

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
HOMABAY HIGH COURT CIVIL CASE NO.E006/2025

REPUBLIC.....
APPLICANT

VERSUS

JOHNMARK HENGA	.....	1ST
PLAINTIFF		
BENARD KIDEW	.....	2ND
PLAINTIFF		
PETER ODIEMBO	.....	3RD
PLAINTIFF		
CYNTHIA NYANDE	.....	4TH
PLAINTIFF		
KENNEDY AGHAN	.....	5TH
PLAINTIFF		
NICHOLAS AGWA	.....	6TH
PLAINTIFF		
JESE MO KIROWO	.....	7TH
PLAINTIFF		
CINTY MALIKA	.....	8TH
PLAINTIFF		
JOSHUA A KIROWO	.....	9TH
PLAINTIFF		
EZEKIEL DENG	.....	10TH
PLAINTIFF		
DANIEL ODHIAMBO ODEMBA	.....	11TH
PLAINTIFF		

VERSUS

SAMUEL ALIMA **1ST**
DEFENDANT

GEORGE MUNGA AMOLLO **2ND**
DEFENDANT

EDWARD OBUYA **3RD**
DEFENDANT

ALPHONCE OWINO **4TH**
DEFENDANT

MAUREEN AKINYI **5TH**
DEFENDANT

VERSUS

GEORGE MBEWA **1ST INTERESTED**
PARTY

GEORGE OMINO **2ND INTERESTED**
PARTY

PETER OWIDHO **3RD INTERESTED**
PARTY

GRACE OLIECHI **4TH INTERESTED**
PARTY

JUDITH OLOO **5TH INTERESTED**
PARTY

EVEREST OGENDO **6TH INTERESTED**
PARTY

PETER OLANGO **7TH INTERESTED**
PARTY

THE REGISTRAR OF SOCIETIES **8TH INTERESTED**
PARTY

RULING

[1] Before the Court for ruling is the plaintiffs’ Notice of Motion dated 18th November 2025. It is expressed to have been filed

under Section IA, 1B and 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya, Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules, 2010 and all other enabling laws for orders that:

[a] Spent

[b] The Court be pleased to issue a temporary injunction barring and/or restraining the Registrar of Societies (the 8th interested party), from making any changes to its register following the elections held on 9th November 2025 by Lambwe Valley Welfare Association pending hearing and determination of this application.

[c] That the Court be pleased to issue a temporary injunction barring and/or restraining the 8th interested party from making any changes to its register following the elections held on 9th November 2025 by Lambwe Valley Welfare Association pending hearing and determination of the main suit.

[2] In the alternative, the plaintiffs prayed that:

[a] The Court be pleased to issue a temporary injunction suspending, nullifying and/or setting aside any changes made by the 8th interested party to its register arising from the elections held on 9th November 2025 by Lambwe Valley Welfare Association pending hearing and determination of this application.

[b] The Court be pleased to issue a temporary injunction suspending, nullifying and/or setting aside any changes made by the 8th interested party to its register arising from the elections held on 9th November 2025 by Lambwe Valley

Welfare Association pending hearing and determination of the main suit.

[c] The Court be pleased to issue a temporary injunction restraining the 1st to 7th interested parties, their agents, servants or any other persons acting under their instructions from acting, representing or holding themselves out as officials of Lambwe Valley Welfare Association and from in any way interfering with the affairs and operations of the welfare pending hearing and determination of this application.

[d] The Court be pleased to issue a temporary injunction restraining the 1st to 6th interested parties, their agents, servants or any other persons acting under their instructions from acting, representing or holding themselves out as officials of Lambwe Valley Welfare Association and from in any way interfering with the affairs and operations of the welfare pending hearing and determination of the main suit.

[e] The costs of this application be provided for.

[3] The application is supported by the affidavit sworn by John Mark Henga in which he averred that, at all times, the Lambwe Valley Welfare Association (hereinafter, "the Association") has always been governed by its Constitution. He further averred that on 25th October 2025, the office of the patrons of the Association communicated to all members through the Association's WhatsApp group, that there would be a Special General Meeting (SGM) scheduled for 9th November 2025 at the Den (Meladen) Restaurant from 10.00 a.m. It was further stated on behalf of the plaintiffs that one

of the items of agenda would be to set a date for the election of office bearers.

[4] The plaintiffs further deposed that members of the Association were eager to attend the meeting, granted that elections were not conducted in the month of October as provided for in their Constitution. They added that, on the 8th November 2025, a day before the Special General Meeting, the office of the patrons again communicated to the members through the Association's WhatsApp group that the venue had been changed to Railway Museum and that the meeting would start at 9 a.m. According to the plaintiffs, these changes were made in contravention of Association's Constitution; particularly the provision requiring that communication of Special General Meetings be made by the Secretary General under Article 9.3 of the Constitution; and that such meetings be held at a time and place determined by the Executive Committee.

[5] The plaintiffs further averred that, notwithstanding the infractions aforementioned, a section of the members attended the meeting in which the respondents proceeded to conduct general elections, notwithstanding that the conduct of elections did not form part of the agenda for the day. They complained that the impugned elections have since paved way for the 1st to 7th interested parties herein to be unlawfully placed in office as members of the Executive Committee of the Association in various capacities, with the mandate to run its operations.

[6] It was in the light of the foregoing that the plaintiffs filed the instant suit seeking to challenge the manner in which the elections of 9th November 2025 were conducted. They were apprehensive that the 1st to 7th interested parties will effect changes of office bearers of the Association as registered with the 8th interested party; as well as at Co-operative Bank where the Association operates its bank account, unless the Court intervenes and grants the injunctive orders sought. They added that, unless restrained by this Court, the 1st to 7th interested parties will continue to act as officials, operate accounts and make decisions that could cause irreparable loss, confusion and further division amongst members of the welfare group.

[7] In response to the application, the defendants filed a Notice of Preliminary Objection dated 27th November 2025 on the following grounds:

- [a] That this Court lacks jurisdiction to entertain this suit;
- [b] That the suit offends the mandatory provisions of Article 35 of the Constitution of Lambwe Valley Welfare Association which provides for an alternative dispute resolution mechanism.

[8] The plaintiffs thereafter filed a Further Affidavit sworn by Johnmark Henga on 4th December, 2025 in which they averred that the 1st to 7th interested parties were handling the operations of the Association as though they had been validly elected; and that they proceeded to hold a meeting on 20th November 2025 and appointed members to the various committees that had not been filed up.

They reiterated their prayer for interlocutory injunction in order to safeguard the integrity of the Association and the subject matter of this suit.

[9] The parties filed their written submissions in respect of both the application and the respondent's Preliminary Objection. Thus, in their written submissions dated 4th December 2025, the plaintiffs proposed the following two issues for determination:

- [a] Whether this Court has jurisdiction to entertain this matter?
- [b] Whether the plaintiffs have met the threshold for the issuance of interlocutory injunction at this stage?

[10] In the submission of the plaintiffs, the internal dispute resolution mechanism referred to by the defendants is an affront to their fair hearing rights for reasons that:

[a] The committee put in place to entertain such disputes include some of the perpetrators of the very injustice complained of while others are the direct beneficiaries of the said injustice; [b] The perpetrators will therefore be called upon to sit as judges in their own case while the beneficiaries defend their position which creates room for an obvious biased outcome;

[c] The mechanism is ineffective as it does not provide specific timelines on when the dispute should be settled, who should hear the dispute and at what stage;

[d] The internal mechanism lacks checks and balances since the outcome of the process is final thus denying the

complainants an opportunity to challenge the outcome in a court of competent jurisdiction.

[11] The plaintiffs further submitted that this court has inherent jurisdiction to uphold the rule of law and ensure the protection of constitutional rights. Relying on the case of **Geoffrey Muthinja & another versus Samuel Muguna Henry & 1756 others (Civil Appeal 10 of 2015) [2015] KECA 304 (KLR) (30 October 2015)** among other authorities, the plaintiffs submitted that there are exceptions to the exhaustion rule and urged the Court to find that the circumstances of this case fall within those exceptions. Therefore, the plaintiffs urged for the dismissal of the defendants' Preliminary Objection to pave way for a determination, on the merits, of their application for temporary injunction.

[12] On the merits of their application, the plaintiffs cited the case of **Giella v Cassman Brown Co. Ltd** and submitted that they have a genuine and arguable case with a high likelihood of success. They relied on the averments set out in their Supporting Affidavit and in particular, their allegation that the impugned elections were conducted in violation of Article 35 of the Association's

Constitution. They further submitted that the impugned elections affected the fundamental rights of not only the plaintiffs but also the majority of the members of the Association who did not attend the meeting and who were never given a chance to participate in the impugned elections.

[13] They further submitted that the net effect of the disputed elections is that the 1st to the 7th interested parties have since assumed office and continue to make decisions which may be irreversible such as the decisions made at the meeting held on 20th November 2025 in which appointments were made to various committee; which committees run various aspects of the Association, yet the appointments were all made without the input of a majority of the members of the Association. They accordingly, submitted that, unless the injunctive orders are granted, the suit will be rendered nugatory and the aggrieved members of the Association will end up suffering irreparable harm for which an award of damages would not be adequate recompense.

[14] Lastly, the plaintiffs submitted that the only loss the defendants stand to suffer is delayed service, should the Court ultimately find that they were validly elected. They contended that if, on the other hand, the Court makes a finding that they are illegally in office, the greater number of the members may not be in a position to undo all acts done by the 1st to 7th interested parties. They therefore urged the Court to find that the balance of convenience tilts in their favour, and grant the orders prayed for in their Notice of Motion dated 18th November 2025.

[15] The defendants filed written submissions dated 10th December 2025 in which they proposed the following issues for determination

[a] Whether this Court has Jurisdiction to hear and determine the instant suit as is;

[b] Whether the plaintiffs are entitled to the injunctive reliefs sought;

[c] Who bears the costs?

[16] They pointed out that this is a dispute between members of a welfare association whose constitution expressly provides for an alternative dispute resolution mechanism. Their assertion was therefore that this dispute is completely out of the jurisdiction of this Court. They relied on Article 159(2)(c) of the Constitution of Kenya 2010 and the cases of **Geoffrey Muthinja Kabiru & 2 Others vs Samuel Munga Henry & 1756 Others (supra)**, **Nelson Andayi Havi v Law Society of Kenya & 3 Others (2018) eKLR**, **Majimbo Georgiadis v Law Society of Kenya, Nairobi Branch & 11 Others (2018) eKLR**, **Mark Ndungu Ndumia v the Law Society of Kenya, Petition No. 94 of 2019, Republic v County Government of Turkana v National Land Commission & others, Civil Appeal No. 138 of 2019 (UR)**, among others to buttress their arguments.

[17] The defendants further submitted that, while they appreciate that there are exceptions to the doctrine of exhaustion, the facts of this suit do not in any way meet that threshold, bearing in mind the prayers sought. They argued that the main issue in contest concerns the manner in which the elections were conducted, and not the legality of any provision of the Constitution of Lambwe Valley

Welfare Association. They added that there is absolutely no reason given by the plaintiffs in their pleadings as to why they did not first exhaust the dispute resolution mechanism outlined in their Constitution before invoking the jurisdiction of this Court.

[18] On the merits of the application, the defendants submitted that this dispute concerns an election which, on the plaintiffs own admission, had already occurred. They added that the interested parties had already taken over office and are currently running the operations of the Association. In their submission, what ought to be preserved in the circumstances is the current status quo. In support of this argument, the defendants relied on *Asan and v Petit* [1989] 1 KLR 241, in which the Court of Appeal had this to say of temporary injunctions:

The object of a temporary injunction is to keep things in status quo so that if at the hearing the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make the judgment ineffectual.

[19] The defendants also relied on *Giella v Cassman Brown* (supra) as well as *Suleiman v Amboseli Resort Ltd* [2004] eKLR 589 and urged the Court to find that the plaintiffs have failed to meet the threshold for the grant of the injunctive orders sought. They added that, even if they had a prima facie case, the plaintiffs cannot possibly suffer irreparable harm if the injunctive relief sought are not granted since their prayer is for the impugned election to be nullified.

Thus, the defendants posited that, in the event of success the plaintiffs will still have the redress by way of a fresh election.

[20] Lastly, the defendants submitted that the issuance of the injunctive relief sought is likely to result in a power vacuum; to the detriment of the larger majority of the members who depend on it for financial support. Accordingly, they prayed not only for the dismissal of the application for injunction but the striking out of the entire suit with costs.

[21] I have given due consideration to the matter. It is imperative that the defendant's Preliminary Objection be determined first before a merit consideration can be given to the plaintiff's Notice of Motion dated 18th November 2025. What amounts to a preliminary objection was aptly captured in *Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors* [1969] EA 696 thus:

"...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..."

[22] Similarly, in *Aviation & Allied Workers Union Kenya v*

Kenya Airways Limited & 3 Others [2015] eKLR the Supreme Court emphasized the point that: -

"...a preliminary objection may only be raised on a "pure question of law". To discern such a point of law,

the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record...”

[23] The defendant’s Preliminary Objection is premised on the doctrine of exhaustion. According to the defendants, Article 35 of the Constitution of Lambwe Valley Welfare Association, as revised in December 2016, provides that all disputes between and amongst the members be referred to arbitration; and that the decision of the arbitral tribunal would be final. It was therefore the posturing of the defendants that the plaintiffs ought to have exhausted that alternative dispute resolution mechanism instead of rushing to Court for resolution of the instant electoral dispute.

[24] The doctrine of exhaustion was restated in *Geoffrey Muthinja Kabiru & Others v Samuel Muguna Henry & 1756 others* (supra) by the Court of Appeal as:

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

[25] It is noteworthy however that the Constitution in question is yet to be formally introduced as evidence before the Court and therefore the alternative dispute resolution

mechanism is not, unlike the mechanisms provided for by way of statute, readily manifest at this stage of the proceedings. It is trite that any preliminary point that puts the Court to inquiry cannot be a valid preliminary objection. In *Oraro v Mbaja* [2005] 1 KLR 141, Hon. Ojwang, J. (as he then was) held that:

"...A "preliminary objection" correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed...Where a court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence..."

[26] Secondly, even where the alternative dispute resolution mechanism is expressly provided for by statute, it does not amount to an outright ouster of the jurisdiction of this Court as contended by the defendant. In the case of *Mohamed Ali Baadi and others v Attorney General & 11 others* [2018] eKLR, the court held:

"While our jurisprudential policy is to encourage parties to exhaust and honour alternative forums of dispute resolution where they are provided for by statute (See *The Speaker of National Assembly vs James Njenga Karume* {1992} KLR 21), the exhaustion doctrine is only applicable where the alternative forum is accessible, affordable, timely and effective. Thus, in the case of *Dawda K.*

Jawara vs Gambia it was held that:

"A remedy is considered available if the Petitioner can pursue it without impediment, it is deemed effective if

it offers a prospect of success and is found sufficient if it is capable of redressing the complaint [in its totality]...the Governments assertion of non exhaustion of local remedies will therefore be looked at in this light ...a remedy is considered available only if the applicant can make use of it in the circumstances of his case."

[27] The same position was articulated in *Republic v Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR, thus:

"46. What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved - including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it.

[28] Therefore, I agree entirely with the plaintiffs that, in the circumstances of their case, they are unlikely to attain fair hearing from the same committee members whose election they have impugned. They were therefore justified in seeking the intervention of this Court. Moreover, in *Kenya Ports Authority v Three ways Shipping Services (K) Ltd* [2019] eKLR, the Court of Appeal cautioned (at paragraph 30) that:

"...We also bear in mind that access to justice as enshrined in Article 48 of the Constitution is a fundamental right, that cannot be derogated from. Whereas Alternative Dispute Resolution (ADR), such as arbitration, is crucial in expeditious disposal of disputes, by its very nature ADR is inferior to the principle of access to justice..."

[29] It is therefore my finding that the respondents' Preliminary Objection was improperly taken. In Mukisa Biscuits Manufacturing case Sir Charles Newbold, P. emphasized the point that:

"The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop".

[30] In the light of the foregoing, I find no merit in the respondents' Preliminary Objection dated 19th January 2026. The same is hereby dismissed with an order that the costs thereof be borne by the respondents.

[31] In respect of the plaintiffs' Notice of Motion, I have considered the pleadings, the affidavit evidence presented herein, and the written submissions filed by parties. The guiding principles for the grant of a temporary injunction are well settled and are set out in **Giella v Cassman Brown (supra)**. This position has been reiterated severally and more particularly by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR**, where it was held: -

"...In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially...”

[32] Hence, the first hurdle for the plaintiffs to surmount is to establish that they have a prima facie case. A prima facie case was defined in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others (supra)** as follows:

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...”

[33] In their application, the plaintiffs seek injunctive orders to restrain the 8th Interested Party from making any changes to its register following the elections held on 9th November 2025 by Lambwe Valley Welfare Association pending hearing and determination of the main suit. An interested party has been defined in the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, to mean:

“...a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.” (emphasis added)

[34] In this instance, there is no wrongdoing attributed to the 8th interested party in the body of the Plaint. Indeed, the Supreme Court pointed out in **Trusted Society of Human**

Rights Alliance v Mumo Matemo & 5 others (Petition 12 of 2013) [2014] KESC 32 (KLR) (27 February 2014)

(Ruling) that: “A suit in Court is a ‘solemn’ process, “owned” solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

[35] Since an order of the court can only issue against a party to the suit, it is my finding that the plaintiffs have failed to establish a prima facie case against the 8th interested party to warrant the issuance of the orders prayed for by them. That being my finding there would be no basis for consideration of the other prerequisites for the issuance of an injunction (**see Nguruman Ltd v Jan Bonde Nielsen & 2 others, supra**).

[36] In the result, the Notice of Motion dated 18th November 2025 is hereby dismissed with an order that the costs thereof be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 19TH DAY OF MARCH 2026

.....
OLGA SEWE
JUDGE

ORIGINAL