

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. E102 OF 2024**

**ALBERT GACHERU WAITHAKA.....**  
**.....PLAINTIFF**

**-VERSUS-**

**MBUVI KASINA .....1<sup>ST</sup>**  
**DEFENDANT**

**BONIFACE MBAI MUNYAO**

**DAVID MAKOVU MULI**

**MICHAEL MUTISO MUNYAO** (Sued as the current officials of Stony  
Athi Members Association) .....**2<sup>ND</sup>**

**DEFENDANT**

**THE ATTORNEY GENERAL**

**SUED ON BEHALF OF REGISTRAR OF**

**SOCIETIES ..... 3<sup>RD</sup>**

**DEFENDANT/APPLICANT**

**RULING**

1. For determination is **The Attorney General's** (*sued on behalf of the Registrar of Societies*) **Preliminary Objection (PO) dated 02/05/2025.**
2. However, leading up to the Preliminary Objection (PO), **Albert Gacheru Waithaka** (*hereafter the Plaintiff*) filed suit as against **Mbuvi Kasina** (*hereafter the 1<sup>st</sup> Defendant*), **Boniface Mbai Munyao, David Makovu Muli & Michael Mutiso Munyao** – **Sued as the current officials of Stony Athi Members Association** (*hereafter the 2<sup>nd</sup> Defendant*) and **The Attorney**

**General** (sued on behalf the **Registrar of Societies**) (hereafter the 3<sup>rd</sup> Defendant) seeking among other orders that-;

- a) A declaration be and is hereby issued that the Special Annual General held on 03/05/2024 is null and is hereby nullified;
- b) The notice issued by the 1<sup>st</sup> Defendant on 19/04/2024 and as published in the Daily Nation Newspaper is null and void and is hereby nullified.
- c) A permanent order of injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their agents or persons acting on their instructions from presenting the results of the election and the resolutions passed on 03/05/2024 to the 3<sup>rd</sup> Defendant adoption and implementation.
- d) A permanent order of injunction be and is hereby issued as against the Registrar of Society restraining the Registrar of Societies, her employees or persons working on his/her direction from adopting, recognizing and or implementing the resolutions of the meeting held on 03/05/2024.
- e) A declaration that the notice of 19/04/2024 to the extent that the name of the association was misspelt to Stoni Athi Members Association, could not be used to carry out a meeting for Stony Athi Members Association
- f) Costs of the suit be provided for.

3. It is on the premise of the aforestated, that the 3<sup>rd</sup> Defendant has filed a Preliminary Objection (PO) **dated 02/05/2025** objecting to the Plaintiff's suit on grounds that-;

- i. That the Plaintiff has blatantly disregarded **Section 18** of the **Societies Act (Cap 108)** which sets out the mechanism for resolving a dispute in regard to the officers of a society which is the basis of the Plaintiff's suit.*
  - ii. That the Plaintiff's suit offends the doctrine of exhaustion.*
  - iii. That based on the foregoing the Applicant has not properly invoked the jurisdiction of this Honourable Court and thus the court should not entertain this matter.*
  - iv. That a Court not properly clothed with jurisdiction has no duty to listen and determine this suit.*
  - v. That the Plaintiff's suit is therefore premature, vexatious and an abuse of the court process.*
  - vi. That consequently the Plaintiff's suit is fatally defective and should be struck out with costs.*
- 4.** In response to the Preliminary Objection (PO), the Plaintiff filed a **Replying Affidavit dated 15/07/2025.**
- 5.** Directions were taken on disposal of the 3<sup>rd</sup> Defendant's Preliminary Objection (PO) by way of written submissions, of which, the Plaintiff and 3<sup>rd</sup> Defendant duly complied. However, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants opted not to file submissions in respect of the instant proceedings.
- 6.** Having set out the above, the Court has considered the 3<sup>rd</sup> Defendant's Preliminary Objection (PO), the Plaintiff's response and submissions filed thereto and thus postulates that the issues for **determination concerns -:**

- a) Whether the 3<sup>rd</sup> Defendant's Preliminary Objection is merited?
- b) Who ought to bear costs?

**Whether the Plaintiff's Preliminary Objection is merited?**

7. As to the nature of a Preliminary Objection (PO), the same has since been settled within our jurisdiction in the celebrated decision in the case of **Mukisa Biscuits Manufacturing Company Ltd.** It was held therein that -;

*“So far as I am aware, 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, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract-giving rise to the suit to refer the matter 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”*

8. In the case of **Oraro v Mbaja (2005) KLR 141, Ojwang J** (as he then was) reiterated the above by stating that-;

*“A preliminary objection correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested, and*

in any event, to be proved through the process 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.”

9. Meanwhile, the Court of Appeal in **Kigwor Company Limited v Samedy Trading Company Limited [2021] KECA 810 (KLR)** cited with approval the decision of the Supreme Court in **Independent Electoral & Boundaries Commission v Cheperenger & 2 others [2015] KESC 2 (KLR)** where the latter court emphasized that:-

*“[16] It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law. (See Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others, Civil Application No. 14 of 2014, [2014] eKLR).”*

10. A cursory review of the 3<sup>rd</sup> Defendant’s Preliminary Objection (PO), it essentially challenges this Court’s jurisdiction to entertain the instant proceedings on the premise of the “Doctrine of Exhaustion”.

11. Ordinarily in a proper case, an objection appertaining to jurisdiction constitutes a pure point of law that ought to be determined *in limine*. The words of **Nyarangi. JA**, in the *locus classicus* decision in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** require no restatement save for the exhortation, which still endures that “*Jurisdiction is everything. Without it, a court has no power to make one more step.*” That said, the High Court draws its original jurisdiction to entertain disputes from **Article 165(3)** of the **Constitution** and or relevant statute.

12. Here, it is ostensive that the 3<sup>rd</sup> Defendant’s Preliminary Objection (PO) is premised on **Section 18** of the **Societies Act** which provides that-;

*(1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.*

*(2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period, which the Registrar may allow, the Registrar may cancel the registration of the society.*

*(3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.*

13. With the above in reserved, while calling to aid the decisions in **Geoffrey Muthinja & another V Samuel Muguna Henry & 1756 Others [2015] KECA 304 (KLR)**, **William Odhiambo Ramogi & 3 Others vs. Attorney General & 4 Others; Muslims for Human Rights & 2 Others (interested parties) [2020] eKLR** and **Muchemi (Chairperson), Macharia (Secretary) & Ali (Treasurer) Suing as the Representatives of Safaricom Dealers Association) v Ondieki & 4 others [2024] KEHC 11274 (KLR)** the 3<sup>rd</sup> Defendant posits that by dint of the above provision the Plaintiff was required to first seek the intervention of the Registrar of Societies in resolving the current dispute in regards to the officers of the society before filing the instant suit.
14. Further, while placing reliance on the **Section 9(4)** of the **Fair Administration Actions Act** and the decision in **Fleur Investments Limited Vs Commissioner of Domestic Taxes & Another [2018] eKLR** it was submitted that the Plaintiff has not adduced any evidence to show the existence of exceptional circumstances to warrant the direct invocation of Court's jurisdiction without exhausting all remedies available. In conclusion, it was submitted that the above provision creates a valid forum for the resolution of the Plaintiff's dispute.
15. On the part of the Plaintiff, counsel posits that, only the Registrar can invoke the aforestated provision, if the latter is of the opinion that there is a dispute as to the officials of a registered society. While equally citing the decision in **Muchemi**

**(Chairperson), Macharia (Secretary) & Ali (Treasurer) Suing as the Representatives of Safaricom Dealers Association)** (supra), counsel argued that the Plaintiff had already moved the Registrar over the dispute and therefore it may have amounted to abuse of the Court process to invoke parallel process.

16. It was submitted that by dint of the Registrar's response to the Plaintiff's motion accompanying the suit, the former does not believe there exists a dispute meanwhile has since taken a position on the elections held on 03/05/2024 therefore cannot be a neutral arbiter in the matter.
17. The Plaintiff went on to posit that the doctrine of exhaustion does not divest the Court of jurisdiction but rather serves to postpone judicial consideration of a dispute until the prescribed administrative mechanisms have been pursued. In conclusion, it was submitted that the doctrine is not relevant to the instant matter given the Registrar's position. The decision in **Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties) [2023] KESC 113 (KLR)** was cited in the latter regard.
18. Here, the Court has taken the liberty of juxtaposing the Plaintiff's pleadings alongside the 3<sup>rd</sup> Defendant Preliminary Objection (PO) as premised on **Section 18** of the **Societies Act**. The doctrine of exhaustion is more or less codified under **Article 159(2)(c)** of our **Constitution**. In **Mutanga Tea & Coffee Company Ltd v Shikara Limited & another [2015] KECA 469 (KLR)** the Court of Appeal discussed the rationale underlying the doctrine. Later, the Supreme Court in **Mumba & 7 others v Munyao & 148 others [2019] KESC 83 (KLR)** pithily put it that-;

“In pursuit of sound legal principles, it is our disposition that the disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of the superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to the relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.”

See also-; **Speaker of National Assembly v Njenga Karume [1992] KECA 42 KLR,**

- 19.** It is not in contention that the dispute herein revolves around a Notice issued by the 1<sup>st</sup> Defendant on 19/04/2024 and published in the Daily Nation Newspaper and the subsequent Special Annual General held on 03/05/2024 in respect of Stony Athi Members Association, which resulted in an election of the impugned officer bearers and resolution in respect of the association.
- 20.** The question that begs at this juncture is whether the suit is premature given the dispute as may be localized to **Section 18** of the **Societies Act**?  
My understanding of the above provision is that it vests the Registrar of Societies to intervene in leadership disputes within a registered society, and if the dispute is not properly resolved, to cancel the society’s registration – reserving a right of appeal to the High Court, with respect to the latter.
- 21.** In essence where there is a leadership dispute, the Registrar steps in and demands proof of who the lawful officials of the

society are, or that the dispute is being resolved i.e. *internally as per the society's constitution or in Court, as the case may be*. The provision ensures order and legitimacy in the leadership of societies, backed by the threat of deregistration while retaining judicial oversight. Therefore, the Court is not convinced by the 3<sup>rd</sup> Defendant's argument that the purport of the provision entails that the first port of call, with respect to the Plaintiff's dispute, ought to be with the Registrar of Societies.

**22.** In any event, given the Plaintiff's nature of dispute, **Section 18** of the **Societies Act** is not exhaustive as to the manner in which the Plaintiff's dispute may be resolved within the confines of the Act. In legal parlance, the provision merely vests the Registrar with supervisory and quasi-adjunctive authority to ensure certainty and regularity in the governance of registered societies by mandating the resolution of leadership disputes and punishing non-compliance through deregistration. It does not grant the Registrar arbiter jurisdiction over leadership disputes.

**23. In the end, the Court is not persuaded that the 3<sup>rd</sup> Defendant's Preliminary Objection dated 2/5/2025 is merited.**

**It is dismissed with each party to bear its own costs.**

**Orders Accordingly.**

**Delivered Dated and Signed at Nairobi this 16<sup>th</sup> day of April, 2026.**

.....

**JANET MULWA.**

**JUDGE**