

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW APPLICATION NO. E396 OF 2025**

ALLEN WAIYAKI GICHUHI SC.....  
.....APPLICANT

VERSUS

THE COMMITTEE ON SENIOR COUNSEL.....1<sup>ST</sup>  
RESPONDENT  
ADVOCATES DISCIPLINARY TRIBUNAL.....2<sup>ND</sup> RESPONDENT  
LAW SOCIETY OF KENYA.....3<sup>RD</sup>  
RESPONDENT

AND

NELSON ANDAYI HAVI, SC.....1<sup>ST</sup> INTERESTED PARTY  
MOSES KURGAT, SC.....2<sup>ND</sup> INTERESTED PARTY  
AMBROSE RACHIER, SC.....3<sup>RD</sup> INTERESTED PARTY

**JUDGMENT**

1. The Applicant Allen Waiyaki Gichuhi SC vide his Amended Originating Motion dated 10<sup>th</sup> December 2025 and amended on 12<sup>th</sup> January 2026 and supported by an affidavit sworn by him on 10<sup>th</sup> December 2025 seeks the following orders:

1. *Spent*
2. *Spent as amended*
3. *THAT the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be directed and ordered to produce within 5 days of the order of the court:*

- a. *Information and documents supplied to the 1<sup>st</sup> Respondent regarding any of the 105 applicants who has applied for conferment of the rank of senior counsel who had any criminal convictions for felony, convictions by the Disciplinary Tribunal and/or pending disciplinary complaints before the Disciplinary Tribunal.*
  - b. *Information as to whether any criminal convictions or convictions by the Disciplinary Tribunal had been omitted regarding any of the 54 advocates listed for conferment of the rank of senior counsel.*
  - c. *All information provided by any members of the Law Society or members of the public containing any matters pertaining to the conduct of any of the 54 advocates listed for conferment of the rank of senior counsel pursuant to 3<sup>rd</sup> Respondent's Notice dated 3<sup>rd</sup> October 2025 titled "List of Applicants for Consideration of Conferment of the Rank of Senior Counsel and Submission of Comments on Applicants for Conferment of Rank of Senior Counsel".*
4. *THAT the 1<sup>st</sup> Respondent do within 5 days of the order of the court:*
- (a) *Produce the reasons and minutes setting out the reasons as to why applicants with convictions by the Disciplinary Tribunal and/or pending disciplinary complaints before the Disciplinary Tribunal or with any criminal convictions if any, were considered for conferment in place of*

*advocates with integrity, irreproachable professional conduct and good character.*

*(b) Produce the criteria applied and any point-based scoring system in considering applications for conferment of senior counsel.*

*(c) Produce the decision dated 3<sup>rd</sup> December 2025.*

*5. THAT a Declaration be issued that any person who has been found guilty of professional misconduct, is facing any pending complaints before the Disciplinary Committee or has been convicted for any felony is ineligible and barred from being considered for, or conferred with, the rank of Senior Counsel, and that any attempt to confer such rank on such a person would be unlawful and ultra vires the Advocates Act and Rule 7 (d) and (g) of the Advocates (Senior Counsel Conferment Rules).*

*6. Spent as amended*

*7. THAT an order of Certiorari do issue quashing the names of any Advocate conferred with the Rank of Senior Counsel who has been found guilty of professional misconduct, is facing any pending complaints before the Disciplinary Committee or has been convicted for any felony is ineligible and barred from being considered for, or conferred with, the rank of Senior Counsel, and that any attempt to confer such rank on such a person would be unlawful and ultra vires the Advocates Act and Rule 7 (d)*

and (g) of the Advocates (Senior Counsel Conferment Rules).

8. THAT an Order of Mandamus do issue directing the Chief Registrar of the Judiciary to:

a. Within 7 days of the order of the court expunge the names of the Advocates from the Roll of Senior Counsel who were conferred with the Rank of Senior Counsel contrary to the Advocates Act and Rule 7 (d) and (g) of the Advocates (Senior Counsel Conferment Rules) as determined by the court..

b. Gazette the expungement of the names of the Advocates who were conferred with the Rank of Senior Counsel contrary to the Advocates Act and Rule 7 (d) and (g) of the Advocates (Senior Counsel Conferment Rules) as determined by the court.

9. Spent as amended

10. THAT the decision of the 1<sup>st</sup> Respondent dated 3<sup>rd</sup> December 2025 conferring those Advocates with the Rank of Senior Counsel who have been found guilty of professional misconduct, facing any pending complaints before the Disciplinary Committee or have been convicted for any felony in (sic) contrary to the Advocates Act and Rule 7 (d) and (g) of the Advocates (Senior Counsel Conferment Rules) be set aside.

11. Spent as amended

**12. THAT an order of Prohibition do issue barring the 1<sup>st</sup> Respondent from in future shortlisting applicants for the rank of Senior Counsel who have been found guilty of professional misconduct, are facing any pending complaints before the Disciplinary Committee or have been convicted for any felony.**

**13. THAT there be no order as to costs.”**

2. The Originating motion is predicated on the grounds on the face of the application and the affidavit sworn by Senior Counsel, the applicant herein. Briefly, the Applicant’s case is that on 2<sup>nd</sup> September 2025, the 1<sup>st</sup> Respondent issued a public call for applications for conferment of the rank of Senior Counsel, to which 105 advocates responded. He states that on 8<sup>th</sup> October 2025, the 3<sup>rd</sup> Respondent invited comments and additional information with regards to the various applicants who had applied for conferment of the rank of senior counsel.
3. That a memorandum by advocate Ochiel Dudley, addressing the history of conferment in various jurisdictions, and the criteria to be considered by the 1<sup>st</sup> Respondent, was widely circulated on social media. It is his case that on 4<sup>th</sup> December 2025, the 1<sup>st</sup> Respondent published a list recommending 54 advocates for conferment of the rank of Senior Counsel.
4. The Applicant contends that some of the recommended advocates were ineligible due to prior convictions or pending disciplinary matters. He cites the

recommendation of Nelson Andayi Havi despite a finding of professional misconduct in **Disciplinary Tribunal Misc. No. 216 of 2022**. He urges that although a constitutional petition challenging that conviction is pending and sentencing was stayed, the conviction has not been set aside.

5. The Applicant refers to a comment made by Ahmednasir Abdullahi, SC who he states is a member of the 1<sup>st</sup> Respondent where he states as follows:

*“It’s because of of (sic) your JIHAD against JurisPESA judges that you were rightly conferred (sic) the SENIOR COUNSEL title. We want see more (sic) battles and victims of your enterprise”.*

6. The Applicant also refers to the case of **Moses K. Kurgat v The Disciplinary Committee of the Law Society of Kenya [1998]**, which is said to have confirmed suspension of the advocate from the roll of advocates on 22<sup>nd</sup> August 1997, and to **Diamond Star General Trading LLC v Ambrose D.O. Rachier carrying on business as Rachier & Amollo Advocates [2017] KEHC 5377 (KLR)**, where the court is said to have entered judgment for Kshs. 80 million for breach of a professional undertaking. He also refers to **Diamond Star General Trading LLC v Ambrose D.O. Rachier carrying on business as Rachier & Amollo Advocates [2017] KEHC 5377 (KLR)**, where the court is said to have ordered payment of the decretal sum in monthly instalments of Kshs. 2,500,000 from November 2018 until payment in full.

7. He avers that several advocates privately expressed outrage at the recommendation of individuals found guilty of professional misconduct and those with pending disciplinary matters.
8. The Applicant therefore asserts that the 1<sup>st</sup> Respondent ought to disclose all information and documents received in respect of the 105 applicants who applied for conferment of the rank of Senior Counsel, specifically relating to any criminal convictions for felony convictions, convictions by the Disciplinary Tribunal, and/or pending disciplinary complaints before the Disciplinary Tribunal.
9. The Applicant further seeks disclosure as to whether any criminal convictions or Disciplinary Tribunal convictions were omitted in relation to any of the 54 advocates listed for conferment of the rank of Senior Counsel.
10. Additionally, the Applicant asserts that there should be disclosure of all information submitted by members of the Law Society of Kenya or members of the public concerning the conduct of any of the 54 advocates listed for conferment of the rank of senior counsel, pursuant to the 3<sup>rd</sup> Respondent's Notice dated 3<sup>rd</sup> October 2025 titled "*List of Applicants for Consideration of Conferment of the Rank of Senior Counsel and Submission of Comments on Applicants for Conferment of Rank of Senior Counsel.*"

11. He asserts that the 1<sup>st</sup> Respondent acted unlawfully and ultra vires the Advocates Act and the Advocates (Senior Counsel Conferment and Privileges) Rules, particularly Rule 7(d) and (g), which require that a candidate be a person of integrity, irreproachable professional conduct and good character, and not have been found guilty of professional misconduct.

12. He alleges that the 1<sup>st</sup> Respondent ignored mandatory eligibility criteria, acted with bias by favouring candidates with convictions or pending disciplinary issues, departed from established precedent where such candidates were automatically excluded, and violated Rule 7(g) as well as Rule 132 of the Law Society of Kenya Code of Standards concerning breaches of professional undertakings.

13. The Applicant states that during his tenure as President of the Law Society of Kenya from 2018 to 2020, he served as an automatic member in the Senior Counsel Committee then presided over by Omesh Kapila SC. He urges that at that time, it was mandatory practice that any advocate found guilty of professional misconduct, facing pending disciplinary complaints, or convicted of a felony was ineligible for consideration. He explains that under Sections 57 and 19 of the Advocates Act, conferment of the rank of Senior Counsel would remove the jurisdiction of the Disciplinary Tribunal, thereby nullifying pending disciplinary proceedings or sentencing.

14. He maintains that a presumption of innocence or stay orders obtained against pending disciplinary matters cannot justify conferment, and that eligibility arises only upon exoneration by the disciplinary tribunal or success on appeal.

15. The Applicant further contends that the process contravened Article 47 of the Constitution of Kenya, 2010, as it was unlawful, unreasonable, inefficient and procedurally unfair. He relies on **Republic v Mohammed & Another [2019] eKLR**, where the Supreme Court is said to have held that the designation of Senior Counsel recognises outstanding status for the bearer and carries an expectation of distinguished service in the administration of justice. He also relies on the case of **Holman v Johnson [1775-1802] All ER 98** where the court is said to have held that public policy demands that no court should countenance an illegality.

16. The Applicant asserts that the recommendation of ineligible candidates renders their conferment null and void ab initio, undermines the integrity of the process, erodes public confidence in the legal profession, and interferes with the proper administration of justice. He maintains that the integrity of the conferment must be credible, transparent, unbiased and just, and that the process should recommence de novo.

17. He states that there is no alternative remedy capable of preventing irreparable harm to the profession and seeks urgent intervention, including interdictory

relief and orders expunging the names of those gazetted in breach of Rule 7(d) and (g) of the Advocates (Senior Counsel Conferment and Privileges) Rules.

### **Responses**

18. Opposing the Originating motion, the Respondents filed a preliminary objection dated 20<sup>th</sup> January 2026. The preliminary objection raises six grounds of opposition which include- that the Amended Originating Motion fails to cite the substantive and procedural provisions of law necessary to sustain the relief sought, and that for this reason the High Court lacks jurisdiction to entertain the claim.

19. The respondents further contend that the application impugns a decision of the President of the Republic of Kenya and is therefore defective for failure to join the President as a party through the Attorney General.

20. The Respondents contend that, since the Letters of Conferment were issued by the President of the Republic of Kenya, the matter has been overtaken by events, and this Court consequently lacks jurisdiction. In their view, the Applicant's only recourse lies in petitioning the Committee on Senior Counsel directly for removal of the fifty-four Senior Counsel, or any of them, pursuant to Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules.

21. They also contend that the claim is neither ripe nor justiciable, is founded on conjecture and speculation, and is unsupported by evidence. The Respondents

characterise the application as a mala fide fishing expedition, alleging that the Applicant improperly seeks to compel them to supply evidence to substantiate his case.

22. Additionally, the Respondents contend that any grievances concerning the suitability of the unidentified Senior Counsel amount to disputes among members of the Law Society of Kenya and must first be subjected to the alternative dispute resolution mechanism provided under Regulations 95 and 96 of the Law Society of Kenya (General) Regulations.

23. The Respondents also argue that the application effectively invites the Court to substitute its own decision for that of the Committee on Senior Counsel and the President of the Republic of Kenya on contested questions of fact, and that an Originating Motion is an inappropriate procedural vehicle for such relief.

### **Written submissions**

24. This Court in its directions of 21<sup>st</sup> January 2026 directed that the preliminary objection be canvassed first and as such parties filed written submissions for and against the preliminary objection. On the date of fixing this date, the applicant urged this Court to consider the preliminary objection as responding to his Originating motion. Some interested parties contested the position. However, in the course of writing this decision, and depending on the strength of the preliminary objections, as parties did file comprehensive submissions, the

Court may determine the originating motion as a whole, should the preliminary objection fail, and this is in view of the timeline for determining these proceedings as stipulated in section 8 of the Fair Administrative Action Act which is 90 days from the date of filing of the application.

### **The Applicant's submissions**

25. The Applicant filed written submissions dated 24<sup>th</sup> February 2026. He framed the dispute as a fundamental choice between upholding due process and condoning illegality, drawing analogy from Mark 15:8–15, where Pontius Pilate is said to have yielded to public pressure and released Barabbas instead of upholding justice. The Applicant urges the Court not to repeat such a “Barabbas moment” by allowing technical objections to defeat substantive justice. In his view, the issue is whether the 1<sup>st</sup> Respondent validly recommended candidates for conferment of the rank of Senior Counsel despite alleged criminal convictions, findings of professional misconduct, or pending disciplinary complaints, contrary to mandatory statutory requirements.

26. The Applicant asserts in his submissions that conferment of Senior Counsel is a statutory recognition governed by Section 17(1) of the Advocates Act, which provides that the President may grant a letter of conferment to a person of irreproachable professional conduct. Further reliance is placed on Rule 7 of the Advocates (Senior Counsel Conferment and Privileges) Rules, which sets

mandatory eligibility criteria including integrity, irreproachable conduct, good character, and absence of findings of professional misconduct, and Rule 10(2) of the same Rules, which prohibits discriminatory considerations in the recommendation process.

27. The Applicant also invokes Rule 132 of the Law Society of Kenya Act Code of Standards of Professional Practice and Ethical Conduct, Article 47 of the Constitution, Rule 11(3) of the Fair Administrative Action Rules, 2024 and **Form JR 2**, arguing that the suit is properly grounded in law and pleads specific particulars of illegality and ultra vires action.

28. In opposing the Preliminary Objection, the Applicant relies on the decision in **Mukisa Biscuit Manufacturers limited vs. West end Distributors Limited (1969) E.A 696** submitting that a preliminary objection must raise a pure point of law capable of disposing of the suit. According to the applicant, the Respondents' objection raises factual disputes and therefore fails this threshold. The Applicant argues that no replying affidavit has been filed and that the evidence stands uncontroverted.

29. On jurisdiction and non-joinder, the Applicant invokes Article 165(3)(b) and (d) of the Constitution, asserting that the High Court has unlimited original jurisdiction to determine violations of rights and review any act performed under the authority of the Constitution or any law.

30. The Applicant submits that Rule 3 of the Advocates (Senior Counsel Conferment and Privileges) Rules establishes the composition of the Committee on Senior Counsel, which includes advocates, judges, and the Attorney General. He argues that the Respondents' insistence on joinder of the President overlooks a fundamental principle of judicial review, namely that such proceedings are directed at the decision-maker. That in this case, the impugned decision is the recommendation made by the 1<sup>st</sup> Respondent, a statutory body.

31. The Applicant further contends that the President merely acts on the Committee's recommendation, making the recommendation the primary administrative action under challenge. He maintains that if the recommendation is quashed, the subsequent conferment automatically collapses by operation of law and becomes a nullity, thereby rendering the President unnecessary as a party to the proceedings.

32. Regarding the argument that the matter is overtaken by events, the Applicant invokes the doctrine of nullity, relying on Lord Denning's statement in **MacFoy v United Africa Co. Ltd (1961)**, as cited in **Omega Enterprises (Kenya) Limited v Kenya Tourist Development Corporation Limited & 2 others [1998] eKLR**, that one cannot place something on nothing and expect it to stand. It will collapse. The Applicant submits that if the recommendation

breached Rule 7, any subsequent conferment was premised on nothing and ought to collapse.

33. The Applicant cites decisions where courts nullified completed appointments despite assumption of office, including: **Matindi & 3 others v The National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties) (Petition E080 & E150 of 2023 (Consolidated) [2023] KEHC 19534 (KLR)**, where the court is said to have nullified the appointment of 50 Cabinet Administrative Secretaries after they had been sworn into office since the underlying creation of those offices was unconstitutional. He also relies on **Katiba Institute v Attorney General & 2 others; Ndi & 20 others (Interested Parties)**, where the court is said to have nullified the appointment of 21 presidential advisers for violating Article 132(4)(a) and the Public Service Commission Act.

34. The Applicant submits that an appointment secured through an illegal or unconstitutional process is void ab initio and to support this position he cites the case of **State of Mysore & Anr v S. V. Narayanappa [1966] AIR**. He argues that while procedural irregularities might be curable, fundamental illegalities, such as the failure to uphold the *'irreproachable professional conduct'* required for Senior Counsel, cannot be regularized. Further, that Administrative opaqueness vitiates the entire process of appointment.

35. Further reliance is placed on the case of **Gichuhi v Committee on Senior Counsel & another**, where the Court is said to have quashed an invitation for applications because the process was found to be unlawful, emphasizing that a flawed recruitment process cannot stand. The case of **Trusted Society of Human Rights Alliance v Attorney General & 2 others**, is also relied on, where the High Court's decision is said to have upheld by the Court of Appeal, ruling that the appointment of the 1<sup>st</sup> Respondent was illegal and quashed the same for failing to adhere to the mandatory constitutional criteria of appointment such as integrity and the failure to vet the 1<sup>st</sup> Respondent before his appointment. According to the Applicant, the Court in *Mumo Matemu* held that, an appointment made without proper vetting for integrity is a nullity.

36. On justiciability and access to information, the Applicant relies on Section 6(1), (2), and (4) of the Fair Administrative Action Act, which according to him entitles an affected person to reasons and documents and presumes absence of good reason where none are supplied. The Applicant asserts that there is no estoppel against statute, citing **Henry Muthee Kathurima v Commissioner of Lands & another [2015] KECA 892 (KLR)** where the court is said to have held that estoppel cannot be used as a shield to protect unlawfully acquired property; estoppel cannot be used to circumvent Constitutional provisions and

estoppel cannot override express statutory procedures, and that there can be no estoppel against a statute.

37. On the doctrine of exhaustion, the Applicant argues that the doctrine is not an absolute bar to the High Court's jurisdiction, relying on **Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment)**, where the Supreme Court is said to have held that the exhaustion is a rule of convenience and prudence, inapplicable where the alternative forum cannot grant effective relief or determine constitutional questions.

38. The Applicant contends that Regulations 95 and 96 of the LSK (General) Regulations are unsuitable, as internal alternative dispute resolution cannot issue Judicial Review remedies such as certiorari or mandamus, nor quash a recommendation already submitted to the President. Further reliance is placed on Section 9(4) of the Fair Administrative Action Act, permitting exemption from exhaustion in exceptional circumstances.

39. The Applicant contends that such circumstances are manifest here being that the 3<sup>rd</sup> Respondent and members of the 1<sup>st</sup> Respondent are the very entities whose decision-making is impugned for bias and procedural unfairness. That this is not a private dispute between members suitable for alternative dispute

resolution, and that it is a high-stakes challenge to the integrity of the legal profession's highest rank.

40. On alleged abuse of process, The Applicant cites the case **Havi v Law Society of Kenya & another; Mboya & another (Interested Parties) [2018] KEHC 8791 (KLR)**, where the Court is said to have articulated several key jurisprudential principles. Firstly, that precedent should be followed only insofar as it advances justice, and courts must avoid rigid adherence that obstructs the path of justice. Secondly, that courts have a duty to reject interpretations of statutes or actions that would undermine societal goals or the public good. Third, that where statutory language is clear and unambiguous, courts must not rewrite, expand, or supplement it, as they have no legislative mandate, their role being to interpret the law as enacted and not to legislate. Fourth, that statutory interpretation begins with the plain meaning of the text, understood as an ordinary and reasonable person would read it, and if the wording is clear, no further inquiry is required. Finally, that clear statutory provisions override any claimed legitimate expectation and that a decision-maker cannot act contrary to express statutory terms, and there can be no legitimate expectation against the clear provisions of a statute.

41. In conclusion, the Applicant contends that the Preliminary Objection dated 20<sup>th</sup> January 2026 is an attempt to shield the Respondents from scrutiny over an

allegedly flawed conferment process that favoured candidates with disciplinary records. He urges this Court not to allow procedural technicalities to defeat substantive constitutional values of transparency and accountability, emphasizing the public interest in the integrity of the Roll of Senior Counsel. The Applicant therefore seeks dismissal of the Preliminary Objection with costs and requests that, pending full determination of the suit, the Court allow Prayer 3 on information sought and Prayer 4 on production of reasons, minutes, evaluation tool kit and the actual decision.

### **The Respondents' submissions**

42. The Respondents filed written submissions dated 18<sup>th</sup> February 2026. They oppose the Amended Originating Summons on six substantive grounds and urge the Court to uphold the Notice of Preliminary Objection dated 20 January 2026 and strike out the entire suit.

43. On the first ground, the Respondents submit that the Amended Originating Summons does not cite the substantive and procedural provisions of law anchoring the reliefs sought and therefore the High Court lacks jurisdiction for want of enabling provisions. They rely on the Supreme Court decision in **Macharia & another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR**, where the court is said to have held that a court's jurisdiction flows

from the Constitution or statute and cannot be expanded through judicial craft or innovation.

44. The respondents also rely on **Priscilla Nyambura Njue vs Geovhem Middle East Limited Kenya & Another [2021] eKLR** for the proposition that inherent jurisdiction is not an open-ended licence for courts to grant remedies not specifically provided for in law and that where Parliament has legislated exhaustively, courts must operate within those confines. On this basis, the Respondents contend that the claim by the applicant is unsustainable.

45. On the second ground of non-joinder, the Respondents submit that conferment of the rank of Senior Counsel is constitutionally and statutorily vested in the President under Section 17(1) of the Advocates Act, with letters of conferment issued pursuant to Section 17(3). That after signing of the Roll before the Chief Registrar under Section 18(4), the Chief Justice gazettes the conferment under Section 18(5). They argue that the Committee on Senior Counsel merely makes recommendations and exercises an advisory role, whereas the substantive prerogative power rests with the President. Consequently, that the failure to sue the President through the Attorney General renders the proceedings fatally defective.

46. On the third ground, the Respondents contend that the suit has been overtaken by events and that the Court is being asked to act in vain. They state that the 54

Senior Counsel have already signed the Roll and been gazetted by both the President and the Chief Justice, and as such removal from the Roll can only occur under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules. In support, they rely on the case of **Kenya Youth Parliament & 2 others v Attorney General & another; Kenya for Peace with Truth and Justice & Another [2012] eKLR**, where the Court is said to have declined to interrogate the appointment Keriako Tobiko as Director of Public Prosecutions as the same had already been effected and held that the proper recourse was removal from office.

47. The respondents also cite **Republic v Law Society of Kenya & Ahmednasir Abdullahi Ex Parte Leonard Gethoi Kamweti [2015]eKLR** where they submit that a challenge was dismissed on grounds that once Senior Counsel status had been acquired, the Respondent lacked jurisdiction to entertain the proceedings before it.

48. On the fourth ground of justiciability, the Respondents argue that the claim is speculative, unsupported by evidence, and amounts to a fishing expedition intended to compel the Respondents to furnish evidence to build the Applicant's case. They rely on **Musimba v Independent Electoral & Boundaries Commission & 2 others [2022]** for the proposition that a litigant cannot sue

and simultaneously seek information from the opposing party to sustain the action.

49. They submit that any request for information must strictly comply with the Access to Information Act (Chapter 7M). According to the respondents, Part III of the Act provides for access to information and the processing of a request for the information, and that this Court's jurisdiction is appellate and is triggered by Section 23(3). They cite **Kenya Railways Corporation & 2 others v Okoit & 3 others (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023]**, where the court is said to have observed that Article 35 of the Constitution and the Access to Information Act, 2016 guarantee the right to access information held by the State, but require that a formal request first be made to the relevant agency before the right becomes justiciable, as affirmed in **Kahindi Lekalhaile & 4 others v Inspector General National Police Service & 3 others [2013] eKLR**, where the Court is said to have held that the right crystallizes only upon denial of a request. The Court is said to have further emphasized that access to information is a two-way process requiring adherence to prescribed procedures, and that information obtained without following due process may be inadmissible and of diminished probative value.

50. The Respondents further rely on the case of **Aluochier v Senate & 2 others (Petition E014 of 2025) [2025] KESC 59 (KLR)**, where the Supreme Court is

said to have held that where information qualifies as a public record, a party must exhaust the remedies provided under the Act before approaching the High Court.

51.They also cite the case of **Ochieng v Public Service Commission & another; Attorney General & another (Interested Parties) (Petition E291 of 2024) [2025]** , which case is said have underscored that access to state-held information is regulated by statute and must follow prescribed procedures. The Respondents argue that the Applicant has not demonstrated that he has exhaustively followed the laid down process when seeking information.

52.On the fifth ground of exhaustion, the Respondents assert that the dispute concerns members of the Law Society of Kenya and must first be subjected to the alternative dispute resolution mechanism under Regulations 95 and 96 of the Law Society of Kenya (General) Regulations. They also rely on the case of **Republic vs. Nelson Andayi Havi & 2 Others; Gad Aguko (Ex Parte Applicant) Carolyne Kamende & 12 others (Interested Parties) [2021] eKLR**, where the Court is said to have observed that the dispute before it involved members of the Law Society of Kenya.

53.On the sixth ground, the Respondents contend that the suit is an abuse of the court process as it invites the Court to substitute its decision for that of the Committee on Senior Counsel and, by extension, the President. They argue that

the Originating Summons seek determination of contested factual issues unsuitable for judicial review and to support this position they rely on the case of **Republic v Nelson Andayi Havi & 2 Others; Gad Aguko (Ex Parte Applicant) Carolyne Kamende & 12 others (Interested Parties) supra**, where the court is said to have observed that judicial review under Section 7(2) of the Fair Administrative Action Act does not permit merit review or resolution of contested factual disputes.

54. In conclusion, the Respondents submit that there is no enabling law supporting the reliefs sought, and urge that this court finds that the suit is defective for non-joinder of the Attorney General, that the matter is overtaken by events, that the claim is not justiciable, and also that alternative remedies have not been exhausted. It is also their case that the proceedings constitute an abuse of process.

55. They further invoke Section 5(1) of the Fair Administrative Action Act, which requires issuance of a notice of intention to sue before seeking an order of mandamus, and contend that no such notice has been exhibited. Accordingly, they urge the Court to uphold the Preliminary Objection and strike out the Amended Originating Summons dated 12<sup>th</sup> January 2026.

### **The Interested Parties' submissions**

### **The 1<sup>st</sup> Interested Party's submission**

56. The 1<sup>st</sup> Interested Party filed written submissions dated 2<sup>nd</sup> February 2026, in support of the Respondents' Notice of Preliminary Objection dated 20<sup>th</sup> January 2026 and opposes the Amended Application dated 12<sup>th</sup> January 2026.

57. According to the 1<sup>st</sup> Interested Party, this Court lacks jurisdiction because the Applicant has disregarded the dispute resolution mechanism expressly provided under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules. It is argued that jurisdiction flows only from the Constitution or statute, as affirmed by the Supreme Court in **Samuel Kamau Macharia & Another v Kenya Commercial Bank and another [2012] eKLR**.

58. It is submitted that Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules, grants the Committee on Senior Counsel original and exclusive jurisdiction, either on its own motion or upon petition by a member of the Law Society of Kenya to remove a person from the Roll of Senior Counsel where that person ceases to meet the qualifications under Rule 7.

59. Rule 15 is said to empower the Committee to inquire into such a petition in accordance with the Constitution and, if satisfied, to submit its decision to the Chief Justice for transmission to the President for revocation and publication in the Gazette. The 1<sup>st</sup> Interested Party contends that the Rules do not envisage removal from the Roll through judicial review proceedings and that the Applicant, by seeking removal of unnamed Senior Counsel directly before the

High Court, has bypassed a comprehensive statutory process, thereby robbing the Court of jurisdiction.

60. Reliance is placed on the Court of Appeal decision in **Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR**, which is said to have affirmed the doctrine of exhaustion and emphasized that where a dispute resolution mechanism exists outside the courts, it must be exhausted before invoking judicial intervention, as courts are fora of last resort.

61. The 1<sup>st</sup> Interested Party further invokes Regulations 95 and 96 of the Law Society of Kenya (General) Regulations, which are said to provide specific procedures for resolving disputes among members of the Law Society through negotiation, conciliation, mediation, and arbitration. He submits that Regulation 96(6) allows a dispute between a member and another member, or a member where the Applicant and all other relevant parties fall in as members as was stated in **Adipo v Secretary/CEO Law Society of Kenya & another [2024] KEHC 12811 (KLR)**.

62. The 1<sup>st</sup> Interested Party also relies on the case of **Havi vs Law Society of Kenya & another; Mboya & another (Interested Parties) [2018] KEHC 8791 (KLR)** and **Majimbo Georgiadis vs Law Society of Kenya, Nairobi Branch & 11 others [2018] KEHC 6620 (KLR)**, in which applications by members of the Law Society of Kenya are said to have been dismissed for

failure to comply with the doctrine of exhaustion. The 1<sup>st</sup> Interested Party submits that the Applicant, Respondents, and Interested Parties are all members of the Law Society of Kenya and that any dispute between them must first be subjected to the internal mechanisms under Regulations 95 and 96 of the Law Society of Kenya General Regulations and the failure to do so renders the Application premature and defective for want of jurisdiction.

63. On the second ground, the 1<sup>st</sup> Interested Party submits that the matter has been overtaken by events because the statutory process of conferment of the rank of Senior Counsel had been fully concluded before the Application was filed. It is argued that the Committee on Senior Counsel, acting under Section 17(3) of the Advocates Act and Rule 12(1) of the Rules, completed its evaluation, made its collective determination and submitted its recommendations to the Chief Justice, thereby discharging its mandate.

64. Further, that the Chief Justice, pursuant to Rule 12(2), transmitted the recommendations to the President, who, under Sections 17(1) and 17(3) of the Advocates Act, granted letters of conferment. It is submitted that the names were subsequently published in the Kenya Gazette in accordance with Section 18(4) of the Advocates Act, rendering the conferment complete. The Committee it is submitted therefore became *functus officio* upon submission of its recommendations and retains no residual authority capable of being

restrained. According to the Interested Party its jurisdiction can only be re-invoked through a petition under Rule 15, not through judicial review proceedings.

65. The 1<sup>st</sup> Interested Party submits that the application improperly challenges a presidential decision without joining the President through the Attorney General. It is contended that the decision sought to be quashed is ultimately that of the President, exercised pursuant to Section 17 of the Advocates Act and embodied in a Gazette Notice issued under presidential authority.

66. The 1<sup>st</sup> Interested Party also relies on the case of **Nyarotho v Attorney General & 3 others [2013] KEHC 4162 (KLR)**, where the Court is said to have held that proceedings alleging contravention of the law by a state officer are in the nature of constitutional remedies under Articles 22 and 23 of the Constitution and are legally instituted and maintained against the Attorney General.

### **The 3<sup>rd</sup> Interested Party's submissions**

67. The 3<sup>rd</sup> Interested Party filed written submissions dated 20<sup>th</sup> February 2026. He submits that the court lacks requisite jurisdiction to interfere in such issues as the Advocates (Senior Counsel Conferment and Privileges) Rules establishes the Committee on Senior Counsel. According to the 3<sup>rd</sup> Interested Party, the Committee under Rule 4(c) has the mandatory function to consider any

application for the removal of a person from the Roll of Senior Counsel after which it makes recommendations to the President.

68. It is the 3<sup>rd</sup> Interested Party's submission that the Applicant seeks to arrogate unto himself authority that is reserved for a duly constituted legal process under the rules as well as various laws in Kenya. He argues that invoking the maxim *ex nihilo nihil fit* is evidence that the motion cannot derive authority from a source devoid of lawful mandate, and as such, the motion lacks substantive and procedural provisions and is based on nothing.

69. It is submitted that the doctrine of exhaustion posits that where a statute provides a dispute resolution mechanism, that mechanism must be pursued to its logical conclusion before seeking judicial intervention. This principle, it is urged is codified under Section 9 (2) of the Fair Administrative Action Act. The Supreme Court in the case of **Geoffrey Muthinja Kabiru & 2 Others vs. Samuel Munga Henry & 1756 Others [2015] eKLR** is to have emphasized the importance of the doctrine of exhaustion.

70. It is submitted in reiteration that Rule 15 of the Senior Counsel Conferment and Privileges Rules is clear on the process to be followed for such a removal which steps have to be exhausted first. The 3<sup>rd</sup> Interested Party submits that the motion seeks mandatory orders to compel the 1<sup>st</sup> Respondent to render various

documents and decisions before this Honorable Court in a bid to substantiate the matter before this Court.

71. It is submitted that the Kenyan judicial system is adversarial in nature, this means that this Honorable Court is not one to proceed on a fact-finding mission in an effort to substantiate and strengthen a claim against the Respondents. That beyond this, the drafters of the Constitution foresaw the need to access information and developed a concise code on how to guarantee this right and this is provided for under Article 35(1) of the Constitution. Further, that section 9 of the Access to Information Act is said to provide a detailed process of the application as well as the timelines from which the Applicant ought to demonstrate (prior to seeking the intervention of this court) that they followed the necessary steps to seek information from the 1<sup>st</sup> Respondent that is a public statutory body with the Republic of Kenya.

72. The 3<sup>rd</sup> Interested Party also submits that Rule 12 (1) of The Advocates (Senior Counsel Conferment and Privileges) Rules states that the Committee shall submit the persons recommended for conferment of the rank of Senior Counsel to the Chief Justice within 30 days from the date of its decision.

73. That the important operative term in the rule is 'within 30 days from the date of its decision' which means that the Committee is clothed with the authority to decide who will be conferred the rank of Senior Counsel.

74. It is urged that the role of the Chief Justice in receiving the list and submitting them to the President as well as the President's role in granting a letter of conferment to each person whose name is on the list is ceremonial at best, and is done to authenticate the decision of the Committee, and that as such, the prayer seeking an order quashing the names of the Advocate conferred with the rank of Senior Counsel for whatever reason is moot, misplaced and overtaken by events.

#### **Analysis and Determination**

75. This court has carefully considered the Applicant's pleadings, affidavits and the Respondents' Preliminary Objection coupled with the the submissions filed by the Applicant, the Respondents and 1<sup>st</sup> and 3<sup>rd</sup> Interested Parties. The following issues arise for determination:

- i. Whether the Preliminary Objection raises pure points of law capable of disposing of the suit.*
- ii. Whether, following the completion of the conferment process, this Court can grant the declaratory and other judicial review reliefs sought in light of the statutory removal mechanism under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules.*

*iii. Whether the prayers seeking production of information are properly before this Court in view of Article 35 of the Constitution and the Access to Information Act.*

*iv. What orders should this Court make.*

*Whether the Preliminary Objection raises pure points of law capable of disposing of the suit.*

76. In resolving this issue, it is important to note that the preliminary objection notice outlines several grounds upon which the respondents seek to have the Originating Motion struck out in limine and that they respondents therefore need not prove all the grounds. Any one of the grounds, if found to be dispositive of the suit, can lead to determination of the suit without delving into the merits. I now proceed to assess each of the preliminary objection grounds but first things first. What is a preliminary objection?

77. In the Supreme Court, in **Petition No. 19 (E022) of 2020 —Between— Agnes Wachu Wamae & 97 Others, Appellants —And— Barclays Bank of Kenya Limited**, citing the locus classicus on what a preliminary objection is, stated as follows:

*“[18] The principles established by the time-honoured, Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors (1969) EA 696, cited with approval by this Court in Hassan Ali Joho Case (supra) are settled that;*

*“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”*

78. Thus, the **Mukisa Biscuit** case underscores that a valid preliminary objection must not be interwoven with factual disputes requiring proof by evidence.

79. The Respondents’ preliminary objection is multifaceted. They contend that their Preliminary Objection raises pure points of law, which include- that this Court lacks jurisdiction as the Applicant’s application fails to cite enabling provisions under which this court can make orders; that the application by the applicant fails to join the President of the Republic of Kenya; that the matter is overtaken by events; that the Applicant has failed to exhaust statutory remedies; and that the Applicant has failed to comply with the Access to Information Act. The

respondents rely *on Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* and argue that these objections, if upheld, dispose of the suit without the need for evidence.

80. The 1<sup>st</sup> Interested Party supports the Preliminary Objection and submits that the objections go to jurisdiction and statutory competence. He argues that where Parliament has provided a specific mechanism for removal under Rule 15, the High Court cannot assume original jurisdiction. He relies on the case of **Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others** for the principle that jurisdiction flows only from statute or the Constitution.

81. The 3<sup>rd</sup> Interested Party too submits that this Court is devoid of the requisite jurisdiction to interfere in such issues as the Advocates (Senior Counsel Conferment and Privileges) Rules establishes the Committee on Senior Counsel. According to the 3<sup>rd</sup> Interested Party, the 1<sup>st</sup> respondent Committee under Rule 4(c) is mandated to consider any application for the removal of a person from the Roll of Senior Counsel after which it makes recommendations to the President. It is also the 3<sup>rd</sup> Interested Party's submission that the Applicant seeks to arrogate himself of the authority that is reserved for a duly constituted legal process under the Rules as well as various statutes in Kenya.

82. The Applicant contests the preliminary objection and argues that the preliminary objection does not raise pure points of law but instead invites the

Court to determine contested factual matters. He submits that the objections relating to eligibility, integrity and disciplinary status require factual interrogation. He maintains that in the absence of a replying affidavit, his evidence stands uncontroverted and the matter cannot be disposed of on a Preliminary Objection.

83. I have considered the preliminary objection as supported by the grounds summarized hereinabove and the question to be answered is whether the objections meet the threshold for a preliminary objection as was stated in the case of **Mukisa Biscuits Co. Ltd v West End Distributors Ltd. [supra]**.

84. The Mukisa Biscuits case defines what a preliminary objection is and that definition has stood the test of times. The Black Law Dictionary defines a Preliminary Objection as being:

*“In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary....”*

85. In the **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [supra]** case, Lord Charles Newbold P. held that a proper preliminary objection constitutes pure points of law. The Learned Judge then stated that:

*“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what*

*used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”*

86. In **Attorney General & Another v Andrew Mwaura Githinji & another** [2016] eKLR, the Court was explicit on the scope, nature and meaning of a Preliminary Objection in the following terms:

*“(i) A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.*

*(ii) A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and*

*(iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.”*

87. The Supreme Court of Kenya in **Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others** [2014] eKLR held that a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out

of the pleadings and which if argued as a preliminary point, may dispose of the suit.

88. In **David Nyekorach Matsanga & Another v Philip Waki & 3 Others [2017] eKLR** the Court held that a preliminary objection should not be raised where facts had to be ascertained or where what was sought is the exercise of judicial discretion.

89. In **Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR**, it was held that it was improper to resort to the preliminary objection as a sword for winning a case otherwise destined to be resolved judicially and on merits instead of summarily and that judicial time and resources would be preserved for hearing a matter on merits.

90. Upon careful examination of the grounds raised in the Preliminary Objection, I find that most of the grounds either invite the Court to interrogate contested facts or require the exercise of judicial discretion. The grounds that properly qualify as pure points of law are whether, in view of the completed conferment process and the statutory framework governing removal under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules; and in view of the provisions under the Access to Information Act on the procedure for obtaining information from state or non-state agency, the reliefs sought are available for granting by this Court.

91. The remaining grounds, without delving into the merits of each of them, including allegations that the claim is not anchored on any specific provisions of the law; is bad in law for want of joinder of the President or Attorney General, amounts to a fishing expedition; that the dispute is between advocates hence governed by Rules 95 and 96 of the Law Society of Kenya General Regulations; concerns unidentified persons, necessarily require factual inquiry, evidentiary evaluation, or assessment of the Applicant's intentions. Such matters fall outside the scope of a proper preliminary objection as contemplated in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd** and therefore, cannot be determined without a substantive merit hearing.

92. The objection based on non-joinder of certain office holders or affected persons does not, in the present circumstances, constitute a dispositive pure point of law. Whether the absence of such parties is fatal depends on the nature of the relief sought and the extent to which their legal rights would be directly affected. That inquiry would necessarily require consideration of the substance of the claims and cannot be conclusively determined at the preliminary stage. In any event, non-joinder is a procedural irregularity that can be remedied at any stage of the proceedings in proceedings of this nature and does not automatically bar the Court from hearing the matter.

93. On the other hand, the grounds capable of disposing of the suit at the preliminary stage are the statutory exclusivity under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules which provides for the procedure for removal of Senior Counsel following a completed process under section 18(4) of the Advocates Act and the failure to comply with Access to Information Act as read with section 9 of the Fair Administrative Action Act, 2015.

94. The Respondents and 1<sup>st</sup> and 3<sup>rd</sup> Interested Parties contend that once the conferment process has been completed, the Committee on Senior Counsel has transmitted its recommendations, the Chief Justice has submitted the list to the President, the Letters of Conferment have been issued and the advocates have signed the Roll, the High Court cannot intervene to quash, set aside, or otherwise nullify the conferment. That any attempt to do so would circumvent the statutory scheme and the Constitution, and is therefore unavailable.

95. This Court reminds itself of the holding in **Oraro v Mbaja [2005] 1KLR 141** in which the Court held that:

*“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.*

96. Thus, once the conferment process is complete, can the High Court quash or nullify it without circumventing the statutory framework, consistent with the principle that preliminary objections must not be based on disputed facts as established in **Oraro v Mbaja [2005] 1 KLR 141**. This leads this Court to venture into the issue of *whether, following the completion of the conferment process, this Court can grant the declaratory and judicial review reliefs sought in light of the statutory removal mechanism under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules*.

97. All the parties to these proceedings concede and it is not in dispute that without jurisdiction, as decreed in the locus classicus **Owners of Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Limited, Civil Appeal No 50 of 1989, [1989] KLR 1**, this Court downs its tools, and declares that the application is incompetently filed. The Court of Appeal in the **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (supra)** case held that:

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

*exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”.*

98. This Court must therefore first assess whether it has jurisdiction to entertain relief that would directly affect a process already finalized under the Advocates Act and the relevant Rules made thereunder.

99. On jurisdiction of the Court, **In the Matter of Advisory Opinions of the Court under Article 163 of the Constitution (Constitutional Application No. 2 of 2011 at para. 30)**, the Supreme Court stated:

*“...a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern or interpret the intentions of Parliament, where the legislation is clear and there is no ambiguity.”*

100. In **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank & 2 Others, Supreme Court Civil Appeal (Application) No. 2 of 2011**, the Supreme Court rendered itself as follows regarding a Court’s jurisdiction:

*“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. Where the Constitution exhaustively provides for the jurisdiction of a court of law,*

*the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”*

101. In this case, it is undisputed that the conferment of the rank of Senior Counsel has been finalized and Rule 15 of the (SCCP) Rules provides the exclusive statutory procedural mechanism for stripping an advocate, of such rank. It is also not in dispute that the Committee on Senior Counsel made its recommendations; providing a list of advocates whom it was satisfied met the eligibility criteria for conferment of the rank of Senior Counsel; the Chief Justice transmitted the list to the President; the President granted the Letters of Conferment; the respective advocates signed the Roll of Senior Counsel and the Gazette Notice was duly published gazetting them as Senior Counsel. All this information is provided by the applicant. The administrative process contemplated under section 17 of the Advocates Act therefore reached its legal conclusion.

102. The Respondents contend that by reason of this completion of the process of conferring the rank of Senior Counsel, the matter has been overtaken by events and that this Court lacks jurisdiction to intervene.

103. I must however clarify that while it is correct to say that jurisdiction must be determined at the earliest opportunity, as emphasized in **Owners of the Motor Vessel Lillian S v Caltex Oil Kenya Ltd**, the mere fact of implementation of

an impugned decision does not, in itself, render that decision moot or automatically divest the Court of jurisdiction. Courts retain power in appropriate cases to review and quash completed administrative actions and decisions.

104. The Respondents assert that, since the Letters of Conferment were issued by the President of the Republic of Kenya, the matter has been overtaken by events and this Court consequently lacks jurisdiction. In their view, the Applicant's only recourse lies in petitioning the Committee on Senior Counsel directly for removal of the 54 Senior Counsel, or any of them, pursuant to Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules.

105. The 1<sup>st</sup> Interested Party on his part argues that Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules, grants the Committee on Senior Counsel original and exclusive jurisdiction, either on its own motion or upon petition by a member of the Law Society of Kenya, to remove a person from the Roll of Senior Counsel where that person ceases to meet the qualifications under Rule 7.

106. It is also the 1<sup>st</sup> Interested Party's position that Rule 15 empowers the Committee to inquire into such a petition in accordance with the Constitution and, if satisfied, to submit its decision to the Chief Justice for transmission to the President for revocation and publication in the Gazette. The 1<sup>st</sup> Interested

Party contends that the Rules do not envisage removal from the Roll through judicial review proceedings and that the Applicant, by seeking removal of unnamed Senior Counsel directly before the High Court, has bypassed a comprehensive statutory process, thereby robbing the Court of jurisdiction.

107. On the part of the Applicant, he invokes the doctrine of nullity, arguing that if the recommendation was unlawful, the conferment collapses automatically. He cites several decisions to support his position.

108. Section 17 of the Advocates Act is on the rank of Senior Counsel it states as follows:

***“17. Senior Counsel***

***(1) The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon him the rank and dignity of Senior Counsel.***

***(2) A person shall not be eligible to be a Senior Counsel unless—***

***(a) he is a duly enrolled advocate of the High Court of not less than fifteen years’ standing; or***

***(b) being a person to whom section 10 applies, he holds, and has held for a continuous period of not less than fifteen years, one or other of the qualifications specified in section 13(1).***

***(3)The grant shall be made not later than sixty days upon receipt of a list of names submitted by the Committee on Senior Counsel through the Chief Justice.***

109. Rule 7 of the Advocates (Senior Counsel Conferment and Privileges) Rules provides for the criteria for conferment as follows:

***7. Criteria for conferment***

***A person qualifies for conferment of the rank of Senior Counsel if that person—***

***(a)meets the requirements specified under section 17(2) of the Act;***

***(b)is an active legal practitioner and undertakes training of other members in the legal profession;***

***(c)holds a valid practicing certificate or is entitled to act as an advocate under section 10 of the Act, at the time of making the application;***

***(d)has not been found guilty of professional misconduct by the Disciplinary Committee established under the Act;***

***(e)possesses sound knowledge of law and professional competence;***

***(f)has argued a substantive matter before a superior, regional or international court;***

***(g)is a person of integrity, irreproachable professional conduct and good character;***

*(h)has actively served the Society or other regional or international bar association to which the Society is a member or has undertaken community service; and*

*(i)has contributed to the development of the legal profession through scholarly writings and presentations.*

110. Section 18 of the Act provides for the Roll of Advocates having the rank of Senior Counsel in which every person upon whom the rank of Senior Counsel has been conferred shall sign, in the presence of the Registrar.

111. Rule 3 of the Advocates (Senior Counsel Conferment and Privileges) Rules provides for the Composition of the Committee on Senior Counsel. The functions of the Committee are set out under Rule 4 as follows:

*“4. Functions of the Committee*

*The Committee on Senior Counsel shall—*

*(a) consider the applications submitted to it under rule 6(1);*

*(b) make recommendations to the President for the conferment on a person of the rank of Senior Counsel; and*

*(c) consider any application for the removal of a person from the Roll of Senior Counsel and make recommendations to the President.*

112. Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules provides for the removal from the Roll of Senior Counsel. The section provides as follows:

***“15. Removal from Roll of Senior Counsel***

***(1) The Committee may, either on its own motion or on the application of a member of the Society, remove the name of a person from the Roll of Senior Counsel if the person ceases to meet the qualifications prescribed under rule 7.***

***(2) A member of the Society who applies for the removal of a person from the Roll of Senior Counsel under paragraph (1) shall submit a written petition to the Committee and submit a copy of the petition to the Council.***

***(3) The Committee shall inform the Senior Counsel of its intention or, of receipt of an application, to remove his name from the Roll of Senior Counsel.***

***(4) The Committee shall conduct an inquiry on the removal of the Senior Counsel and shall give the Counsel an opportunity to be heard on the petition.***

***(5) The Committee shall, where it determines that the name of the Senior Counsel should be removed from the Roll of Senior Counsel, submit its***

*decision to the Chief Justice and the Senior Counsel and give reasons for its decision.*

*(6) The Chief Justice shall transmit the decision of the Committee to the President and the President shall revoke the grant of conferment of the rank of Senior Counsel.*

*(7) The Chief Justice shall cause to be removed from the Roll of Senior Counsel, the name of the Senior Counsel and cause to be published in the Gazette, a notice revoking the conferment of the Rank of Senior Counsel.*

*(8) The Committee shall determine its own rules and procedures for holding an inquiry under this rule.*

113. Section 17 of the Advocates Act vests the power of conferment of the rank of Senior Counsel in the President, upon recommendation of the Committee on Senior Counsel. Once that conferment has been granted and the name of the Advocate is entered in the Roll pursuant to section 18, the Advocates (Senior Counsel Conferment and Privileges) Rules provide, under Rule 15, a detailed procedure for removal from the Roll. That procedure includes the filing of a petition before the Committee, inquiry with a right to be heard, recommendation to the Chief Justice and eventual revocation by the President through Gazette publication.

114. The question is whether this Court can entertain proceedings seeking the removal of a Senior Counsel, or a declaration that the conferment of that status was illegitimate, whether now or in future, in circumstances where the **Advocates Act (Cap 16, Laws of Kenya)** and Rules made thereunder, provide a statutory framework governing the conferment and removal of that designation.

115. It is a well-established principle that jurisdiction is the foundation of every judicial proceeding. Where a court of law establishes that it is devoid of jurisdiction, it cannot proceed any further. This principle was enunciated in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where the Court of Appeal stated that jurisdiction is everything and that without it a court must do no more than down its tools. The Supreme Court of Kenya and all other courts and Tribunals have reiterated this same position over and over. In **Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR**, the Supreme Court emphasized that jurisdiction is conferred by the Constitution, statutes or both and that not even the consent of parties can confer jurisdiction on the court, nor the court arrogating itself of jurisdiction, whether by craft, when it is devoid of such jurisdiction.

116. In Kenya, the status of Senior Counsel is not merely ceremonial. It is a statutory designation governed by the Advocates Act. The Act establishes the framework within which that status may be conferred and also provides the institutional mechanism through which questions relating to that designation, including removal of such designation, may be addressed. The structure created by the statute reflects the legislative intention, that matters concerning the conferment or revocation of Senior Counsel be handled within that statutory course.

117. It is not lost to this Court that Courts have consistently held that where the law provides a specific procedure for resolving a particular dispute, that procedure ought to be followed. In **Speaker of the National Assembly v Karume [1992] KLR 21**, the Court of Appeal observed that where the Constitution or an Act of Parliament provides a clear procedure for redress, that procedure should be strictly adhered to.

118. The position in the above case has been reaffirmed in later decisions. In **Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] eKLR**, the Court of Appeal emphasized the importance of allowing statutory bodies to exercise the mandates given to them by statute before the courts are invited to intervene. Similarly, in **MUTANGA TEA & COFFEE COMPANY LIMITED v SHIKARA LIMITED & another [2012] KEHC**

2880 (KLR) Okwengu J (as she then was), had this to say concerning exhaustion of alternative remedies:

*“Moreover, I am persuaded by the holding in R versus Birmingham City Council ex parte Ferrero Ltd [1993] All ER 530 referred to by Wendoh, J. in R versus National Environmental Management Authority ex parte Sound Equipment Ltd [2010] eKLR, that:*

*“Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it was only exceptionally that judicial review would be granted. In determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what in the context of the statutory powers was the real issue to be determined and whether statutory appeal procedure was suitable to determine it.”*

*Needless to state, that no exceptional circumstances have been demonstrated to justify departing from the statutory provisions.”*

119. The above decision was appealed against and the Court of Appeal in upholding the High Court decision stated as follows:

*“35. This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for resolution of particular disputes. Speaker of The National Assembly v Karume (supra), was a 5(2)(b) application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by the Constitution. In granting the order, the Court made the often-quoted statement that: “[W]here there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”(See also Kones v Republic & Another Ex Parte Kimani Wa Nyoike & 4 others (2008) 3 KLR (ER) 296).*

*36. It is readily apparent that in those cases the Court was speaking to issues of the correct procedure rather than of the correct forum for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.*

*37. The basis for that view is first that Article 159 (2) (c) of the Constitution has expressly recognized alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The use of the word “including” leaves no doubt that Article (159(2)(c) is not a closed catalogue. To the extent that the Constitution requires these forms of dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the High Court would not be promoting, but rather, undermining a clear constitutional objective. A holistic and purposive reading of the Constitution would therefore entail construing the unlimited original jurisdiction conferred on the High Court by Article 165(3)(a) of the Constitution in a way that will accommodate the alternative dispute resolution mechanisms.*

*38. Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost-effective manner. In *Rich Productions Ltd. v Kenya Pipeline Company & Another*, Petition No. 173 of 2014, the High Court explained why it must be slow to undermine prescribed alternative dispute resolution mechanisms thus:*

*“The reason why the Constitution and the law establish different institutions and mechanism for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2nd respondent, such supervision is limited in various respects, which I need, not go into here. Suffice to say that it (the court) cannot exercise such jurisdiction in circumstances where parties before it seek to avoid mechanisms and processes provided by law, and convert the issues in dispute into constitutional issues when it is not.”*

*39. On the same reasoning, this Court, in Republic v The National Environmental Management Authority, CA No. 84 of 2010 upheld a decision of the High Court, which declined to entertain a judicial review application by a party who had a remedy, which he had not utilized, under the National Environment Tribunal. The Court reiterated that where Parliament has provided an alternative remedy in the form of a statutory appeal procedure, it is only in exceptional circumstances that an order of judicial review will be granted. More recently in Vania Investment Pool Ltd. v Capital Markets Authority & 8 Others, CA No. 92 of 2014 this Court also upheld a decision of the High Court in which the court declined to*

*entertain a judicial review application by an applicant who had failed to first refer its dispute to the Capital Markets Appeals Tribunal established by the Capital Markets Act.*

*40. We are therefore satisfied that the learned judge did not err by striking out the appellant's suit and application which sought to invoke the original jurisdiction of the High Court in circumstances whereas the relevant statutes prescribed alternative dispute resolution mechanisms and afforded the appellant the right to access the High Court by way of appeal, which mechanisms he had refused to invoke. To hold otherwise would, in the circumstances of this appeal, be to defeat the constitutional objective behind Article 159(2)(c) and the very raison d'être of the mechanisms provided under the two Acts.*

*41. What we have stated above also sufficiently disposes of the appellant's contention that the High Court failed to invoke its inherent jurisdiction or abdicated its jurisdiction. It also answers the applicant's contention that the failure to follow the prescribed dispute resolution mechanism was a mere technicality curable under Article 159 (2) (d) of the Constitution. Granted the express constitutional principle under which the dispute resolution mechanisms provided by the PPA and the EMCA are*

*underpinned, it cannot be claimed that lack of compliance with those mechanisms is a mere technicality. In Raila Odinga & 5 others v. IEBC & 3 others, Petition No. 5 of 2013, the Supreme Court stated that in interpreting the Constitution, it must be read as one whole and that Article 159(2)(d) cannot be read or applied in a manner that ousts the provisions of other clear Articles of the Constitution. And in Lemanken Aramat v Harun Maitamei Lempaka, Petition No. 5 of 2014, the same Court, while considering the provisions of Article 159(2) (d) of the Constitution noted that where the issue at hand is one of mere procedural lapse which has no bearing on jurisdiction, the court can cure the same under Article 159(d). However, where the Constitution links certain vital conditions to the power of the court to adjudicate a matter, Article 159(2)(d) has no application.”*

120. The Court of Appeal in the above case cautioned against bypassing statutory mechanisms, noting that doing so would undermine the very framework established by law.

121. In this case, Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules made under the Advocates Act provides the mechanism through which matters relating to the conferment or removal of Senior Counsel are to be addressed. Until that mechanism is invoked and exhausted, this Court

cannot grant reliefs that would directly nullify or revoke the conferment already effected.

122. In other words, to invite this Court to directly exercise original jurisdiction and determine whether a Senior Counsel should be removed, or whether the conferment of that status was illegitimate, absent of any order staying that conferment and with no evidence that any order of the court was violated by the conferring authority, would be to require this Court to assume a role that the law has assigned to a statutory process. See the case of **Omondi & another v Attorney General & 2 others; Ethekon & 6 others (Interested Parties) (Petition E269 of 2025) [2025]** where the Court held that a completed statutory or constitutional process while there was subsisting a stay order was a nullity and the court proceeded to nullify that process.

123. That is not the position in this case. The applicant came to court on the say when the advocates had been gazetted for conferment of the rank of Senior Counsel and the process went all the way to the very end. Whereas the High Court retains supervisory jurisdiction under Article 165(6) and (7) of the Constitution and the authority to enforce the right to fair administrative action under Article 47, that supervisory jurisdiction is exercised where a proper basis for intervention is established. The jurisdiction allows the Court to review the legality of a process where it is alleged that a statutory body acted unlawfully,

irrationally, or in breach of procedural fairness. It does not permit the Court to substitute itself for the statutory body or to undertake the functions entrusted to the statutory body by law.

124. Although the applicant argued that the procedure is merely procedural and should not be elevated as section 9(4) of the Fair Administrative Action Act provides for exemption from resorting to such alternative mechanisms, it is worth noting that there was no application by the applicant seeking for exemption from resorting to alternative mechanisms. The Fair Administrative Action Act implements Article 47 of the Constitution. Under section 9 of the Act:

***9. Procedure for judicial review.***

***(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.***

***(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.***

***(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).***

***(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.***

***(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.***

125. There is no prayer for exemption, setting out what the applicant may have considered to be exceptional circumstances warranting such exemption. A party cannot seek an exemption through submissions after the adverse party has raised the issue of non-exhaustion of alternative remedies. More so, it has not been demonstrated that the applicant is remediless. From the provisions of the law that I have reproduced herein, he can initiate the process for revocation of the ranks conferred following the established procedure.

126. I reiterate that any grievance concerning the conferment or removal of the designation of the rank of Senior Counsel must first be pursued within the

statutory mechanism provided under the Act and Rules made thereunder as reproduced hereinabove, subject only to the Court's supervisory jurisdiction where a proper basis for intervention is established. See also **Ndiara Enterprises Ltd v Nairobi City County Government [2018] KECA 825 (KLR)**.

127. If this Court were to grant orders quashing the conferment at this stage, this would have the effect of by passing the removal mechanism specifically provided under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules.

128. The procedure stipulated under the Advocates Act and Rules reproduced hereinabove, for removal of Senior Counsel once the advocate is conferred of such rank, only compares to the procedure mandated by the Constitution for removal of a Judge. By comparison, once a Judge of a superior Court is appointed as such Judge, a party aggrieved by that appointment can only challenge it through a petition to the Judicial service Commission and not through a Court process seeking declarations or removal on account of illegality, ineligibility or illegitimacy.

129. In the circumstances, I am not persuaded that this Court has jurisdiction to entertain proceedings seeking the removal of a Senior Counsel or a declaration invalidating the conferment of that status outside the framework established

under Rule 15 of the Advocates (Senior Counsel Conferment and Privileges) Rules.

130. On that ground alone, and in view of the jurisdictional restraint by the Court and the jurisdictional principle espoused in **Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others** that a court's jurisdiction flows from the Constitution or statute or both and that such jurisdiction cannot be expanded through judicial innovation, this Court must respect the procedural architecture established by Parliament.

131. In the end, this Court finds and holds that the originating motion proceedings before this Court cannot be sustained and are amenable for striking out for want of jurisdiction. To that extent, the Preliminary Objection succeeds on the ground that the reliefs sought are not available through these proceedings in view of the completed statutory process and there being an exclusive removal framework provided by law.

132. I would have stopped there. However, there is another jurisdictional issue that this Court finds necessary to determine, arising from the prayers sought and the issue is *whether the prayers seeking production of information are properly before this Court in view of Article 35 of the Constitution and the Access to Information Act.*

133. The Applicant also seeks orders compelling the production of information and documents from the Respondents. These prayers are grounded on section 6(1), (2) and (4) of the Fair Administrative Action Act, and Article 35(1) of the Constitution, which guarantee the right of access to information held by the State.

134. Article 35(1) of the Constitution guarantees every citizen the right of access to information held by the State, and to information held by another person where that information is required for the exercise or protection of any right or fundamental freedom. However, the enforcement of this right is governed by statute and established jurisprudence. Accordingly, an applicant seeking to enforce that right must comply with a structured statutory procedure before approaching the High Court.

135. The Access to Information Act was enacted to give effect to this right and the Act establishes the procedure for seeking such information. Sections 8 and 9 of Access to Information Act set out a very detailed mechanism for making a written request to the relevant public entity, the timelines within which the request is to be processed and the procedure to be followed in the event of refusal. Section 23 further vests jurisdiction in the High Court in an appellate capacity where a person is aggrieved by a decision of the Commission on Administrative Justice regarding access to information.

136. It is important to highlight the aforesaid procedure as set out in the Act.

Under sections 6 and 8 of the Access to Information Act, a person seeking information must:

- i. Make a formal request to the relevant public entity or private body;
- ii. Await a response within the statutory timeline which is 21 days;
- iii. Where aggrieved by delay or refusal to get the information requested, lodge a complaint with the Commission on Administrative Justice.

137. The Commission on Administrative Justice, CAJ, is one of the Chapter fifteen Constitutional Commissions established with the mandate to promote fair administrative action, investigate maladministration, and oversee the enforcement of the Access to Information Act, 2016. The Commission is thus vested with investigative and enforcement powers including the power to compel and or order disclosure of information requested.

138. In **Kenya Railways Corporation & 2 others v Okoit & 3 others [2023] KESC 38 (KLR)**, the Supreme Court quite recently affirmed that the right to access information under Article 35 of the Constitution crystallizes only after a request for information has been made to the relevant State agency and access has been denied. The Court made it clear that while every person has a constitutional right to access information held by the State or public bodies as guaranteed by Article 35, this right is not automatic. One must first follow the

proper procedure laid out in the Access to Information Act. That means making a formal request to the relevant public body and giving them time to respond followed by a request for review of that administrative action via the Commission on Administrative Justice. Only after the request has been denied, ignored, or improperly handled does the right to take the matter to court arise.

139. The Supreme Court also emphasized that information obtained outside this formal process, for example, through informal or secret means, cannot simply be relied on in court, and that permitting that would undermine the statutory procedure and other protections such as privacy.

140. The apex Court observed thus:

***“84. Article 35 of the Constitution of Kenya 2010 provides for the right to access information held by the State, including that held by public bodies. The Access to Information Act No 31 of 2016 was enacted to give effect to article 35 and sets out the procedure to be followed when requesting information including on the mandate of the Commission on the Administrative Justice. Pursuant to this provision, citizens should be able to access the information by first, requesting for the information from the relevant State agency. In Kahindi Lekalhaile & 4 others v Inspector General National Police Service & 3 others Nrb Petition No 25 of 2013 [2013] eKLR, the High Court stated as follows:***

*“However, in order for this right to be justiciable, it must be established that the person seeking the information has sought the information, and access to such information has been denied. ... In the instant case, no request for information has been made to the respondents. The enforcement of the right cannot therefore be said to have crystallized.*

*85. The right to institute an action in court only crystallizes once a citizen has requested for the information from the State and the request has been denied or not provided. The 1st, 2nd and 3rd respondents herein did not make a request to be provided with the information relied on.”*

141. In the present case, the Applicant has not demonstrated that a formal request for the specific information sought was made in accordance with section 8 of the Access to Information Act, nor has it been shown that such a request was refused, ignored, or otherwise determined by the information officer of the 1<sup>st</sup> Respondent.

142. There is equally no evidence that the Applicant invoked the statutory review mechanism before the Commission on Administrative Justice as contemplated under the Act.

143. The right of access to information is not self-executing in a manner that permits the Court to engage in a fact-finding mission in the absence of compliance with the statutory procedure. As observed in **Republic v**

**Communication Authority of Kenya; Safaricom Limited & 2 others (Interested Parties); Ex Parte Omikko Electronics Kenya [2019] KEHC 11697 (KLR)**, it must be established that the Respondent holds the information sought and that access has been properly requested in the manner provided for under the Access to Information Act.

144. In the absence of any material on record of a formal request, denial, or exhaustion of the statutory mechanism under the Access to Information Act, the Applicant's prayers for production of information are premature and not properly before this Court.

145. Accordingly, the failure by the applicant to comply with the provisions of the Access to Information Act on the procedure for accessing information deprives this court of its jurisdiction to hear the merits of the originating motion.

146. I reiterate that such exhaustion of process being recognized under section 9(2) of the Administrative Action Act is mandatory and no grounds were advanced to this court by way of an application for consideration, as to why an exemption should be granted.

147. Accordingly, the reliefs seeking to quash, set aside, or otherwise nullify the conferment of the rank of Senior Counsel are not available to the applicant on account of want of jurisdiction of this Court to intervene in a statutorily and procedurally completed process; and failure to exhaust the available

mechanisms for addressing the concerns raised by the applicant, both as regards the revocation of the rank of Senior Counsel and in seeking information held by the respondents.

148. Before I conclude, I must address prayer 4 of the originating Motion. The Prayer No. 5 seeks a declaration that anyone who has been found guilty of professional misconduct, is facing pending complaints before the Disciplinary Committee, or has been convicted of a felony is ineligible for the rank of Senior Counsel, and that any attempt to confer such rank would be unlawful and in violation of the **Advocates Act** and **Rules 7(d) and (g)** of the **Advocates (Senior Counsel Conferment) Rules**.

149. This Court has already found that it has no jurisdiction to intervene in matters concerning the conferment of Senior Counsel where, as is in the present case, the process was completed, because a clear statutory framework exists under the **Advocates Act** and **Advocates (Senior Counsel Conferment) Rules** and that the information sought cannot be ordered by this court in view of the procedure for accessing information as stipulated under the Access to Information Act.

150. For that reason, to grant the declaration sought would effectively direct how that statutory body, being the Committee on Senior Counsel, should exercise its powers in the future, which would conflict with the Court's earlier finding that

it cannot step into this process in the circumstances of this case. Furthermore, the Rules already explicitly dictate the eligibility criteria for such conferment and therefore a court declaration or prohibition simply repeating that law is absolutely superfluous, absent any evidence that the 1<sup>st</sup> respondent is notorious for flouting that procedure and the criteria for identifying suitable advocates for conferment of the rank of Senior Counsel. This Court cannot issue such broad and prospective declarations and prohibitions when there is no concrete factual foundation.

151. A court of law can only decide on matters properly placed before it and supported by evidence. In this case, the applicant indicated that certain information held by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents was central to his claim but sought to have the Court compel its production. However, this Court has found that the law provides a specific procedure for accessing such information under the **Access to Information Act**, which procedure the applicant did not follow or exhaust before approaching this Court. Without following that statutory process, this Court cannot compel the production of the information or base a declaration on it. For these reasons, and in addition to the issue of jurisdiction, Prayer No. 6 is unavailable to the applicant.

152. Further, regarding the prayers for mandamus and prohibition as sought, this Court cannot order that the names of advocates already conferred with the rank

of Senior Counsel be expunged nor can it prohibit future conferment on the basis of alleged criminality or misconduct. This is because, as stated above, the conferment of Senior Counsel is governed by a clear statutory framework under the **Advocates Act** and the **Senior Counsel Conferment Rules**, which gives the designated statutory body the authority to make such determinations. Issuing such orders would require this Court to descend into the shoes of that body and substitute its own judgment for the statutory process, without even according those very advocates accused by the applicant of lacking integrity, among other accusations, an opportunity to be heard, which Articles 47 and 50(1) of the Constitution and the Fair Administrative Action Act do not permit.

153. I reiterate that any concerns about eligibility of the respective advocates for conferment of the rank of Senior Counsel must first be dealt with through the procedures set out in the Act. Further, information that has not been formally obtained under the **Access to Information Act** cannot form the basis for the Court's intervention, as was emphasised in **Kenya Railways Corporation v Okoiti (supra)** case.

154. For these reasons, the Court cannot grant a mandamus and prohibition in relation to the conferment or removal of the Senior Counsel rank.

155. Therefore, on what orders this court should make, for the reasons contained in this judgment, I find that the prayers 5 and 7 seeking declarations and

certiorari reliefs to declare as nullities and or quash or prohibition of the the conferment or future conferment of the rank of Senior Counsel are not available to the applicant as far as the prayers directly challenge completed conferment. Moreover, prayers 8, 10 and 12 seeking for mandamus, setting aside and prohibition respectively are equally caught up in the jurisdictional challenge.

156. The prayers in prayers 3, 4 of the Originating Motion seeking production of information and documents from the Respondents are found to be premature, for failure to comply with the statutory procedure under the Access to Information Act (Chapter 7M Laws of Kenya), including failure to demonstrate a formal request, denial, or exhaustion of the statutory mechanism before the Commission on Administrative Justice.

157. On the whole, this Court finds the Originating Motion dated 10<sup>th</sup> December, 2025 as amended on 12<sup>th</sup> January, 2026 is deficient of legal backing and for want of jurisdiction, this Court proceeds to strike out the said Originating Motion is with no orders as to costs.

158. This file is closed.

159. It is so ordered.

**Dated, Signed & Delivered virtually at Nairobi this 10<sup>th</sup> Day of March, 2026**

**In the presence of all parties and their respective counsel**

**R.E. ABURILI  
JUDGE**