, governance structures, and disciplinary procedures of the Institution.

27. The deponent draws the court's attention to Article 5 of the ISK Constitution, which sets out the objects of the Institution. These objects include: to secure the advancement and facilitate the acquisition of that knowledge which constitutes the profession of a surveyor; to promote the general interests of the members of the profession; to promote ethical performance of the obligations of the members of the profession for the

benefit of the public; to contribute to the development of international and national policies and legal frameworks in land management; to represent the interests of members in relevant forums; and to conduct such examinations, tests or other assessments as may be necessary to determine an applicant's eligibility for membership.

28. From these objects, the 2nd Respondent contends that the institution has a mandate to protect the public and help maintain the reputation of the surveying profession by ensuring that members maintain professionalism, standards, discipline, and also by preventing quacks from infiltrating the profession. The deponent asserts that the 2nd Respondent, being a non-profit making professional organization, concerns itself with matters of public interest and is therefore a means by which members of the surveying profession can meaningfully realize the right to associate as provided for under Article 36 of the Constitution.

29. The 2nd Respondent argues that the institutional framework mechanism under the Survey Act, the ISK Constitution and By-laws, and the Survey Regulations of 1994 is meant to create a conducive environment for the development of professionally competent surveyors with clear channels of responsibility, thus engendering transparency and accountability. The deponent further contends that historically, professions have been regulated as units in order to ensure that standards required of the professions' members are adhered to and that members are continually

trained to serve the public, and that the surveying profession should not be any different.

30. On the issue of the right to freedom of association, the 2nd Respondent, through advice from its advocates, contends that the rights under Article 36 are not absolute and should be read in conjunction with Article 24(1) of the Constitution. The deponent further states, on advice, that the Petitioner can alternatively sit for the examinations for a license to practice as a surveyor and be registered as a licensed surveyor without having to be a full member of the ISK. From this, the 2nd Respondent avers that there is no inconsistency between the impugned provisions and the Constitution, as the members of the surveying profession are committed and subject to known standards and require regulation for their own benefit and that of the public.

31. It was submitted that the Petitioner has not provided any evidence demonstrating how his rights have been violated, and has instead merely cited provisions of the Constitution alleged to have been violated. Relying on the case of *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272* and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR*, the 2nd Respondent submits that the Petition does not meet the threshold of a constitutional petition as it lacks reasonable precision in framing the issues.

32. The 2nd Respondent further submits that Articles 36 of the Constitution do not constitute absolute freedoms and can be limited in a manner that is justifiable and acceptable in an open and democratic society based on human dignity, equality and freedom in accordance with Article 24(1) of the Constitution. The 2nd Respondent then proceeds to apply the factors under Article 24(1) to the circumstances of this case.
33. On the nature of the right, it was submitted that the right to freedom of association is considered inherent to human dignity and autonomy, recognizing individuals' natural inclination to join together voluntarily to pursue common goals, but that this right serves a dual purpose to both safeguard and empower the people, and as such it may be limited in order to protect the public.
34. On the importance of the purpose of the limitation, the 2nd Respondent submits that it has a mandate to protect the public and therefore help maintain the reputation of the surveying profession by ensuring that members maintain professionalism, standards, discipline, and by preventing quacks from infiltrating the profession. The limitation, in its submission, is for the benefit of the public.
35. On the nature and extent of the limitation, the 2nd Respondent draws attention to the fact that Section 12(1) of the Survey Act only provides for exemptions from the examinations to be licensed as a surveyor. It lists the various categories of persons who may be exempted from the whole

examination or from examination in any subject, and the impugned part merely requires production of evidence of full membership of the ISK as part of the exemption process. Similarly, Regulation 15 only provides for alternative qualifications and exemptions to the examinations for a license to practice as a surveyor. The 2nd Respondent argues that the extent of the limitation is just to the extent of being exempted from doing the examinations, and that one can alternatively sit for the examinations for a license to practice as a surveyor and be registered without having to be a full member of the ISK. In that light, it submits that the Petitioner's right to freedom of association has not been violated.

36. On the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose, the 2nd Respondent submits that historically professions have been regulated as units in order to ensure that standards required of the professions' members are adhered to and that members are continually trained to serve the public. It contends that the mandate to protect the public and help maintain the reputation of the surveying profession cannot be achieved if membership is scattered instead of being that of a body of associated members.
37. The 2nd Respondent places strong reliance on the case of ***Eunice Nganga & another v Law Society of Kenya & another [2019] eKLR***, which involved a similar challenge to compulsory membership in the Law Society of Kenya. In that case, the court held that the 1st respondent's mandate as stipulated in Section 4 of the Act could not be achieved if the membership was scattered

instead of being that of a body of associated members. The court further held that the legal profession is a special category and for that reason its operations are regulated in a manner that may be seen as limiting rights and fundamental freedoms of members, but that rights under Article 36 are not absolute and are capable of limitation in terms of Article 24(1) so long as the limitation is reasonable and justifiable in an open and democratic society.

38. Regarding the constitutionality of the impugned provisions, the 2nd Respondent submitted that the legislature, being the peoples' representative, understands the problems the people face and therefore the laws enacted are intended for resolving those problems. It urges the court to follow guiding principles of constitutional and statutory interpretation developed by the courts over the years, including that the Constitution should not be given a rigid or artificial interpretation to avoid distorting its spirit, ideals and aspirations; that the Constitution should be read as one document and given a holistic interpretation; and that there is a general but rebuttable presumption that statutes enacted by Parliament are constitutional, until the contrary is proved.

39. The 2nd Respondent relied on several authorities in support of these principles, including *Katiba Institute & 3 others v Attorney General & 2 others [2018] eKLR*, *Njoya & 6 Others v Attorney General & another [2004] eKLR*, *Law Society of Kenya v The AG & Another (Supreme Court Petition No.4 of 2019)*, and *Olum and another v Attorney General [2002] EA*. It

submits that the purpose of the institutional framework mechanism under the Survey Act, the ISK Constitution and By-laws, and the Survey Regulations of 1994 was to create a conducive environment for the development of professionally competent surveyors with clear channels of responsibility thus engendering transparency and accountability, and that there is no inconsistency between the impugned provisions and the Constitution.

40. The court was thus urged to dismiss the Petition with costs.

THE 3RD RESPONDENT'S CASE

41. The 3rd Respondent, the Honourable Attorney General, opposes the Petition through Grounds of Opposition dated 16th November 2023 and written submissions dated 28th May 2024. The Attorney General is sued in his capacity as the principal legal adviser to the national government, with the Petitioner alleging that he has failed to advise the 1st Respondent on constitutional requirements regarding freedom of association.

42. In its Grounds of Opposition, the 3rd Respondent raises several objections to the Petition. First, it contends that the Petition does not meet the test of a constitutional petition laid down in ***Anarita Karimi Njeru v Republic (No.1) [1979] KLR 154*** and emphasized in ***Mumo Matemu v Trusted Society of Human Rights Alliance (supra)*** arguing that apart from citing omnibus provisions of the Constitution, the Petition has provided neither particulars

of the alleged complaints nor the manner of alleged infringements, particularly against the 3rd Respondent.

43. Second, the 3rd Respondent contends that the Petitioner is unable to sufficiently prove the nature and manner in which the 3rd Respondent has allegedly violated his rights or any of the provisions of the Constitution or any other written law. It points to Article 36 of the Constitution, which provides that any legislation that requires registration of an association of any kind shall provide that registration may not be withheld or withdrawn unreasonably and that there shall be a right to have a fair hearing before a registration is cancelled.

44. Third, the 3rd Respondent draws attention to Section 10 of the Survey Act Cap 299, which provides that no person shall be licensed under the Act unless qualified, and that every person who is so qualified shall be entitled, on payment of the prescribed fee, to be granted a licence by the Board. It notes that the Petitioner has attached a copy of the response he received from the Land Surveyors' Board, which does not actually reject his application for a license but merely informs him of the requirements for a Land Survey License inclusive of LSB Application form and Statutory form A and B, and provides him with a checklist of the requirements for licensing.

45. The 3rd Respondent contends that instead of complying with the said requirements as communicated in the said letter, the Petitioner has filed the instant Petition to circumvent statutory pre-requisites to the issuance of

a license. It further notes that the Petitioner has not attached any evidence that he has made an application for membership to the ISK or any evidence that the said membership application was arbitrarily rejected.

46. The 3rd Respondent argues that the Petition as taken out against it is misconceived, incompetent, and devoid of any merit or legal justification, and is meant to drag the 3rd Respondent into a matter where its attendance is unnecessary. It contends that the Petition discloses no reasonable cause of action as against the 3rd Respondent, and that the 3rd Respondent is non-suited.
47. In its written submissions, the 3rd Respondent narrows the issues for determination to two main issues: whether the Petition meets the threshold of a Constitutional Petition, and whether there is a justiciable issue before the court.
48. On the first issue, the 3rd Respondent reiterates its position that the Petition does not meet the test of a constitutional petition laid down in **Anarita Karimi Njeru v Republic (supra)** and **Mumo Matemu v Trusted Society of Human Rights Alliance (supra)**. It submits that whereas the Amended Petition cites numerous Articles of the Constitution, paragraphs 18 to 31 merely state the provisions of the law but do not address how the said provisions have been violated, particularly against the 3rd Respondent.

49. On the second issue regarding justiciability, the 3rd Respondent draws heavily on the case of ***Wanjiru Gikonyo & 2 Others v National Assembly of Kenya & 4 Others***, where Onguto J. extensively discussed the doctrine of justiciability. It argued that by justiciability it is meant a matter "proper to be examined in courts of justice" or "a question as may properly come before a tribunal for decision." The court in that case held that the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases, and that the court is not expected to engage in abstract arguments.
50. Further reliance was placed on the decision in ***Apollo Mboya v The Attorney General and National Employment Authority, Nairobi Constitutional Petition Number E335 of 2023 (unreported)*** where the court quoted with approval the doctrine of Constitutional Avoidance as defined in Black's Law Dictionary, 10th Edition: "*The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion.*" Applying these principles, the 3rd Respondent submits that there is no justiciable issue before the court. It argues that the letter from the Land Surveyors Board dated 29th September 2023 does not actually reject the Petitioner's application for a license but merely informs him of the requirements and provides him with a checklist. The Petitioner, instead of complying with these requirements, has filed the instant Petition to circumvent statutory pre-requisites. The 3rd Respondent contends that the Petitioner is essentially asking this court to step into the place of the

licensing authority and perform a statutorily mandated function of the Board while disregarding the legal requirements set out under the Act.

51. The 3rd Respondent further submits that the Petitioner has not shown that he applied for membership in the proper manner and that the said membership was unreasonably withheld, nor has he shown that after he was denied membership, he was not given an opportunity to have a fair hearing of an appeal of the decision to deny him membership. It contends that the Petitioner ought to comply with the law and not seek to be treated in a special manner while he is aware of the law and practice.

52. The 3rd Respondent thus urged this court to dismiss the Petition.

THE 4TH RESPONDENT'S CASE

53. The 4th Respondent, the National Assembly, opposes the Petition through its Grounds of Opposition dated 12th May 2025 and written submissions dated 18th June 2025. The National Assembly is sued in this Petition for allegedly failing to discharge its mandate under Articles 94 and 95 of the Constitution, which require Parliament to enact legislation to protect the Constitution and to promote the democratic governance of the Republic.

54. In its Grounds of Opposition, the 4th Respondent raises several grounds in opposition to the Amended Petition. First, it contends that the Petition raises issues that are premature, abstract, and not ripe for adjudication, as

they seek to compel the National Assembly to amend legislation, a function exclusively reserved to Parliament under Article 94 of the Constitution.

55. Second, the 4th Respondent argues that the Petitioner has not demonstrated exhaustion of alternative remedies, such as petitioning Parliament under Article 119 of the Constitution to propose amendments to the Survey Act. Article 119 provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

56. Third, the 4th Respondent contends that the Petitioner's claim that Parliament has "failed to enact and/or amend the Survey Act to be in tandem with the Constitution of Kenya, 2010" is unfounded, as there is no constitutional timeline that binds Parliament to amend this particular law. It further notes that since the promulgation of the 2010 Constitution, the Survey Act has been amended once (on 18th March 2020, by the Business Laws (Amendment) Act, 2020) and revised once (on 31st December 2022, through the 24th Annual Supplement). The 4th Respondent argues that the Petitioner has not demonstrated that he has at any time pursued the appropriate avenues for legal reform, such as petitioning Parliament under Article 119, to propose amendments to the Survey Act, nor has he furnished any evidence that he submitted recommendations or participated in any public processes during the Act's amendment since the promulgation of the 2010 Constitution.

57. Fourth, it is argued that the Petitioner has failed to prove, with specificity, how the impugned provisions of Section 12(1) of the Survey Act and Regulation 15 of the Survey Regulations contravene the guarantees of freedom of association under Article 36 of the Constitution. It contends that the Petition merely asserts a perceived inconsistency without providing tangible evidence or articulating the specific nature of the alleged violation.
58. Fifth, the 4th Respondent invokes the presumption of constitutionality of statutes, arguing that statutes enjoy a presumption of constitutionality and the Petitioner has not provided sufficient evidence to rebut this presumption.
59. Sixth, the 4th Respondent argues that the Petitioner has neither clearly linked the impugned provisions to specific constitutional violations nor demonstrated how the mandatory ISK membership per se infringes on freedom of association.
60. Seventh, the 4th Respondent contends that the Amended Petition has not been pleaded with the precision required under Rule 10 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 ("the Mutunga Rules"). It lacks clarity and sufficient particulars regarding the alleged constitutional violations, thus failing to meet the threshold set in *Anarita Karimi Njeru v Republic (supra)*.

61. Eighth, the 4th Respondent argues that the Amended Petition is vague and speculative, lacking a factual basis for the alleged exclusion of qualified surveyors. It contends that the Petitioner has not clearly shown that the current licensing framework has caused actual prejudice to his rights or those of other surveyors, and that allegations of exclusion from licensing remain unsubstantiated by reliable data or evidence.
62. Ninth, the 4th Respondent argues that the National Assembly retains the discretion to prioritize legislative amendments based on public interest and resource allocation. Tenth, it argues that the establishment of professional licensing criteria falls properly within the policy domain of designated regulatory bodies, such as the Land Surveyors' Board, working in conjunction with the Legislature's constitutional mandate.
63. Finally, the 4th Respondent argues that the Constitution entrusts Parliament and relevant professional bodies with the primary responsibility of setting and regulating professional standards, while the Judiciary is assigned the distinct constitutional role of interpreting the law and adjudicating disputes. By inviting the court to intrude into a domain reserved for legislative and executive action, the Amended Petition attempts to offend the doctrine of separation of powers.
64. On the issue of prematurity and violation of the doctrine of separation of powers, the 4th Respondent submits that the Petition seeks to compel Parliament to legislate, a function exclusively reserved under Articles 94 and

95 of the Constitution. Reliance was placed on several authorities in support of this position, including ***Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR)*** where the Supreme Court held that while courts have the mandate to interpret the law and where necessary strike out a law for being unconstitutional, this mandate does not extend to legislation or repeal of statutory provisions.

65. Further reliance was placed on the decision in ***Cabinet Secretary for the National Treasury and Planning & 4 others v Okoiti & 52 others; Bhatia (Amicus Curiae) [2024] KESC 63 (KLR)*** where the Supreme Court stated that courts are required to exercise judicial restraint in policy matters, intervening only to the extent necessary to uphold constitutional compliance, and that as a rule of thumb, courts should restrain from intervening in policy matters. It further cites ***Katiba Institute v Attorney General & 9 others [2023] KESC 47 (KLR)*** where the Supreme Court held that in reviewing the administrative actions of state organs, the court must not substitute itself into the organs whose actions or decisions are the subject of review or substitute the impugned decision with its own decision.
66. On the issue of exhaustion of alternative remedies, the 4th Respondent submits that the Petitioner has failed to exhaust the available legislative remedies under the constitutional and legal framework. It cites Article 119 of the Constitution, which provides citizens with a direct and effective avenue to petition Parliament for legal reforms, yet the Petitioner has

presented no evidence of having utilized this mechanism. The 4th Respondent explains the petition process in detail, noting that admissible Petitions are presented to the House by either a Member of Parliament or the Clerk of the National Assembly, and that the Clerk reviews the Petition for compliance, directs amendments if needed, and forwards compliant petitions to the Speaker of the National Assembly for approval. The Speaker then refers the Petition to the Public Petitions Committee, which investigates and tables a report before the House for adoption or rejection. The Clerk then notifies the petitioner of the House's decision and forwards the Report to the relevant authority for implementation.

67. The 4th Respondent argues that the Petitioner's decision to bypass the parliamentary process of petitioning the National Assembly and proceed directly to court seeking, essentially, the amendment of the impugned Act and its Regulations highlight the Petitioner's failure to exhaust alternative remedies. It relies on the case of ***Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR)*** where the Court of Appeal held that courts ought to be the fora of last resort and not the first port of call, and that the exhaustion doctrine accords with Article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution.

68. On the issue of justiciability, the 4th Respondent submits that the Petition fails to meet the threshold of justiciability as the Petitioner alleges constitutional violations but provides no evidence of actual harm suffered

under the current framework. It relies on **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] KEHC 5536 (KLR)** where the court discussed the doctrine of justiciability and held that the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases, and that an issue before the court must be ripe, through a factual matrix, for determination.

69. On the issue of defective pleadings under the **Anarita Karimi (supra)** standard, it was submitted that the Petition violates the standard which requires precise pleadings. It relied on the decision in **Kipchirchir v Cabinet Secretary for Lands & 6 others [2024] KECA 1484 (KLR)** where the Court of Appeal reiterated the principle from **Anarita Karimi Njeru v Republic (supra)** that in constitutional petitions, it is important that the petitioner set out with reasonable degree of precision that of which he complains, the provision said to be infringed, and the manner in which they are alleged to be infringed.
70. The 4th Respondent argues that the Petitioner claims a violation of the freedom of association as per Article 36 based solely on the fact that his application for a license was denied for failure to present proof of full membership in the ISK, but provides no evidence beyond his own application letter, the rejection letter from the Land Surveyors Board, and the statutory provisions cited. It contends that the Petitioner does not demonstrate how this requirement uniquely or unfairly prejudiced him, attach evidence of his qualifications or proof that he satisfied all other

licensing criteria, or attach correspondence or affidavits from other similarly affected individuals despite claiming the issue affects "thousands" of surveyors.

71. The 4th Respondent further argues that while the Petitioner argues that ISK and membership thereto is "not a creation of the law," he fails to provide evidence showing that the Board's reliance on ISK membership is unjustifiable, unreasonable, arbitrary or lacks regulatory purpose; that there are better or less restrictive alternatives for assessing professional competence and conduct; or that the requirement for full membership in the ISK is not merely a standard professional benchmark akin to membership in professional associations for engineers, scientists, or medical practitioners.

72. The court was thus urged to dismiss the Amended Petition with costs, as it encroaches on the National Assembly's legislative role under Article 94, the Petitioner failed to exhaust remedies under Article 119, the Petition does not rebut the presumption of constitutionality, and it is pleaded in breach of the Anarita Karimi specificity standard.

ANALYSIS AND DETERMINATION

73. Having carefully considered the pleadings filed herein, the affidavit evidence on record, the written submissions by the respective parties, and the various authorities cited, the following issues crystallize for determination by this court:

- i. *Whether the Amended Petition meets the constitutional threshold for pleadings and whether it discloses a justiciable controversy against the Respondents.*
- ii. *Whether the Institution of Surveyors of Kenya is a statutory body established by an Act of Parliament and whether it has a legally recognized role in the licensing and regulation of land surveyors in Kenya.*
- iii. *Whether the requirement for compulsory membership in the Institution of Surveyors of Kenya, as a precondition for obtaining a license to practice as a land surveyor under Section 12(1) of the Survey Act and Regulation 15 of the Survey Regulations, constitutes a violation of the Petitioner's right to freedom of association guaranteed under Article 36 of the Constitution.*
- iv. *Whether the limitation on the right to freedom of association, if any, is reasonable and justifiable in an open and democratic society within the meaning of Article 24 of the Constitution, taking into account the factors enumerated therein.*
- v. *Whether the doctrine of separation of powers and the principle of exhaustion of alternative remedies, particularly the avenue of petitioning Parliament under Article 119 of the Constitution, bar this court from granting the reliefs sought in the Petition.*
- vi. *What appropriate reliefs, if any, should this court grant, and what orders should be made as to costs.*

Whether the Amended Petition meets the constitutional threshold for pleadings and whether it discloses a justiciable controversy against the Respondents

74. Before delving into the substantive merits of this Petition, this court must first address the objections raised by the 3rd and 4th Respondents regarding the competency of the Petition and the question of justiciability. Both Respondents have invoked the celebrated case of ***Anarita Karimi Njeru v Republic (supra)***, which established the fundamental principle that constitutional petitions must be pleaded with a reasonable degree of precision. The 3rd Respondent contends that the Petition, apart from citing omnibus provisions of the Constitution, has provided neither particulars of the alleged complaints nor the manner of alleged infringements, particularly against the 3rd Respondent. The 4th Respondent similarly argues that the Petition is vague, speculative, and fails to demonstrate how the mandatory ISK membership per se infringes on freedom of association.
75. The principles enunciated in *Anarita Karimi Njeru* were subsequently affirmed and elaborated upon by the Court of Appeal in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others (supra)***. In that case, the Court of Appeal emphasized that while precision is not coterminous with exactitude, and although it demands neither formulaic prescription of factual claims nor formalistic utterance of constitutional provisions, the whole function of pleadings is to define issues in litigation and adjudication. The Court of Appeal held that the petition before it, which referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of the Constitution in its title but

provided little or no particulars as to the allegations and the manner of the alleged infringements, did not meet the threshold established in *Anarita Karimi Njeru*.

76. This court is guided by the wisdom in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others (supra)* that the rule requiring reasonable precision in framing issues in constitutional petitions is an extension of the fundamental principle that pleadings assist in giving fair notice to the other party. As Jessel M.R. stated in *Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639*, the whole object of pleadings is to bring the parties to an issue, to prevent the issue being enlarged, and to narrow the parties to define issues, thereby diminishing expense and delay.
77. Applying these principles to the instant Petition, this court finds that the Petitioner has, to a reasonable degree, set out with precision the provisions of the Constitution alleged to have been violated and the manner of such alleged violations. The Petitioner specifically identifies Article 36 of the Constitution as the primary right allegedly infringed. He pinpoints the impugned provisions as part of Section 12(1) of the Survey Act and part of Regulation 15 of the Survey Regulations. He specifies the manner of infringement by detailing that the 1st Respondent, through its letter of 29th September 2023, communicated to him that among the requirements for licensing is full membership in the ISK, and that this requirement compels him to join an association of any kind contrary to Article 36(2) which

provides that a person shall not be compelled to join an association of any kind.

78. The Petitioner further elaborates the factual matrix by providing the history of the ISK as a society registered under the Societies Act, not established by an Act of Parliament. He draws a distinction between the regulatory mandate of the Land Surveyors' Board under Section 9 of the Survey Act and the objects of the ISK, arguing that the ISK has no statutory mandate in regulation of the profession. He invokes Article 24 and addresses each of the factors for limitation of rights. He provides statistical information regarding the number of licensed surveyors to demonstrate the impact of the impugned provisions. This court is satisfied that the Petitioner has provided sufficient particulars to enable the Respondents to understand the nature of the case against them and to respond appropriately.

79. On the question of justiciability, the 3rd Respondent has argued that there is no justiciable issue before the court, contending that the letter from the Land Surveyors Board does not actually reject the Petitioner's application but merely informs him of requirements, and that the Petitioner ought to comply with those requirements rather than seeking to circumvent them through this Petition. The 3rd Respondent relies on ***Wanjiru Gikonyo & 2 Others v National Assembly of Kenya & 4 Others (supra)*** where the court discussed the doctrine of justiciability, holding that the justiciability dogma

prohibits the court from entertaining hypothetical or academic interest cases, and that the court is not expected to engage in abstract arguments.

80. This court takes a different view. The doctrine of justiciability does not bar a court from determining a constitutional question where a law or statutory provision is directly challenged as being inconsistent with the Constitution. The Petitioner is not asking this court to determine whether his application for membership was properly processed or whether his license application was correctly rejected. Rather, he is challenging the constitutional validity of the statutory provisions themselves. This is precisely the kind of controversy that the High Court is constitutionally mandated to determine under Article 165(3)(d)(i) of the Constitution, which grants the High Court jurisdiction to hear any question respecting the interpretation of the Constitution, including the determination of the question whether any law is inconsistent with or in contravention of the Constitution.

81. In *John Harun Mwau & 3 Others V Attorney General & 2 Others [2012] KEHC 5438 (KLR)*, the court stated that the jurisdiction to interpret the constitution conferred under Article 165(3)(d) is exercised in the context of a real dispute or controversy. The instant Petition presents a real and substantial controversy: whether statutory provisions that condition the grant of a professional license on compulsory membership in a particular association violate the constitutional guarantee of freedom of association. This is not a hypothetical or academic question; it is a live controversy with

direct implications for the Petitioner and potentially for the entire surveying profession.

82. Furthermore, the 3rd Respondent's argument that the Petitioner should comply with the requirements rather than challenge them misses the point of constitutional litigation. The very essence of a constitutional challenge to a law is that the law itself is alleged to be invalid. If this court were to require the Petitioner to comply with provisions he contends are unconstitutional before he can challenge them, it would render constitutional review nugatory. The proper approach, as established in constitutional jurisprudence, is that a person aggrieved by a law may challenge its constitutionality directly without first submitting to its requirements, particularly where compliance would itself involve the very infringement complained of.

83. For these reasons, this court finds that the Amended Petition meets the constitutional threshold for pleading and raises justiciable issues properly before this court for determination. The preliminary objections on these grounds are accordingly overruled.

Whether the Institution of Surveyors of Kenya is a statutory body established by an Act of Parliament and whether it has a legally recognized role in the licensing and regulation of land surveyors in Kenya

84. A foundational question underlying this Petition is the legal status of the 2nd Respondent and its proper role in the regulatory framework for the

surveying profession. The Petitioner contends that the ISK is not a statutory body but a society registered under the Societies Act, and that its objects do not include licensing and regulation of the profession. The 2nd Respondent, on the other hand, asserts that it has a mandate to protect the public and maintain the reputation of the surveying profession by ensuring that members maintain professionalism, standards, discipline, and by preventing quacks from infiltrating the profession.

85. The evidence on record, particularly the ISK Constitution, reveals that the ISK was registered on 12th August 1969 as a body corporate under the Societies Act. The Societies Act, Cap 108, defines a "society" to include any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya. It is not an Act of Parliament establishing a statutory body, but rather a registration regime for voluntary associations. The ISK is therefore, in its essential character, a voluntary professional association, not a creature of statute in the sense of being established by an Act of Parliament with defined statutory functions.

86. However, this does not mean that the ISK has no legally recognized role in the broader professional landscape. As the Court of Appeal observed in *Nganga v Law Society of Kenya & 2 others [2025] KECA 1384 (KLR)*, which involved a similar challenge to compulsory membership in the Law Society of Kenya, professional associations play a vital role in maintaining standards, promoting ethical conduct, and advancing the interests of the profession and the public. The court in that case noted that the 1st

respondent's mandate as stipulated in Section 4 of the Law Society of Kenya Act could not be achieved if the membership was scattered instead of being that of a body of associated members. In arriving at the conclusion, the court stated thus;

“Therefore, the United States Supreme Court promulgated a threshold by which the constitutionality of the compulsion to join a bar association and to pay the dues to it is how germane the bar association’s activities are to the legal profession , quality of legal services and the goals of the association. In our view, this is a permissible and reasonable limitation within the meaning of Article 24 of our [Constitution](#), in light of the purposes and reasons stated hereinabove for regulation of the legal profession. In addition, the appellant did not in this respect identify or demonstrate any activities that were being undertaken by the LSK that are outside the permissible extent of regulation of advocates, improvement of legal services or achievement of its statutory objectives.”

87. The objects of the ISK, as set out in Article 5 of its Constitution, include promoting ethical performance of the obligations of members for the benefit of the public, contributing to the development of policies and legal frameworks in land management, representing members' interests in relevant forums, and conducting examinations to determine an applicant's eligibility for membership. These objects align with the functions typically performed by professional bodies in various jurisdictions: setting standards,

promoting ethical conduct, advocating for the profession, and in some cases, playing a role in determining qualifications for membership.

88. The critical question, however, is whether these functions, valuable as they may be, can legitimately be made a compulsory precondition for state licensing. This brings us to the distinction between membership in a professional association for the purposes of collective action, professional development, and advocacy, and compliance with regulatory requirements established by a statutory body for the purposes of protecting the public.
89. The Survey Act, Cap 299, establishes the Land Surveyors' Board under Section 7 as the statutory body responsible for licensing and regulation. Section 9 of the Act outlines the duties of the Board, which include conducting examinations of candidates for admission as licensed surveyors, granting licences, keeping a register of all licensed surveyors, taking disciplinary proceedings against licensed surveyors, hearing and determining disputes between licensed surveyors and clients as to fees, and advising the Director on matters relating to cadastral surveys. These are the core regulatory functions: determining who is qualified to practice, granting the authority to practice, maintaining a register of practitioners, and disciplining those who fall short of professional standards.
90. The ISK, as a voluntary association, performs none of these statutory functions. It does not grant licences; the Board does. It does not maintain the official register of licensed surveyors; the Board does. It does not have

statutory disciplinary powers over licensed surveyors; the Board does. Its disciplinary powers, as outlined in its By-laws, apply to its members in relation to their membership, not to the license to practice which is granted by the state.

91. This distinction is crucial in constitutional analysis. The requirement for compulsory membership in a voluntary association as a precondition for obtaining a state license raises different constitutional considerations than a requirement to be registered with a statutory regulatory body. The former compels association with a private body whose governance structures, membership criteria, and disciplinary processes are determined by its members, not by the state through legislation. The latter involves compliance with a statutory regime established by Parliament with defined public accountability mechanisms.

92. In the Kenyan context, several professions have statutory bodies established by Acts of Parliament with regulatory functions. The Medical Practitioners and Dentists Board under the Medical Practitioners and Dentists Act, the Architects and Quantity Surveyors Board under the Architects and Quantity Surveyors Act, and the Engineers Board of Kenya under the Engineers Act are examples of statutory regulatory bodies. Membership in these bodies is, by definition, a requirement for practice because the body itself is the regulator. However, membership in a separate voluntary association, even one representing the profession, stands on a different footing.

93. The 2nd Respondent has not pointed to any provision in the Survey Act that establishes the ISK as a statutory body or that delegates to it any regulatory functions. The impugned provisions in Section 12(1) and Regulation 15 merely reference membership in the ISK as a requirement for exemption from examinations or for licensing. The Act does not create the ISK, define its composition, prescribe its governance structure, or establish accountability mechanisms for its decisions regarding membership. The ISK remains, in law, what it was in 1969: a voluntary association of professionals registered under the Societies Act.
94. This court therefore finds that while the ISK performs valuable functions in advancing the surveying profession and promoting ethical conduct among its members, it is not a statutory regulatory body established by Parliament with defined public law functions. Its role in the licensing process, as currently structured, is not as a regulator but as a gatekeeper whose approval is required before the statutory regulator can act. This raises the constitutional question whether the state can, through legislation, delegate to a private association the power to determine who may access a profession, without the safeguards that would accompany a properly constituted statutory regulatory body.

Whether the requirement for compulsory membership in the Institution of Surveyors of Kenya, as a precondition for obtaining a license to practice as a land surveyor under Section 12(1) of the Survey Act and Regulation 15 of

the Survey Regulations, constitutes a violation of the Petitioner's right to freedom of association guaranteed under Article 36 of the Constitution.

95. The core of the Petitioner's case rests on Article 36 of the Constitution, which guarantees the right to freedom of association. Article 36 provides in its entirety: (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. (3) Any legislation that requires registration of an association of any kind shall provide that—

(a) registration may not be withheld or withdrawn unreasonably; and

(b) there shall be a right to have a fair hearing before a registration is cancelled.

96. The provision is clear and unambiguous: it establishes both a positive right to form, join or participate in associations, and a negative right not to be compelled to join an association of any kind. Sub-article (2) is particularly emphatic in its prohibition against compelled association. It does not admit of exceptions on its face, but must be read together with Article 24 which permits limitations on rights and fundamental freedoms under certain conditions.

97. The Petitioner contends that the requirement under Section 12(1) of the Survey Act and Regulation 15 of the Survey Regulations, which conditions the grant of a license on being a full member of the ISK, amounts to compelled association in violation of Article 36(2). The 2nd Respondent,

while conceding that the Petitioner can alternatively sit for the examinations without being a member, maintains that the limitation is justified for the purpose of protecting the public and maintaining professional standards.

98. To determine whether there has been a violation, this court must examine the nature of the requirement and its impact on the Petitioner's right. The evidence shows that the Petitioner applied for a license on 30th August 2023. The 1st Respondent, through its letter of 29th September 2023, communicated to him that among the requirements for licensing is "Full membership of Institution of Surveyors of Kenya, with a certificate of good standing and up to date payment." The letter expressly referenced Section 12(1) of the Survey Act and Regulation 15 of the Survey Regulations as the basis for this requirement.

99. The requirement is mandatory. It is listed alongside other requirements such as practical surveys, passing the Land Law Examination, and payment of fees. There is no indication that the Board has discretion to waive this requirement or to consider alternative evidence of professional competence. The ISK membership is presented as a non-negotiable precondition. The Petitioner is thus faced with a choice: either join the ISK, submit to its membership requirements and governance, and pay its fees, or be denied the license to practice his profession. This is the essence of compelled association.

100. The fact that the 2nd Respondent stated in paragraph 10 of its Replying Affidavit that the Petitioner can alternatively sit for the examinations for a license to practice as a surveyor and be registered as a licensed surveyor without having to be a full member of the Institution of Surveyors of Kenya does not resolve the matter. This statement appears to suggest that the membership requirement applies only to those seeking exemption from examinations, not to those taking the full examinations. However, the checklist provided by the 1st Respondent lists "Full membership of Institution of Surveyors of Kenya" as one of the requirements for licensing, without qualifying it as applying only to those seeking exemption. Moreover, the 1st Respondent has not filed any response clarifying its position or confirming that the membership requirement is optional for those taking the full examinations.

101. In any event, even if the membership requirement only applies to those seeking exemption, the constitutional question remains: can the state condition a benefit (exemption from examinations) on compelled membership in a private association? The principle against compelled association protects against all forms of compulsion, whether the compulsion is a direct precondition for practice or an indirect precondition for a benefit that significantly affects one's ability to practice.

102. The right to freedom of association has been interpreted in various jurisdictions as protecting both the positive freedom to associate and the negative freedom not to associate. In *Roberts v. U.S. Jaycees*, 468 U.S. 609

(1984), the United States Supreme Court recognized that freedom of association includes the right not to associate, and that compulsory membership in an organization can infringe this right if it significantly affects the individual's freedom of expression or association. While the facts of that case differ, the principle that compelled association requires justification is well-established.

103. In the Kenyan context, the Court of Appeal in *Nganga v Law Society of Kenya & 2 others (supra)* acknowledged that the legal profession is a special category and that its operations are regulated in a manner that may limit rights and fundamental freedoms of members. However, the court was careful to note that the limitation must be reasonable and justifiable in an open and democratic society. The court did not hold that any and all compelled association is automatically justified simply because it relates to a profession.

104. This court finds that the requirement for compulsory membership in the ISK as a precondition for obtaining a license under the Survey Act constitutes compelled association within the meaning of Article 36(2) of the Constitution. The Petitioner is being compelled to join an association of a particular kind (the ISK) in order to access the profession for which he has qualified. This engages his right not to be compelled to join an association and requires justification under Article 24.

Whether the limitation on the right to freedom of association, if any, is reasonable and justifiable in an open and democratic society within the meaning of Article 24 of the Constitution, taking into account the factors enumerated therein

105. Having found that the impugned provisions engage the right to freedom of association, this court must now determine whether the limitation imposed by these provisions is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account the factors set out in Article 24(1) of the Constitution.

106. Article 24(1) provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including— (a) the nature of the right or fundamental freedom;

- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

107. The burden of justifying a limitation on a fundamental right rest on the party asserting that the limitation is justified. In ***Ndyanabo v Attorney General of Tanzania [2001] EA 495***, the Court of Appeal of Tanzania stated that there is a presumption of constitutionality of legislation, but where fundamental rights are implicated, the court must scrutinize the limitation carefully. The Supreme Court of Kenya in ***Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)*** affirmed this principle, stating that in determining whether a statute or provision is constitutional, the court must ascertain the object, purpose and effect of that statute. In making the determination, the Supreme court stated as follows;

“Flowing from the above analysis, it is apparent that in considering the nature and extent of the limitation placed under section 16 of the [Act](#), it becomes clear that it does not permanently limit the right to access courts by an aggrieved party. It is only the initial point of call for decisions in workers’ compensation. When read in whole with section 23 and 52 of the [Act](#), therefore, a party is not left without access to justice nor do employees or employers have to resort to self-help mechanisms. What the section does, is that it allows the use of alternative dispute resolution mechanisms to be invoked before one can approach a court.”

108. Applying these principles, this court examines each of the factors under Article 24(1) in the context of this case.

109. The right to freedom of association under Article 36 is a fundamental right that protects both individual autonomy and collective action. It is closely

linked to human dignity, as it recognizes the individual's capacity to choose with whom to associate and for what purposes. The negative aspect of the right, the right not to be compelled to join an association is particularly important as it protects individuals from being forced into relationships or commitments they have not chosen. In a democratic society based on human dignity and freedom, the state should be slow to compel association, and any such compulsion must be carefully justified.

110. The 2nd Respondent asserts that the purpose of the limitation is to protect the public and maintain the reputation of the surveying profession by ensuring that members maintain professionalism, standards, discipline, and by preventing quacks from infiltrating the profession. This court acknowledges that the protection of the public and the maintenance of professional standards are legitimate and important purposes. The state has a compelling interest in ensuring that those who practice professions affecting public safety, property rights, and the public interest are competent and ethical.

111. However, the question is not whether the purpose is important, but whether the specific means chosen, compulsory membership in a particular voluntary association, is necessary to achieve that purpose, and whether the ISK membership requirement serves that purpose in a way that is proportionate to the infringement on the right.

112. The limitation requires the Petitioner to become a full member of the ISK as a precondition for obtaining a license. This is not a trivial or peripheral requirement; it goes to the very heart of the Petitioner's ability to practice his profession. Without ISK membership, he cannot be licensed. Without a license, he cannot practice as a land surveyor. The limitation thus has a significant impact on the Petitioner's livelihood and professional autonomy.

113. Moreover, the limitation extends beyond mere membership. It subjects the Petitioner to the ISK's governance structures, its membership fees, its disciplinary processes, and its internal rules. He must comply with the ISK's Constitution and By-laws, which are determined by its members, not by the state through legislation. He must pay such fees as the ISK may prescribe from time to time. He is subject to disciplinary action by the ISK, which could affect his membership and, consequently, his license. This is a significant intrusion into the Petitioner's autonomy and his right to choose whether and under what conditions to associate with others.

114. The 2nd Respondent has suggested that the Petitioner can avoid the limitation by taking the full examinations rather than seeking exemption. Even if this were accepted as a factual matter (and the 1st Respondent has not confirmed this interpretation), the limitation would still apply to those seeking exemption, and it would still constitute compelled association for a significant category of applicants. The extent of the limitation is therefore substantial.

115. This factor requires consideration of whether the Petitioner's exercise of his right not to associate would prejudice the rights of others, such as members of the public who rely on surveying services, or other surveyors who might be affected by unqualified practitioners. The Petitioner's exercise of his right not to join the ISK does not, in itself, prejudice anyone's rights. The prejudice would arise only if he were allowed to practice without being subject to adequate regulatory oversight. The question, therefore, is whether adequate regulatory oversight can be achieved through means other than compulsory ISK membership.

116. The Land Surveyors' Board, as the statutory regulator, already has extensive powers under Section 9 of the Survey Act to regulate the profession. It can conduct examinations, grant licenses, maintain a register, take disciplinary proceedings, hear disputes, and advise the Director on survey matters. These powers are sufficient to protect the public and maintain professional standards without requiring that all surveyors be members of a particular voluntary association. The Board could, for example, establish its own criteria for assessing competence and ethical fitness, conduct its own investigations, and impose its own sanctions. The fact that the Board already has these powers suggests that the additional requirement of ISK membership is not necessary to prevent prejudice to others.

117. On the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose, this is perhaps the most critical factor in the proportionality analysis. The question is whether

compulsory ISK membership is rationally connected to the purpose of protecting the public and maintaining professional standards, and whether there are less restrictive means to achieve that purpose.

118. The 2nd Respondent argues that the ISK has a mandate to protect the public and maintain the reputation of the profession by ensuring that members maintain professionalism, standards, discipline, and by preventing quacks from infiltrating the profession. It contends that this mandate cannot be achieved if membership is scattered instead of being that of a body of associated members.

119. However, the evidence does not establish a clear connection between compulsory membership in the ISK and the achievement of these purposes. The ISK's disciplinary powers, as set out in its By-laws, apply to its members. Non-members are not subject to its discipline. If the purpose is to ensure that all practitioners are subject to disciplinary oversight, this would be better achieved through the statutory regulator, which has jurisdiction over all licensees regardless of their membership in any voluntary association. The Land Surveyors' Board already has statutory disciplinary powers under Section 9(d) to take disciplinary proceedings against licensed surveyors. It does not need the ISK to perform this function.

120. Similarly, the purpose of maintaining professional standards can be achieved through the Board's examination and licensing processes, through continuing professional development requirements that the Board could establish, and through its oversight of practice. The ISK may contribute to

these purposes through its educational activities and its promotion of ethical conduct among its members, but this does not require that all practitioners be compelled to join.

121. This court finds that there are less restrictive means to achieve the legitimate purposes of protecting the public and maintaining professional standards. The most obvious less restrictive means is to rely on the statutory regulator, the Land Surveyors' Board, which already has comprehensive powers under the Survey Act. The Board can continue to conduct examinations, grant licenses, maintain a register, and take disciplinary action against errant surveyors. It can also, if it deems necessary, establish requirements for continuing professional development or other measures to ensure ongoing competence. All of this can be done without compelling surveyors to join a particular voluntary association.

122. The model provided by the Physical Planners Registration Act, which the Petitioner cites, offers another example of a less restrictive approach. Section 12 of that Act requires registration of physical planners but allows them to be members of any approved association. This approach recognizes the value of professional associations while respecting the freedom of professionals to choose which association, if any, they wish to join.

123. The 2nd Respondent's argument that the limitation is minimal because the Petitioner can choose not to seek exemption and instead take the full examinations does not address the fundamental point. Whether the requirement applies to all applicants or only to those seeking exemption, it

still constitutes compelled association. Moreover, if the ISK membership is truly necessary for the purpose of protecting the public, it should apply to all practitioners, not just those seeking exemption. The selective application of the requirement undermines the argument that it is necessary for public protection.

124. Having considered all the factors under Article 24(1), this court finds that the limitation on the Petitioner's right to freedom of association imposed by the requirement for compulsory ISK membership is not reasonable and justifiable in an open and democratic society. While the purpose of protecting the public and maintaining professional standards is important, the means chosen—compulsory membership in a particular voluntary association—is disproportionate to that purpose. There are less restrictive means available, primarily through the existing statutory regulator, the Land Surveyors' Board, which already has comprehensive powers to achieve the same purposes without compelling association.

125. This conclusion is consistent with the approach taken by the High Court in *Eunice Nganga & another v Law Society of Kenya & another (supra)*, where the court upheld compulsory membership in the Law Society of Kenya. However, that case is distinguishable. The Law Society of Kenya is established by statute (the Law Society of Kenya Act) and is itself the regulator of the legal profession. Its membership requirement is a requirement to be registered with the statutory regulator, not a requirement to join a separate voluntary association. The ISK, by contrast, is

not the statutory regulator; it is a voluntary association registered under the Societies Act. The two situations are constitutionally distinct.

126. This court therefore holds that the requirement for compulsory membership in the Institution of Surveyors of Kenya as a precondition for obtaining a license under the Survey Act violates the Petitioner's right to freedom of association under Article 36(2) of the Constitution.

Whether the doctrine of separation of powers and the principle of exhaustion of alternative remedies, particularly the avenue of petitioning Parliament under Article 119 of the Constitution, bar this court from granting the reliefs sought in the Petition

127. The 4th Respondent has raised significant arguments regarding the doctrine of separation of powers and the principle of exhaustion of alternative remedies. It contends that the Petition seeks to compel the National Assembly to amend legislation, a function exclusively reserved to Parliament under Article 94 of the Constitution, and that the Petitioner has not exhausted the remedy of petitioning Parliament under Article 119 to propose amendments to the Survey Act.

128. This court takes these arguments seriously. The doctrine of separation of powers is a foundational principle of our constitutional order. As the Supreme Court stated in *In the Matter of the Principle of Gender Representation in the National Assembly and the Senate* [2012] KESC 5 (KLR), the Constitution consciously delegates sovereign power to the three branches of Government and expects that each will

carry out those functions assigned to it without interference from the other two. The legislative authority of the Republic is vested in Parliament under Article 94, and courts must be careful not to usurp that authority.

129. However, the doctrine of separation of powers does not mean that courts are powerless to review legislation for constitutionality. On the contrary, Article 165(3)(d) expressly grants the High Court jurisdiction to hear any question respecting the interpretation of the Constitution, including the determination of the question whether any law is inconsistent with or in contravention of the Constitution. When a court declares a law unconstitutional, it is not legislating; it is fulfilling its constitutional mandate to uphold the supremacy of the Constitution. As the Supreme Court stated in *In the Matter of the Speaker of the Senate & another [2013] KESC 7 (KLR)*, the Constitution is the supreme law, and any law that is inconsistent with it is void to the extent of the inconsistency.

130. In *Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) (supra)*, the Supreme Court affirmed that while courts have the mandate to interpret the law and where necessary strike out a law for being unconstitutional, this mandate does not extend to legislation or repeal of statutory provisions. This is precisely the distinction this court must observe: declaring a provision unconstitutional is an exercise of judicial power; amending or repealing legislation is an exercise of legislative power. This court is not being asked to amend the Survey Act; it is being asked to declare certain provisions unconstitutional to the extent

that they violate the Constitution. That is within its constitutional competence. In the above case, the court had the following to say;

*“This is why, even in the [Muruatetu](#) case, this court was keen to still defer to the Legislature as the proper body mandated to legislate. While the courts have the mandate to interpret the law and where necessary strike out a law for being unconstitutional, this mandate does not extend to legislation or repeal of statutory provisions. In that regard, we echo with approval the words of the High Court in the case of *Trusted Society of Human Rights v Attorney-General and others*, High Court Petition No 229 of 2012; [2012] eKLR, at paragraphs 63-64 where it held as follows:*

“Although the Kenyan Constitution contains no explicit clause on separation of powers, the Montesquieuan influence is palpable throughout the foundational document, the [Constitution](#), regarding the necessity of separating the Governmental functions. the [Constitution](#) consciously delegates the sovereign power under it to the three branches of Government and expects that each will carry out those functions assigned to it without interference from the other two.””

131. The 4th Respondent's argument regarding exhaustion of alternative remedies under Article 119 also requires careful consideration. Article 119 provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation. The 4th Respondent contends that the Petitioner should have pursued this avenue before coming to court.

132. The doctrine of exhaustion of remedies is a well-established principle in administrative law and has been applied in constitutional litigation. In ***Muthinja & another v Henry & 1756 others (supra)*** the Court of Appeal held 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 the fora of last resort and not the first port of call.

133. However, the exhaustion doctrine is not absolute. It admits of exceptions, particularly where the remedy is inadequate, where the dispute raises fundamental constitutional questions, or where the body to which the matter would be referred is not competent to grant the relief sought. In ***Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR)***, the Supreme Court held that where the reliefs under the alternative mechanism are not adequate or effective, there is nothing that precludes the adoption of a nuanced approach. The Supreme court stated as follows;

“Flowing from the above findings and in that context, it is our view that, where the reliefs under the alternative mechanism are not adequate or effective, then there is nothing that precludes the adoption of a nuanced approach, as we have stated. What must matter at the end is that a path is chosen that safeguards a litigant’s right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. This is because, to achieve a harmonious

*and effective legal framework, it is imperative to strike a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant's right to access the court. However, such convergence requires a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism. See also our decision in *Bia Tosha Distributors Ltd v Kenya Breweries Ltd & 6 Others (Pet No 15 of 2020) [2023] KESC 14(KLR) (Const. and JR) (17 February 2023) (Judgment).*"*

134. In this case, the remedy of petitioning Parliament under Article 119 would not be adequate or effective for several reasons. First, a petition to Parliament is a political process, not a judicial one. It does not result in a binding determination of constitutional rights. Second, Parliament is not a court and cannot adjudicate on whether a statutory provision violates the Constitution. Third, even if Parliament were to consider the Petition, it could only amend or repeal the law, not declare it unconstitutional. The Petitioner's grievance is that the law itself violates his constitutional rights. This is quintessentially a judicial question.

135. The Supreme Court of Kenya has consistently held that the High Court has original jurisdiction to determine constitutional questions, including the validity of legislation. In ***Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR***, the Supreme Court affirmed the principle of constitutional avoidance, which entails that a court will not determine a constitutional issue when a matter may properly be

decided on another basis. However, where the very essence of the dispute is the constitutionality of a law, there is no alternative basis on which to decide the matter. The constitutional question must be confronted directly.

136. This court therefore finds that the doctrine of separation of powers does not bar it from determining the constitutionality of the impugned provisions, and that the remedy of petitioning Parliament under Article 119, while available in principle, would not be an adequate alternative remedy for the constitutional questions raised in this Petition.

CONCLUSION

137. Having found that the requirement for compulsory ISK membership violates the Petitioner's right to freedom of association and is not justified under Article 24, this court must now determine the appropriate remedy. The Petitioner seeks declarations that part of Section 12(1) of the Survey Act and part of Regulation 15 of the Survey Regulations are unconstitutional and therefore invalid, null and void.

138. Section 12(1) of the Survey Act provides exemptions from the whole examination or from examination in any subject for various categories of persons, including those who have taken a degree in land surveying from a university recognized by the Board, passed the Kenya land law examination, and had not less than two years practical experience. The provision concludes with the requirement that such persons shall, "upon the production of such evidence thereof as may be prescribed including

evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors)," be exempted in accordance with the directions of the Board.

139. Regulation 15 of the Survey Regulations similarly provides that the Board may accept certain examinations in lieu of setting similar examinations, with the exception of a Trial Survey, a written paper on Kenya Land Law and "production of evidence of full membership of the Institution of Surveyors of Kenya, Chapter of Land Surveyors."

140. This court must interpret these provisions in accordance with the principles of constitutional interpretation. As the Supreme Court stated in *In the Matter of the Kenya National Commission on Human Rights [2014] eKLR*, interpreting the Constitution holistically means interpreting it in context, reading a provision alongside and against other provisions, so as to maintain a rational explication of what the Constitution must be taken to mean in the light of its history, of the issues in dispute, and of the prevailing circumstances.

141. Reading the impugned provisions in the context of the Constitution, particularly Article 36 which guarantees freedom of association and prohibits compelled association, this court finds that the requirement for "evidence of full membership of the Institution of Surveyors of Kenya" as a precondition for obtaining a license or exemption from examinations is

unconstitutional to the extent that it compels persons seeking to be licensed as surveyors to become members of the ISK against their will.

142. The unconstitutionality does not lie in the fact that the ISK exists or that it performs valuable functions for the profession. It lies in the state, through legislation, conditioning access to a profession on membership in a particular private association. The state may legitimately regulate professions to protect the public. It may establish statutory regulatory bodies with compulsory registration. It may set qualifications, standards, and disciplinary procedures. What it may not do, consistent with Article 36(2), is compel individuals to join a particular private association as a condition of practicing their profession.

143. This conclusion is reinforced by Article 24(1)(e), which requires consideration of whether there are less restrictive means to achieve the purpose. As this court has found, there are less restrictive means, primarily through the Land Surveyors' Board itself, which already has comprehensive statutory powers to regulate the profession. The state can achieve its legitimate purposes of public protection and professional standards through these existing mechanisms without compelling association.

144. The 2nd Respondent's reliance on ***Eunice Nganga & another v Law Society of Kenya & another (supra)*** is misplaced for the reasons already stated. The Law Society of Kenya is a statutory body, not a voluntary association. Its membership requirement is a requirement of registration with the statutory regulator. The ISK is not the statutory regulator; it is a voluntary association

registered under the Societies Act. The two situations are constitutionally distinct.

145. Moreover, even in the context of statutory regulatory bodies, courts have been careful to ensure that the limitation on rights is proportionate. In *Eunice Nganga & another v Law Society of Kenya & another (supra)* the court emphasized that rights under Article 36 are not absolute and are capable of limitation, but only so long as the limitation is reasonable and justifiable in an open and democratic society. This court has conducted that analysis and found that the limitation imposed by the impugned provisions is not justified.

146. This court therefore declares that the words "including evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors)" in Section 12(1) of the Survey Act, Cap 299, and the words "and production of evidence of full membership of the Institution of Surveyors of Kenya, Chapter of Land Surveyors" in Regulation 15 of the Survey Regulations, 1994, are unconstitutional as they violate Article 36(2) of the Constitution by compelling persons seeking to be licensed as surveyors to join an association of any kind.

147. The effect of this declaration is that the impugned words are struck from the provisions. The remainder of Section 12(1) and Regulation 15 remain valid and operative. The Land Surveyors' Board may continue to exercise its statutory functions under the Survey Act, including conducting examinations, granting licenses, and regulating the profession. The ISK may

continue to exist as a voluntary association, and surveyors remain free to join it if they wish. What they may not be compelled to do is to join it as a condition of obtaining a state license.

148. This court further declares, as sought by the Petitioner, that the Land Surveyors' Board has the authority to license and regulate the land survey profession as outlined under Section 9 of the Survey Act, and that the Institution of Surveyors of Kenya has no statutory mandate in licensing land surveyors. This declaration is intended to clarify the respective roles of the Board and the ISK in the regulatory framework, and to ensure that the Board exercises its statutory powers independently without delegating or subordinating its licensing function to a private association.

149. This Petition has raised fundamental questions about the relationship between professional regulation and the constitutional right to freedom of association. The Constitution of Kenya, 2010, represents a transformative moment in our nation's history, establishing a new constitutional order based on the values of human dignity, equality, freedom, and the rule of law. The Bill of Rights, as the framework for social, economic and cultural policies, must be interpreted in a manner that promotes these values and advances the enjoyment of fundamental rights and freedoms.

150. The right to freedom of association under Article 36 is a cornerstone of a democratic society. It protects the ability of individuals to come together for common purposes, to form and join associations, and equally importantly, not to be compelled to join associations against their will. This right is not

absolute; it may be limited in accordance with Article 24. But any limitation must be carefully scrutinized to ensure that it is reasonable and justifiable in an open and democratic society.

151. In this case, the limitation imposed by the requirement for compulsory membership in the Institution of Surveyors of Kenya fails that scrutiny. While the purpose of protecting the public and maintaining professional standards is important, the means chosen, compelling all licensed surveyors to join a particular voluntary association is disproportionate to that purpose. There are less restrictive means available, primarily through the Land Surveyors' Board itself, which already has comprehensive statutory powers to regulate the profession.

152. This court is mindful of the valuable role that professional associations play in advancing professional standards, promoting ethical conduct, and representing the interests of their members. The ISK has a long history and has contributed significantly to the surveying profession in Kenya. Nothing in this judgment prevents surveyors from voluntarily joining the ISK and supporting its work. What this judgment protects is the right of each individual surveyor to make that choice freely, without state compulsion.

153. The court also recognizes the concerns raised by the 4th Respondent regarding the doctrine of separation of powers. This judgment does not legislate; it interprets the Constitution and declares certain statutory provisions unconstitutional to the extent that they violate the Constitution. It remains for Parliament, if it sees fit, to consider whether any legislative

amendments are necessary to align the Survey Act fully with the Constitution in light of this judgment.

154. Consequently, this court makes the following final orders:

- a. A declaration be and is hereby issued that the words "including evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors)" in Section 12(1) of the Survey Act, Cap 299, are unconstitutional as they violate Article 36(2) of the Constitution of Kenya, 2010, and are therefore invalid, null and void to that extent.
- b. A declaration be and is hereby issued that the words "and production of evidence of full membership of the Institution of Surveyors of Kenya, Chapter of Land Surveyors" in Regulation 15 of the Survey Regulations, 1994, are unconstitutional as they violate Article 36(2) of the Constitution of Kenya, 2010, and are therefore invalid, null and void to that extent.
- c. A declaration be and is hereby issued that the Land Surveyors' Board has the authority to license and regulate the land survey profession as outlined under Section 9 of the Survey Act, Cap 299, and that the Institution of Surveyors of Kenya has no statutory mandate in licensing land surveyors.
- d. For the avoidance of doubt, the declaration of unconstitutionality with respect to the impugned words in Section 12(1) of the Survey Act and Regulation 15 of the Survey Regulations does not affect the

validity of the remaining provisions of those instruments. The Land Surveyors' Board shall continue to exercise its statutory functions under the Survey Act, including the power to conduct examinations, grant licenses, and regulate the profession, in accordance with the Constitution and the law.

e. Each party shall bear their own costs.

Orders accordingly. File Closed Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF FEBRUARY
2026**

BAHATI MWAMUYE MBS

JUDGE

In the presence of: -

Petitioner in person – Mike Muthumba

Counsel for the 1st and 3rd Respondents – Ms. Odour h/b Ms. Aysha

Counsel for the 2nd Respondent – Ms. Achieng h/b Mr. Okonjo

Court Assistant – Ms. Lwambia