

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. E236 OF 2026

JULIANA KATHURE.....1ST PETITIONER

DAVID OBUYA2ND PETITIONER

VERSUS

THE SPORTS REGISTRAR1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

CRICKET KENYA.....3RD RESPONDENT

RONALD BUKUSI4TH RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....5TH RESPONDENT

REASONS FOR THE ORDER MADE ON 17/4/2026 ON THE APPLICATION FOR CONSERVATORY ORDERS AND THE SETTING ASIDE OF THE EXPARTE CONSERVATORY ORDERS MADE ON 14TH APRIL, 2026

1. On the 14th April, 2026, this Court issued conservatory orders to stop the Cricket Kenya elections scheduled for 19/4/2026. The orders were issued after hearing the petitioners/applicant's counsel exparte on the same day upon receipt

of the Petition and application under certificate of urgency dated 13th April, 2026.

2. In the said conservatory orders, this Court was clear that the orders were issued on the assumption that the applicant petitioners had made full disclosure of all material before this Court, since the respondents had not had the opportunity to be heard on the notice of motion for conservatory orders and that as the elections, if conducted as scheduled on 19th April, 2026, would render the petition nugatory.
3. As soon as the respondents were served with the application and the conservatory orders issued by this Court on 14th April 2026, they immediately filed an application under certificate of urgency dated 16th April 2026 seeking to transfer the matter to Kisii High Court on account that there was a similar matter before Justice Teresa Odera, seeking the same orders as the orders which are being sought in this matter. The Respondents prayed for the setting aside and vacating of the exparte conservatory orders.
4. This Court gave directions virtually for the applicants to serve the respondents/ petitioners for interpartes directions on the Respondent's application and the parties appeared before me for interpartes directions on 17th April 2026.

5. Mr. Kituku counsel for the Respondents/applicants had by then filed another certificate of urgency urging the court which was engaged in other judicial duties out of the court station, to convene and consider his client's plea.
6. I did peruse the second certificate of urgency filed by the Respondents and directed that the petitioners' counsel be served forthwith for interpartes directions later in the day. When the respective parties' counsel appeared before me on 17th April 2026, Mr. Kituku representing the Respondents/ applicants submitted that they had other related matters in other courts on the same subject matter. That in Kisii, there were 3 related matters Kisii JR E005 of 2026, Kisii JR E006/2026 and Kisii Constitution Petition 4/2026 all before Justice Teresa Odera and that the said matters had rulings pending to determine the issue of whether the Cricket Kenya elections scheduled for 19/4/2026 should continue, pending for delivery that very day, only that Justice Odera had informed the parties to first appear in this matter for directions before she could deliver her ruling at 5.30 pm.
7. Mr. Kituku submitted in addition, that in another related matter, Nairobi HCCA E012/25, Justice Okwany had that very morning delivered a ruling dismissing an application that sought to stop the subject elections schedule for 19/4/2026. He urged that Mr. Okiri who is counsel for petitioners in the Kisii High Court

matters is the same counsel in this petition hence he was aware of all the matters pending over the same subject matter.

8. Mr. Kituku was emphatic that the petitioners in this case did not make full disclosure that there are other similar petitions pending and that since Lady Justice Okwany had an order dismissing the application seeking to stop elections, they sought for transfer of this matter to Kisii High Court to be heard together with or for consolidation with the pending similar matters.
9. Counsel submitted that Kisii High Court Pet. E004/2026 was previously filed in Nairobi as NRB Const. Petition E723/2025 and was transferred to Kisii by Mwangi J on 16/2/2026 because of JR E005 & E006/2026 where leave to apply and timelines given had not been complied with, with leave lapsing although the Court had initially stayed the conduct of the subject elections.
10. Counsel submitted that in JR Misc. E387/205, this very Court declined to issue interim orders against Cricket Kenya and Misc. JR. E369 of 2025 where the court is said to have declined to issue any interim orders that sought to interfere with Cricket Kenya even after granting leave to apply although no substantive applications were filed by the petitioners herein.
11. According to Mr. Kituku, the petitioners are only interested in interim orders and that where they do not get the orders, they move to another court. He

prayed this Court vacates the orders which it had issued ex parte on 14th April, 2026.

12. Further submission was that the petitioners had not even exhausted the alternative dispute resolution mechanisms available before approaching the court and that it was in the interest of justice and the public that elections slated for 19/4/2026 proceed otherwise there is a risk of Cricket Kenya being suspended by International Cricket Council which had already issued notice to show cause to Kenya why the country cannot be suspended.

13. Counsel maintained that elections are not a simple affair since money had been spent and it involves processes of venue identification, international observation, selection of coaches, athletes among other logistics.

14. He submitted that the balance of convenience overwhelmingly favours the elections being allowed to go on. Counsel submitted that the petitioners are neither members of Cricket Kenya or players and that the 2nd petitioner is a former player of cricket.

15. In response, Mr. Okiri counsel for the petitioners vehemently opposed the application dated 16/4/2026 as filed by the Respondents seeking the setting aside of conservatory orders. He relied on the replying affidavit which they had filed and argued that the matters in Kisii High Court were filed by different advocates. He denied being on record in those matters. On the transfer sought, he submitted that the argument by the Respondents flies in the face of Article 160 (1) of the Constitution. He submitted that the fact that there are other

petitions or proceedings does not divest the petitioners of their right under Article 22 of the Constitution.

16. According to counsel, there are certain rights of the petitioners which are threatened and infringed. He conceded that there are JR matters before Odera J. and that they filed JR. E006/2026 pursuant to leave granted in JR E005/2026 and an application in Constitution Petition 4/2026 by Odera J, but that they filed a substantive motion vide JR E006/2026 wherein stay had been granted.
17. According to Mr. Okiri, Mr. Kituku's client had misrepresented to the court that no substantive motion had been filed and was seeking that the stay granted be set aside. He submitted that the rights violated have electoral aspects by Cricket Kenya and that this petition is inherently unique, hinging on Article 35 of the Constitution on the Right to information which issue is not before Odera J.
18. He submitted relying on the 1st petitioner's replying affidavit dated 17/4/2026 urging that this Court enjoys the original jurisdiction under Article 165 of the constitution. He relied on the case of **Shanzu Investment Ltd Vs the Commissioner of Lands (1993) e KLR** where the Court of Appeal is said to have stated that an application such as this involves exercise of discretion of the court which must be exercised judiciously. That the Court must establish whether there is a defence and that in this case, the alleged threat of ICC expulsion is addressed in the replying affidavit and that public interest is not served by pleasing international bodies. He maintained that, there are fundamental irregularities in the electoral system, giving an example of the register. He submitted that there was no ruling allowing elections to go on.
19. On alleged nondisclosure, counsel for the petitioners contended that he held that brief for another counsel. He stated that he now realized that the client did not

disclose the other matters which are related to this matter but that that aside, this matter addresses specific constitutional issues seeking redress.

20. On alleged ICC correspondence threatening expulsion of Cricket Kenya and financial ruin, he submitted that the documents in support of the application at pages 266 and 267 show that there is no governance threat as a result of threats of being expelled as the Kenya Government has 6 months to resolve the issues.
21. Regarding review of ex-parte orders, he relied on the case of **Margaret Ndungu Mwashia Vs Kenya Swimming Federation [2022] eKLR** where H. Ong'udi J is said to have emphasized that ex-parte orders should only be set aside in circumstances where the error is shown.
22. It was further submitted that although there are other cases, there is no error of law or facts pointed out in this Court's ruling of 14/4/2026 which was intended to prevent the petition from being rendered nugatory. He urged that if the application by the respondent is granted, elections will proceed and the petitioners' rights under Article 35 of the Constitution will be extinguished and irreparable harm will occur.
23. Regarding alleged breach of Mediation Road map, he submitted that notwithstanding efforts to mediate, the efforts are not a gate pass to constitutional violations. He submitted that the respondents acted in bad faith and repudiated any mediation efforts.
24. On exhaustion of remedies, it was submitted that where constitutional violations are clear and present, exhaustion does not apply. That in this case, there is violation of right of access to information which is not within the jurisdiction of the sports disputes tribunal hence the Sports Disputes Tribunal cannot provide the finality or the interpretive depth to provide remedies for violation of constitutional rights.

25. Counsel urged this Court not to stay these proceedings as it will be abdicating its duty as guardian of rights.
26. On the clamour for transfer of this petition to Kisii High Court, it was submitted that this court is clothed with original and appellate jurisdiction under Article 165 of the Constitution to hear and determine this matter. That although a transfer may be a good administrative decision to have all the matters heard by one court, the contention is wanting in many respects.
27. In conclusion, counsel for the petitioners called upon this Court not to set aside the ex-parte orders of 14/4/2026 on account that the petitioners have concrete grievances before this court even if the other matters are pending before other courts. He denied that they were forum shopping.
28. In a rejoinder, Mr. Kituku for the respondents submitted that the ex-parte orders of 14/4/2026 were conditional upon expectation that full disclosure had been made. That it was now clear that there was no full disclosure and that, that ground alone was sufficient to discharge the said orders. He reiterated that this matter is related to the Kisii High Court matters and that that was the reason for Teresa Odera J directed the parties to appear before this Court.
29. Counsel submitted that the petitioner in Petition E04/2026 alerted Justice Odera in Kisii that there are conservatory orders in this case and that one of the issues in the Kisii cases are elections of Cricket Kenya .
30. On jurisdiction, it was submitted that the petitioners have violated the doctrine of exhaustion. That the 3rd respondents is a national sports organization registered under Section 47 of Sports Act. That the SDT has exclusive jurisdiction under Section 58 and the constitution of the Cricket Kenya provides for the resolution of disputes through the SDT.
31. Further, that the jurisdiction of this court in sports related disputes is appellate and not original and that the petitioners are circumventing the established

mechanisms for resolution of disputes. He urged that they were not seeking to curtail the hearing of the petitioner. He reiterated further that in HCCA 12/2025, this morning, the court in Nairobi, Okwany J dismissed an application by the petitioners seeking to stop the same elections subject of these proceedings.

32. After hearing the parties to the application for setting aside of the exparte conservatory orders issued on 14th April 2026 and or transfer of these proceedings to Kisii High Court on account of the other similar pending proceedings before the said court, I made an order in the following terms:

“ORDER

Upon hearing Mr. Kituku counsel for the 3rd and 4th respondents on the notice of motion dated 16/4/2026 seeking to vacate, set aside and discharge the exparte conservatory orders issued by this Court on 14th April, 2026 staying elections of Cricket Kenya scheduled for 19th April, 2026; as well as the transfer of this Petition to Kisii High Court;

And upon hearing the petitioners’ counsel Mr. Okiri, in opposition to the aforesaid application and upon my perusal of all the pleadings, affidavits and documents filed in support of the petition and the notice of motion dated 16th April, 2026;

I hereby order as follows:

- 1. That for want of jurisdiction and non-exhaustion of remedies the petition filed herein together with the application for conservatory orders are hereby struck out.*

2. ***That for the Petitioners’ material disclosure of the existence of other similar cases seeking similar orders for halting of Cricket Kenya Elections slated for 19th April, 2026, which cases are NRB HCCA E012/2025, Kisii High Court JR E005 AND E006 of 2026, the exparte conservatory orders issued on 14/4/2026 be and is hereby vacated, discharged, and set aside.***
3. ***The Cricket Kenya scheduled elections for 19th April, 2026 shall proceed as scheduled unhindered.***
4. ***That a full ruling giving reasons for these orders shall be supplied to the parties within 7 days of today.***
5. ***That each party shall bear their own costs of these proceedings***
6. ***This file is hereby closed.”***

33. Having made the above orders which effectively terminated these proceedings, I am now providing reasons for the said order which was issued *ex tempore*.

34. The issues for determination are as follows, flowing from the pleadings and submissions by counsel for the respective parties.

(a) Whether there was non-disclosure of material facts of the existence of other similar cases hence these proceedings being subjudice and a forum shopping exercise and abuse of court process

(b) Whether this court has jurisdiction to hear and determine the petition herein

(c) What orders should this court make

35. On the first issue of non-disclosure, as stated earlier, and on the petitioner’s counsel’s own admission, the petitioner obtained exparte conservatory orders through non-disclosure of the existence of similar cases and proceedings before Kisii High Court and Nairobi High Court Civil Appeal Division. In the latter case, the learned Judge had dismissed a similar application which sought to stay

the subject Cricket Kenya elections scheduled for 19th April 2026 which in the Kisii High Court matters, similar orders were sought, an initial stay of the elections granted but lapsed and now the parties were waiting for a ruling on reinstatement of the stay orders.

36. The argument by Mr. Okiri is that this petition is about violation of Article 35 of the Constitution on access to and disclosure of information especially the register of members and that this it concerns violation of rights. He however conceded that there was non-disclosure of the existence of other similar cases.

37. Courts have repeatedly emphasized the absolute necessity for the utmost good faith and candour in all ex parte applications and the duty to ensure that all material and relevant facts are put before the court at ex parte stage.

38. In **Kenya Electricity Transmission Company Limited v Kibotu Limited [2019] eKLR**, it was observed that:

“The fundamental principles of non-disclosure of material facts that an applicant must adhere to are as follows: -

a) The applicant is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge.

b) The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made sufficient inquiries.

c) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including

(a) the nature of the case which the applicant is making when he makes the application,

(b) the order for which the application is made and the probable effect of the order on the defendant, and

(c) the degree of legitimate urgency and the time available for the making of the inquiries.

d) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to issues which were to be decided by the Judge in the application.

e) The question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.

f) Finally, it is not every omission that the injunction will be automatically discharged”.

39. No doubt, material non-disclosure is a serious issue which, once the court is made aware of it, may lead to the setting aside and discharge of an ex-parte order forthwith. Good faith is so central in an ex-parte circumstance that a party who approaches the court in such circumstances must be absolutely truthful.

40. In the instant case, and from the material placed on record, it is clear that this court having granted the ex-parte conservatory orders and made it as a condition that the orders were made on the presumption of full disclosure of all relevant material, and the emerging facts revealing that there was no disclosure of the existence similar proceedings pending before other courts of concurrent jurisdiction, dealing with the same issue of elections of Cricket Kenya, and even without delving into the issue of *subjudice*, I am satisfied that the respondents have demonstrated that the petitioners did not deserve the ex-parte

orders that they got on 14th April, 2026 as the said orders were obtained through deceit and non-disclosure of material facts. The material facts include there being similar applications for the same orders seeking to stop the scheduled elections , the Kisii High Court having vacated an ex parte stay order and a similar application before Justice Okwany was pending Ruling over the same elections.

41. My finding is that the non-disclosure was deliberate, not inadvertent. It was intended to deceive this court to grant orders which were not deserved, had the matter been heard inter partes. The effect was abuse of court process, forum shopping and intended to embarrass this Court and other courts of concurrent jurisdiction to issue inconsistent and contradictory orders. That practice does not advance the rule of law and administration of justice.

42. The Irish High Court in **McDonagh -v- Ulster Bank Ireland Limited [2014] IEHC 476, High Court, Keane J, 22 October 2014**, made it clear, persuasively, that any lack of candour or material non-disclosure of facts in an ex parte application will result in any order made being set aside and the substantive application being refused.

43. In the above case, there were two applications before the Court; the plaintiff's application for an interlocutory injunction pending trial and an application by the defendant for an order setting aside the interim injunction that had been granted to the plaintiff on an ex parte basis.

44. The Plaintiff and his two brothers acting in partnership had purchased lands for €22 million and subsequently entered into a loan agreement with the defendant

Bank to borrow the sum of almost €22 million to fund the purchase. Legal issues arose in connection with the development of the lands which had implications for the Plaintiff's repayment of the loan and he accordingly entered into a compromise agreement with the Bank.

45. The Plaintiff instituted proceedings against the Bank seeking specific performance of the compromise agreement or, in the alternative, an order awarding damages for breach of that agreement. The Plaintiff, in his application, asserted that he had complied with the terms of the compromise agreement but that the Bank had not.

46. The Plaintiff, a *pro se* litigant applied ex parte for, and was granted, an interim injunction restraining the bank from taking any steps, either to enforce the compromise agreement or to enforce or recover the loans or liabilities of the plaintiff pursuant to the agreement, pending the Plaintiff's application for an interlocutory injunction in similar terms.

47. The Bank brought an application to have the interim injunction set aside on grounds of material non-disclosure. In considering whether there had been material non-disclosure Keane J quoted what he referred to as '*the golden rule*' from the English case of **Tate Access Floors Inc. v. Boswell [1991] Ch. 512** where it was stated:

"No rule is better established, and few more important, than the rule (the golden rule) that a plaintiff applying for ex parte relief must disclose to the court all matters relevant to the exercise of the court's discretion whether or not to grant relief before giving the defendant an opportunity to be heard. If that duty is not observed by the plaintiff, the court will discharge the ex parte order and may, to mark its displeasure, refuse the plaintiff further inter partes relief even though the circumstances would otherwise justify the grant of such relief."

48. In the above **McDonagh -v- Ulster Bank Ireland Limited** case Keane J was satisfied that there was a significant and material failure to disclose matters which should have been disclosed in the context of the ex parte application for interim relief. He found the facts that were not disclosed were directly relevant and, therefore, reasonably material, to the specific allegations made by the Plaintiff of breach of the compromise agreement by the Bank. While he did not go so far as to find that the non-disclosure was deliberate, he was satisfied that it involved a culpable failure on the part of the Plaintiff. Accordingly, he exercised his discretion to discharge the interim injunction and to refuse the application for an interlocutory injunction.

49. The above case though persuasive, is applicable to the present petition.

50. Back home, Ibrahim, J (as he then was) in **Republic vs. Kenya National Federation of Co-Operatives Limited ex Parte Communications Commission of Kenya** [2005] 1 KLR 242 held that:

“It is of fundamental importance that applications for judicial review should be made with full disclosure of all material available to the claimant. This is a case which I can properly use in order to send a message to those who are making applications to this court reminding them of their duty to make full disclosure; failure to do so will result, in appropriate cases, in the discretion of the Court being exercised against (a claimant) in relation to the grant of (a remedy).”

51. I further associate myself with the position adopted in **Hussein Ali & 4 Others vs. Commissioner of Lands, Lands Registrar & 7 Others** (2013) eKLR that:

“It is well settled that a person who makes an ex-parte Application to court, that is to say in the absence of the person who will be affected by that which the court is asked to do is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage by him. That is perfectly plain and requires no authority to justify it.”

52. In this case, the Respondents have demonstrated that the petitioners have filed so many cases in different courts, over the same subject matter and upon failing to get favourable orders, they moved to the next court to try their luck. Two of the cases were filed in the Judicial Review Division being JR E369 of 2025 and JR E 387 of 2025 where the court declined to grant stay orders upon which the applicants, the 2nd petitioner herein and another, Manoj Patel did not file the substantive motions, despite the leave granted to apply; another case, Pet E723 of 2025, which was transferred to Kisii High Court; Kisii High Court JR E005 of 2026 and another matter pending as an appeal but with an application to stop the subject elections in the Nairobi High Court Civil Division. All the above cases were seeking to bar the scheduled elections of Cricket Kenya from taking place.

53. The respondents have also demonstrated that the petitioners lied to this Court that Mr. Bukusi was a suspended CEO hence he was incapable of overseeing elections or activities of Cricket Kenya yet the said CEO is lawfully in office, his employment contract having been validated upon his 3 year tenure from 23/1/2023 and vide letter dated 31st March 2026 to last from 1st April 2026 to 30th June 2026. The same contract of employment having ended but extended vide letter of 6th February, 2026 from 22nd February 2026 to 31st March 2026 pending formal reviews once the Board was fully constituted after the impending elections are held. Furthermore, the said CEO is the one who wrote a brief to the ICC on 17th March, 2026 on Cricket Kenya Compliance status.

54. For the above supported reasons, and for material non-disclosure, deceit and mis representation of facts to this Court, the exparte conservatory orders issued on 14th April 2026 in favour of the petitioners are hereby vacated, set aside and discharged forthwith.

55. Accordingly, even without delving into the jurisdictional issues, the respondents are free to proceed with the scheduled elections of Cricket Kenya on 19th April, 2026.

56. Onto the question of jurisdiction of the court and the alleged non exhaustion of the available remedies, the respondents raised this issue arguing that Cricket Kenya is a registered national sports organisation and that its constitution as annexed provides for disputes arising with its members to be referred to the SDT whose jurisdiction is under section 58 of the Sports Act. Further, that the petitioner did not exhaust the internal dispute resolution mechanisms as the Constitution of the Cricket Kenya so provides. Additionally, that this Court only hears appeals from the Sports Disputes Tribunal and not exercising original jurisdiction. Finally, that Regulation 20(5) and (7) of the Sports Registrar Regulations provide for mechanisms for challenging results of elections.

57. Commencing with the internal dispute resolution mechanisms, I have read Article 4.4 of the Cricket Kenya 2021 Constitution on dispute resolution which states that:

“Cricket Kenya shall keep an internal dispute resolution mechanism for resolution of disputes. Such mechanism will initially involve an informal process of resolution before a committee to be established by CK. In the event the dispute is not resolved, it shall be referred for resolution in accordance with the Sports Act, Number 25 of 2013.”

58. Further, Article 7 .6.1 (e) of the said Constitution provides that *all disputes* involving athletes athlete support, personnel, personnel *or other persons under the Federation’s jurisdiction*, (other than those arising under the Anti-Doping Regulations or as otherwise expressly specified in this constitution or any Federation Regulation) shall be submitted to a hearing before the Disciplinary

and Ethics committee. The above provision falls under loss of membership but a reading thereof of the words italicized presuppose *all disputes*, not necessarily those relating to loss of membership.

59. That said, the Sports Registrar Regulations sets out a clear process for resolving election disputes in sports bodies, and that procedure ought to be followed before approaching the Court.

60. Regulation 20(5) mandates the Sports Registrar to examine and be satisfied with the conduct of an election before registering newly elected officials. This means that the election process is monitored and subjected to administrative scrutiny by a specialized office that understands the regulatory framework governing sports organizations in the country. This is evidenced by the letter dated 18th September, 2025 by the Sports Registrar addressed to Ronald Bukusi providing guidance on how to conduct the re-scheduled AGM and the elections process, emphasizing that the Cricket Kenya was expected to hold free, fair and transparent election.

61. On the other hand, Regulation 20(7) grants any person aggrieved by the outcome of an election the right of appeal to the Sports Disputes Tribunal within thirty days. In other words, the law does not leave an aggrieved party without a remedy; it provides a specific forum designed to handle precisely these kinds of disputes.

62. Even assuming that the Cricket Kenya does not have an effective internal dispute resolution mechanism in place, it being a sports organisation, is subject to the jurisdiction of the Sports Disputes Tribunal established under section 55 of the Sports Act. Cricket Kenya, in its constitution, 2021, is clear that it is a duly registered sports organization affiliated to ICC.

63. Under section 58 of the Sports Act:

“The Tribunal shall determine—

(a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —

(i) appeals against disciplinary decisions;

(ii) appeals against not being selected for a Kenyan team or squad;

(b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and

(c) appeals from decisions of the Registrar under this Act.

64. Again, assuming that the parties had not agreed to refer the dispute to the Tribunal or that the Tribunal had not agreed to hear the dispute, these two being very critical preconditions before the Tribunal can assume jurisdiction, and or that the dispute raises pure constitutional questions such as violations or threatened violations of fundamental rights and freedoms, the petition seeks, among others, a declaration that the 1st respondent's failure to provide information requested on 31st March 2026 violates Article 35 of the Constitution. This prayer or relief is very critical because without the information in question, the petitioners cannot establish their case to the required standard.

65. The big question is whether the petitioners exhausted the avenues for seeking such information from the 1st respondent public officer, before approaching this Court.

66. Article 35 of the Constitution guarantees every citizen the right to access information held by the State or by another person where that information is required for the exercise or protection of a right. That right to access information is given effect through the Access to Information Act, which establishes a clear, structured process overseen by the Commission on Administrative Justice, (CAJ) or Ombudsman.

67. Section 5 of the Access to Information Act mandates public entities to disclose information to the information seeker. However, access to public information is not absolute and section 6 of the Act provides for limitations to accessing information.

68. On the procedure for accessing information from a public entity, section 8 of Access to Information Act provides that an application must be made to the entity, while section 9 sets out the application process and section 14 provides for Review of decisions by the Commission on Administrative Justice, where the request for access of information sought is denied.

69. Thus, a person seeking information is required, in the first instance, to make a request to the relevant public body, in writing, with sufficient detail to enable

the information to be identified. Upon receipt, the public entity is under a legal obligation to respond expeditiously, and in any event within the timelines prescribed by the Act, either by providing the information, giving reasons for any refusal, or indicating if more time is needed.

70. Where access is denied, or the response is unsatisfactory, the applicant may seek an internal review within the institution, and thereafter lodge a complaint with the Commission on Administrative Justice, which is empowered to investigate, compel disclosure where appropriate and ensure compliance with the law. This procedure reflects the broader constitutional commitment to transparency, accountability and the public's right to know, while balancing legitimate limitations such as national security or privacy as stipulated in section 6 of the Access to Information Act.

71. The Supreme Court in **Kenya Railways Corporation & 2 others v Okoiti & 3 others [2023] KESC 38 (KLR)** stated as follows, regarding the right to access information:

“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.”

72. In this case, there is no evidence that the petitioners/ applicants after seeking for information vide the letter dated 31st March, 2026, and upon being denied, they applied to the Commission on Administrative Justice for review of the decision of the 1st Respondent Sports Registrar, declining to furnish the information sought.

73. On that ground alone, the prayer 5 of the notice of motion dated 13th April 2025 and prayer 1 of the petition dated the same date, which prayer, all the other prayers would be anchored on, falls by the side since without the

information sought, the petition would be speculative and aspirational, would fail.

74. Accordingly, I find and hold that the petition herein is prematurely filed. On account of all the above, the petition and Notice of motion dated 13th April 2026 are hereby struck out for material non-disclosure and for want of jurisdiction of this court to the extent stated in this Ruling.

75. I make no orders as to costs.

76. This file is closed.

77. I so order.

Dated, Signed and Delivered at Nairobi this 24th Day of April, 2026

**R.E.ABURILI
JUDGE**