



**Security Academy v Cabinet Secretary Ministry of interior & National Administration & 4 others;
Kenya National Private Security Workers Union & another (Interested Parties) (Judicial Review
Application E373 of 2025) [2026] KEHC 4894 (KLR) (Judicial Review) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E373 OF 2025

RE ABURILI, J

APRIL 15, 2026

**IN THE MATTER OF: ALLEGED DISOBEDIENCE OF COURT
RULING DATED 20TH NOVEMBER 2025 IN NAIROBI HIGH
COURT JUDICIAL REVIEW APPLICATION NO. E365 OF 2025**

BETWEEN

SECURITY ACADEMY EX PARTE APPLICANT

AND

**CABINET SECRETARY MINISTRY OF INTERIOR & NATIONAL
ADMINISTRATION 1ST RESPONDENT**

PRIVATE SECURITY REGULATORY AUTHORITY 2ND RESPONDENT

NATIONAL ASSEMBLY 3RD RESPONDENT

THE NATIONAL TREASURY 4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 5TH RESPONDENT

AND

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION .. INTERESTED
PARTY**

LAW SOCIETY OF KENYA INTERESTED PARTY

RULING

1. There are twin matters to be determined by this Ruling and these are, the merits of the Notice of Motion citing the Respondents for contempt of court and a Notice of Preliminary Objection.



2. The first Application is a Notice of Motion dated 4th December 2025 filed under Certificate of Urgency, pursuant to leave granted by this Court on 20th November 2025 and is premised on Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules 2010, and all other enabling provisions of the law.
3. In the said Notice of Motion, the ex-parte Applicant seeks the following Orders: -
 1. Spent
 2. That the Honourable Court be pleased to order that the Principal Secretary of Interior and National Administration, Dr. Raymond Omollo; the Chairman of the Private Security Regulatory Authority Mr. Adiel Nyange; the Chief Executive Officer of the Private Security Regulatory Authority, Mr. Philip Leakey Okello; Board Member of the Private Security Regulatory Authority Mr. Pius Chelimo; Board Member of the Private Security Regulatory Authority, Mr. Baljit Sokhi, the Chairperson of the Private Security Technical Committee on the Draft Regulations, Mr. Sadik Makii; the Vice Chairperson of the Private Security Technical Committee on the Draft Regulations, Mrs. Monica Kimeu; and the Chairperson of the Private Security Industry Association, Mr. Cosmas Mutava be committed to civil jail for a period of six (6) months for contempt of Court for disobedience of Orders issued on 20th November 2025 in High Court Judicial Review No. E365 of 2025.
 3. That the Honourable Court grants any other Order or further orders geared towards protecting the dignity and authority of the Honourable Court deemed expedient in the circumstances.
 4. Costs be in the cause.
4. The Application is supported by the affidavit of Brian Kioko, the ex-parte Applicant's Operations Manager sworn on even date and is grounded as follows: - That a Ruling was delivered by this Court on 20th November 2025 in which the Court granted inter alia, orders of stay of implementation of the Public Participation Notice issued and published on 18th November 2025 in MYGOV publications, whose effect was to halt the public participation exercises in Garissa, Machakos, Kisumu, Kakamega, Mombasa, Nyeri slated for 21st November 2025 and 24th November 2025 in Nairobi.
5. It is averred that the said Court Ruling and Order were duly served upon the Respondents on 21st November 2025 both through e-mail and personal service and equally published on the same date on the print media including the Daily Nation and Star newspapers. In addition, it is averred that Counsel for the Applicants addressed a letter to the Respondents urging compliance with the Court's Order and therefore, they cannot feign ignorance of the terms of the Order.
6. It is the ex-parte Applicant's case that the Respondents have wilfully and blatantly in bad faith disobeyed the said Order and implemented the Public Participation Notice by conducting the public participation exercise in the afore-stated counties, with the Kenya Association of Security Professionals issuing a media invite to the media to attend the public participation forum and witness the impunity and audacious acts of senior government officials openly defying a Court Order.
7. The ex-parte Applicant contends that the Respondent are persons in authority who have treated the Court's Ruling and Orders with unbridled contempt and blatant impunity thereby undermining the administration of justice, striking at the foundations of constitutional governance, which this Court must urgently intervene as obedience of court orders is not an optional but a mandatory obligation.



8. In response to the Application, the 2nd Respondent filed a Replying Affidavit dated 17th February 2026 sworn by Adiel Nyange, the Chairman of the Private Security Regulatory Authority in which he deposes that the Application is premature, mischievous and not anchored on any law warranting its dismissal in limine. Mr. Nyange avers that he was never personally served with the said Order and that he was not aware of its existence as alleged. He said that he did not have any login details of the e-mails where the Order was sent. It is also averred that none of the staff members were in office to receive the said e-mails as they had all left for the public participation exercise between 20th and 25th November 2025 as proven by paragraph 3 of the Affidavit of Service marked “BK4”.
9. He deposes further that he only got to know of the said Order on 25th November 2025 upon his return to office when the public participation exercise had been conducted and concluded and stated that had he known of the same, he would have halted it. He also denies seeing the said Order in the Newspaper and avers that in the absence of strict proof of service and knowledge of the Order, the contempt of court proceedings are incurably defective and must fail. It is his plea that he should not be punished for disobedience of an Order he had no notice of and stated that he was a law abiding citizen who respected court orders and the dignity of courts.
10. The 2nd Respondent filed another Replying Affidavit sworn by Philip Leakey Okello who is the Chief Executive Officer of the Private Security Regulatory Authority opposing the Application for contempt and makes the same averments as the 2nd respondents’ chairperson Mr. Adiel Nyange in his Replying Affidavit dated 17th February 2026.
11. The 5th Respondent filed a Replying Affidavit sworn by Mohamed Sadik Makii, a licensed private security provider dated 17th February 2026 opposing the Notice of Motion Application for contempt on the grounds that it is premature, mischievous, not anchored in law and amounts to an abuse of the court process and as such it ought to be dismissed in limine. He avers that he was neither personally served with the Court Order nor was aware of the same as alleged, and that just as Mr. Nyange, he does not have the login details to the e-mails upon which the orders were sent.
12. He asserts that all members of staff were out of the office for public participation exercise and so he could not receive any e-mails as he proceeded for the public participation exercise in Garissa, Machakos, Kisumu, Kakamega, Mombasa, Nyeri from 20th November 2025 to 25th November 2025 and was therefore never served/informed of any orders stopping the exercise, which otherwise, he would have halted as directed. It is his evidence that he knew of the Orders of this Court on 25th November 2025 when he got back to the office from the public participation exercise.
13. It is also averred that there is no proof of physical service of the order and that he did not see the media posting of the order in the Daily Nation Newspaper. As such, in the absence of strict proof of service and knowledge of the order the contempt proceedings are incurably defective and must fail.
14. The second matter for determination is a Notice of Preliminary Objection by the 5th Respondent dated 10th December 2025 challenging the substantive Notice of Motion filed by the ex-parte Applicant seeking Judicial Review orders pursuant to leave granted by this Court on 20th November 2025. The preliminary objection raises the following points of law:
 1. That this Court is devoid of jurisdiction to entertain the Application.
 2. That the Notice of Motion is incompetent for non-exhaustion of the mandatory administrative remedy under Section 43 of the *Private Security Regulation Act*, Cap 207.
 3. That the Application as presented offends the provisions of Sections 9 (2) of the *Fair Administrative Action Act*, 2015.



15. This Court issued directions on 25th November 2025 for the parties to canvass the Motion for Contempt via oral submissions and later issued further directions on 21st January 2026 to have the preliminary objection canvassed orally together with the first Application for Contempt. The parties have equally filed written submissions which are now on Record.
16. The interested parties did not participate in or file any response in these proceedings.

Submissions in respect of Contempt of Court Application

17. Counsel for the ex-parte Applicant filed written submissions dated 5th January 2026 relying on *Econet Wireless Kenya Ltd. v Minister for Information & Communication of Kenya & Another* (2005) KEHC 1767 (KLR) on the foundational principle governing contempt proceedings and stated that there was wilful disobedience on the part of the Respondents of this Court's Orders. He argued that as a consequence, the Court ought to suspend all other proceedings until the contempt Application is conclusively determined, in order to safeguard judicial authority and avoid undermining the rule of law.
18. It is submitted that an application for contempt of court must be heard and determined first before any other substantive interlocutory issues are dealt with as reaffirmed by the High Court in *Uzel & 8 Others v Gitonga & 5 Others* (Suing as the Management Board of the Mombasa Parents Club) Civil Suit No. 47 of 2022 (2023) KEHC 27533 (KLR) where the Court when faced with two Applications held that if contempt were established, the Respondents could not be heard on any other issue until the contempt was purged.
19. Counsel further submitted that the Order of the Court granted on 20th November 2025 was clear, precise and incapable of any reasonable misinterpretation and that it was duly served upon the Respondents through e-mail and personal service, therefore the Respondents could not feign ignorance of the same. Counsel cited the case of *Basil Criticos v AG & 8 others* (2012) eKLR where the court is said to have held that knowledge of the existence of a court order renders service secondary and disobedience becomes contumacious. Further reliance was placed on the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* (2013) eKLR and the Court of Appeal decision in *Shimmers Plaza Limited v National Bank of Kenya Limited* (2015) eKLR for the proposition that obedience of court orders was not optional.
20. It is submitted that the disobedience of the Court's orders in this case was wilful, deliberate, well-coordinated and executed through identifiable decision-makers and implementers, acting under the instructions and authority of the 1st and 2nd Respondents. Further, that the public assertion by Mr. Collins Okendi who acted on behalf of the Principal Secretary and stated that there were explicit instructions for the public participation exercise to proceed notwithstanding the court order constituted compelling evidence of knowledge and authorization at the highest administrative level. That for the Court to permit senior public officials to shelter behind institutional anonymity would be to eviscerate the contempt jurisdiction entirely.
21. Counsel for the ex-parte applicants urged the Court to find the persons enlisted under prayer (2) of the Motion in contempt of court and commit them to civil jail for a period of 6 months in a bid to assert its authority and act decisively against people who defied compliance.
22. In their oral submissions on 23rd February 2026, Mr. Ayugi counsel for the ex-parte Applicant highlighted their submissions and stated that court orders are never made in vain or for academic purposes and where a court has made an order and directed parties to act, parties must in all circumstances first obey the court order then raise objections. He submitted that the Court's Ruling



- on leave stayed the implementation of the impugned public participation as per the Notice of 18th November 2025; that it was unambiguous and was served upon the Respondents electronically and physically on 21st November 2025 before the commencement of the public participation forum.
23. He further submitted that despite knowledge of the order served on them, the Respondents went ahead and conducted public participation in various parts of the country with the 1st Respondent stating on 24th November 2025 in Nairobi that he was present on behalf of the Permanent Secretary and was instructed to proceed with the public participation irrespective of the court order.
 24. Counsel argued that the Respondents treated the court Order as a mere academic exercise and reiterated that obedience of court orders is not optional yet the Government of Kenya has made it the order of the day contrary to the Rule of Law. He urged the Court to dismiss the Preliminary Objection which he stated was only filed after violating court orders.
 25. Opposing the application for contempt of court, the Respondents' counsel made oral submissions relying on the three 3 Replying Affidavits sworn on 17th February 2026 by Mohamed Sadik Makii, Phillip Leakey Okello and Adiel Nyange and urged that there is no evidence of the alleged contemnors being aware of the said court order and therefore, contempt of court does not arise. Counsel for the respondents submitted that the allegation that Dennis, a Personal Assistant to the Principal Secretary was conducting public participation in Nairobi could not stand because the said Dennis is not a party to these proceedings. They urged that the contempt application be dismissed.

Submissions in respect of Notice of Preliminary Objection

26. Counsel for the Respondents filed their written submissions dated 28th January 2026 in support of the Notice of Preliminary Objection and submitted that the ex-parte Applicant had failed to exhaust the remedies available to them under Section 43 of the [Private Security Regulation Act](#) and that this Court is barred by Section 9 (2) and (3) of the [Fair Administrative Action Act](#) which is couched in mandatory terms, since an appeal has not been lodged before the Cabinet Secretary. The cases of Speaker of National Assembly vs Karume by the Court of Appeal, Republic v Kenyatta University Ex-Parte Ochieng Orwa Dominic & 7 Others (2018) eKLR and Republic v Firearms Licensing Board & Another Ex-Parte Stephen Vincent Jobling (2019) eKLR were cited in support of the proposition that parties must first follow and exhaust laid down procedures for redress of their grievances. Counsel urged the Court to find that the ex-parte Applicant has neither sought an exemption from the requirement of exhaustion remedies nor exhausted the appeal mechanism under Section 43 of the [Private Security Regulation Act](#).
27. In their oral submissions on 23rd February 2026, Counsel for the exparte applicant submitted that the Preliminary objection raises an objection on avenues for resolution of disputes under Section 43 of the Private Security Regulations Act. He stated that Section 43(1) provides for Appeal to the Cabinet Secretary within 30 days and argued that the decision they were challenging was not one of the Authority, but a procedural technicality in developing Regulations under the Act. It was his submission that a party cannot sit as a judge in its own case and as such, they could not appeal to the Cabinet Secretary where the Cabinet Secretary made the impugned Regulations.
28. It was further argued that the introductory remarks in the Regulations say that the Cabinet Secretary is exercising powers conferred by Section 70 of the Act to make Regulations while the Attorney General relies on Section 43 of the Act on Appeals to the Cabinet Secretary. He stated that Section 44 of the Act provides for a right to Appeal to the courts but will only apply where there is a decision of the Cabinet Secretary which is appealable to the court. That therefore, they had no decision to appeal against as they were merely challenging the procedures for making the said Regulations to call for inclusivity



and public participation. It was his submissions that the Preliminary Objection is not merited and is deviating the court's constitutional jurisdiction under Article 165. Counsel cited the case of S.K. Macharia & Another v KCB [2012] eKLR (SCOK).

Analysis and Determination

29. I have considered the pleadings and the rival written and oral submissions of the parties. The issues for my determination are:
- i. Whether there was contempt of Court by the Respondents.
 - ii. Whether the Court has jurisdiction in this matter.

On whether there was contempt of Court by the Respondents

30. The elements of contempt were discussed in the Paper, "Contempt in Modern New Zealand", Issue Paper 36/NZLC, IP36 dated May 2014, at chapter 7 on "Proving the Elements of Civil Contempt", as follows: -

- "7. 18 There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove, to the criminal standard of beyond reasonable doubt, that:
- a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - b. the defendant had knowledge of or proper notice of the terms of the order, normally as the result of personal service;
 - c. the defendant has acted in breach of the terms of the order; and
 - d. the defendant's conduct was deliberate."

31. Mativo J. (as he then was) in Samuel M.N. Mweru & Others v National Land Commission & 2 others [2020] eKLR similarly outlined the elements of contempt and held as follows: -

- "40. It is an established principle of law that [45] in order to succeed in civil contempt proceedings, the applicant has to prove
- i. the terms of the order,
 - ii. Knowledge of these terms by the Respondent,
 - iii. Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities...."

32. The ex-parte Applicant's case is that there was a clear and unambiguous order issued by this Court on 20th November 2025, just before the commencement of the public participation exercise. This Court is aware of the said orders which emanated from its Ruling made on the said date, which issue was also never controverted by any of the Respondents in this case. The question is whether the Respondents alleged contemnors had knowledge of the order and whether there was a wilful disobedience or disregard of the same, to constitute the civil offence of contempt.



33. I note that these proceedings were first instituted under Certificate of Urgency on 19th November 2025, and the Court made a Ruling on 20th November 2025 granting leave to file Judicial Review proceedings and staying the implementation of the public participation notice dated 18th November 2025 in MYGOV publication. Further, I note that the said public participation exercise was expected to commence on 21st November to 25th November 2025.
34. The ex-parte Applicant asserts that they served the said orders upon the Respondents; both physically and electronically and further published the same in the daily newspaper.
35. It is the Respondents' contention, however, that they were never aware of the said Orders and that by the time that the said order was being served upon them, they had already left their offices to attend the impugned public participation exercise.
36. In resolving this issue, I have read the contents of the ex-parte Applicant's affidavit of service sworn by Peter Muinde on 3rd December 2025 at paragraph 3 where he admitted that by the time he proceeded to the offices of the 2nd Respondent, at Lonrho House, he found the offices closed and that he was informed that all the staff members had proceeded for the public participation exercise out of office. This confirms the averments of the deponents who swore the affidavits on behalf of the Respondents, in opposing the Application for contempt.
37. I further note that all the receiving letters served upon the various offices were signed and stamped on 21st November 2025. Equally, the e-mail correspondence between Counsel for the ex-parte Applicant and the Private Security Regulatory Authority and Mr. Okal dated 21st November 2025 was sent at 8.18 a.m. This is the same date when the said exercise was to begin. It is therefore a plausible reason for the Respondents to state that they had not been made aware of the Order that halted the public participation exercise well in advance or at all in time to stop the process.
38. The burden of proof lies on he who alleges, in contempt of court proceedings, the standard of proof is higher than that of balance of probabilities. See Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR and Mutitika v Baharini Farm Limited [1985] KLR 227. This is because, contempt is quasi-criminal and can affect personal liberty (e.g., imprisonment). The breach must therefore be shown to have been made deliberately, wilfully and proven to a standard that leaves no reasonable doubt as to the contemnor's culpability.
39. The facts of this case demonstrate that the public participation exercise was already on course when the ex-parte Applicant served the Respondents. At the same time, it is not clear to this Court why the ex-parte Applicant opted to effect service on the day when the said impugned public participation exercise was set to begin yet they had already been issued with court orders on 20th, November, 2025, a day prior to the commencement of the exercise.
40. My overall finding on this issue is that the second element of knowledge of the order or its terms was not properly established by the ex-parte Applicant. Further, the ex-parte Applicant did not provide any material before this Court to disprove the assertions by the Respondents and the parties cited for contempt, that they only became aware of the said Orders, on 25th November 2025 when they returned from the public participation exercise. Additionally, the applicant sued the Cabinet Secretary for Interior but in the contempt application, it seeks to have the Principal Secretary for Interior be cited for contempt of court without explaining how the Principal Secretary became culpable for contempt of Court orders issued by this Court.
41. In the end, I find and hold that, in the absence of this element of knowledge and deliberate disobedience of orders of this court, the issue of contempt of court cannot arise and has not been proven.



Whether the Court has jurisdiction in this matter

42. Turning onto whether the Notice of preliminary objection is merited, the case of Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors [1969] EA 696 defines what a preliminary objection is as follows:

“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’.”

(see also the case of Hassan Ali Joho & Another v. Suleiman Said Shahbal & 2 Others, Petition No. 10 of 2013, [2014] eKLR at paragraph 31).

43. In Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others, Civil Application No. 23 of 2014, [2014] eKLR, the Supreme Court further stated at paragraph 15 thus, concerning preliminary objections: -

“Thus 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.”

(See also Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 Others, Application No. 50 of 2014, [2015] eKLR).

44. The question of law being imputed from these proceedings by the Respondent is one of jurisdiction. It is axiomatic that jurisdiction is the authority upon which a court acts, as vested upon it by *the Constitution* or statute. It is further an established principle of law that without jurisdiction, a court or tribunal is rendered powerless and must down its tools the moment it is seized of a matter in which it lacks the power to act. This principle was espoused in the locus classicus Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd (1989) KLR 1 where it was held thus: -

“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 tools in respect of the matter before court the moment it holds the opinion that it is without jurisdiction”.

45. Similarly, the Supreme Court in Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others (2012) eKLR aptly pronounced itself in this regard thus: -

“A court’s Jurisdiction flows from either *the Constitution* or Legislation or both. Thus, a court of law (tribunal) can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...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.”

46. The main argument by the Respondents in the Notice of Preliminary Objection is that the ex-parte Applicant has failed to exhaust the existing internal mechanisms for redress by first rushing to the court without seeking the intervention of the Cabinet Secretary. I have considered the provisions of Sections 43 and 44 of the [Private Security Regulation Act](#), Cap 207 which the Respondents rely upon to impute lack of jurisdiction of the Court. The sections provide thus: -

43. Appeals to the Cabinet Secretary

1. Any person aggrieved by a decision of the Authority may within thirty days of such decision, appeal to the Cabinet Secretary.
2. The Cabinet Secretary shall within seven days of receipt, constitute an ad hoc committee, comprising of not more than three persons to hear and determine the appeal.
3. The Cabinet Secretary shall ensure that any appeal brought before him or her is heard and determined within thirty days of receipt.
4. The Cabinet Secretary shall within fourteen days of the hearing of an appeal under this section deliver his or her decision in writing.
5. Where an appeal is lodged under this section, the Authority shall not take any action until the appeal has been heard and determined.
6. Any person making an appeal under this section may either in person or by his or her representative make oral or written submissions to the Cabinet Secretary or the Committee established under subsection (2).

44. Appeals to courts

Any person aggrieved by a decision of the Authority or the Cabinet Secretary under this Act may appeal to any court of competent jurisdiction.

47. The above provisions refer to the doctrine of exhaustion which is provided for under Section 9 of the [Fair Administrative Action Act](#) as follows: -

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 subsection (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.

48. Black's Law Dictionary 10th Edition also explains this doctrine of exhaustion as follows: -

“Exhaustion of remedies. The doctrine is that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.”

49. In *Bernard Murage v. Fine Serve Africa Limited & 3 others* [2015] eKLR the Court stated as hereunder:

“Where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first.”

50. The above expression has its origin in the case of *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, where the Court of Appeal held that:

“... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”

51. Similarly, in *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR, the same Court of Appeal further provided the constitutional rationale and basis for the doctrine of exhaustion as follows: -

“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 the resolution of outside the courts...This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

52. The doctrine of exhaustion envisions a scenario where administrative bodies and other lawful authorities/officers have the opportunity to address and resolve issues within their legal mandate before the same are escalated to the judiciary. In simple terms, a party desirous of judicial intervention must first make use of all the available non-judicial remedies before moving the courts.

53. I have considered the ex-parte Applicant's arguments in opposing the Notice of Preliminary Objection. It is argued by Counsel for the ex-parte Applicant that under Sections 43 and 44 of the *Private Security Regulation Act*, the courts' authority will only be invoked where there is a decision of the Cabinet



Secretary which is appealable to the court and that in their case, there was no decision to be appealed from as they were merely challenging the procedures for making the said draft Regulations to call for inclusivity and public participation.

54. Section 17 of the Act provides that the Authority functions under the supervision of the Cabinet Secretary. The said section provides that:

17. Powers of the Cabinet Secretary

1. The Authority shall operate under the supervision of the Cabinet Secretary.
2. Where the Authority fails to maintain any prescribed standard in the fulfilment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Authority describing the extent of the failure and stating the steps required to remedy the situation.

55. In my humble view, the fact that the Ministry of Interior and National Administration in conjunction with the Private Security Regulatory Authority the 2nd Respondent, the National Assembly as the law making authority and 3rd Respondent in this case, amongst others exercised their power to formulate policies and regulations which would govern the sector, does not necessarily mean that the ex-parte Applicant could not be afforded an audience before the Cabinet Secretary if he had a grievance concerning the process. I say so because, subsection (2) of Section 17 cited above requires the Authority to exercise its functions in the prescribed standards. This in my view, includes the drafting of policies and Regulations that must undergo a proper public participation process as clamoured for by the ex-parte Applicant herein. That public participation exercise must be preceded by adequate and sufficient notice. Therefore, whilst this Court recognizes this requirement, the right must be approached to address any grievance arising as a result of lack of compliance with these established standards.

56. Furthermore, under section 43 of the Act, the Cabinet Secretary shall within seven days of receipt of the appeal, constitute an ad hoc committee, comprising of not more than three persons to hear and determine the appeal. Therefore, there is no evidence that the Cabinet Secretary would effectively be “sitting on its own appeal” or acting in a way that violates impartiality and fair administrative process. From the section, there are inbuilt mechanisms for the Cabinet Secretary to have appeals heard and determined. He does not personally hear the appeals.

57. It is further noteworthy that the ex-parte applicants never sought for exemption from resorting to the appeal mechanisms provided for under the Act. It simply maintained that this was not a matter for appeal to the Cabinet Secretary. In my humble view, the Cabinet Secretary had the power to intervene and even stop the public participation exercise as scheduled if an appeal had been lodged with him in time for consideration.

58. Having so established, it was not proper for the ex-parte Applicant to seek the redress of this Court under Judicial Review without first lodging its grievance before the Cabinet Secretary. Indeed, no evidence was adduced to prove that the ex-parte Applicant had tried to approach the Cabinet Secretary. On the contrary, the only argument advanced by the ex-parte Applicant was that the Cabinet Secretary could not adjudicate over a matter that also involved him since he was the one that was empowered to formulate Regulations. I disagree with the ex-parte Applicant on this, noting that the challenge is not on the contents of the draft regulations but on the allegations that the public was not given sufficient time to participate in the discussions envisaged. I hasten to add that public participation also involves sending memoranda to the Authority and even before enactment, such memoranda can be sent to the Parliamentary Committee responsible for the security sector. In my view, therefore, before moving the Court in the manner that it did, the exparte applicant did, it ought to first have sought the intervention



of the Cabinet Secretary to address the issue of the inadequacy of the said notice for public participation as opposed to rushing to the Court. Where the Cabinet Secretary failed to act, then Judicial Review proceedings could be invoked. This was not the case.

59. I reiterate as has been stated in the above-cited decisions that, where there is a laid down procedure by statute for resolving any grievances, that procedure must be followed unless there are exceptional circumstances, before the court is moved. It is not in contention that the drafting and adoption of regulations in this case constituted an administrative action by virtue of Section 2 of the Fair Administrative Action but I find that there was inadequate evidence adduced by the ex-parte Applicant to demonstrate that the dispute resolution mechanism under Sections 43 and 44 were inadequate to address the issue of inadequate Notice for public participation.
60. In the premises, the Notice of Preliminary Objection finds merit and is upheld. This Court finds that it is devoid of jurisdiction and must down its tools. Having so found, I order that the orders of 20th November 2025 were made without jurisdiction. They are hereby vacated and discharged.
61. I make no orders as to costs.
62. The file is closed.
63. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF APRIL, 2026

R.E. ABURILI
JUDGE

