

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTION PETITION NO. E004 OF 2025

AFRICAN CENTRE FOR PEACE AND HUMAN RIGHTS.....PETITIONER/APPLICANT

VERSUS

HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE PUBLIC PROCUREMENT REGULATORY AUTHORITY.....2ND RESPONDENT

THE CABINET SECRETARY TREASURY.....3RD RESPONDENT

AND

LAW SOCIETY OF KENYA.....1ST INTERESTED PARTY

THE NATIONAL ASSEMBLY 2ND INTERESTED PARTY

RULING

THE PARTIES

1. The Petitioner, AFRICAN CENTRE FOR PEACE AND HUMAN RIGHTS, describes itself as a non-governmental organization committed to promotion of human rights culture, adherence to constitutionalism and the rule of law in Kenya.
2. The 1st Respondent, the Attorney General, is designated as the principal legal advisor to the government.

3. The 2nd Respondent is established under the Public Procurement and Asset Disposal Act and mandated to monitor, assess, and review the public procurement and asset disposal system.
4. The 3rd Respondent is the Cabinet Secretary Treasury.
5. The interested Party is the law society of Kenya mandated to assist members of the legal profession, government and the public in all matters relating to the administration of justice.

THE PETITIONER'S CASE;

6. The Petitioner's case is premised on the Petition dated 9th June 2025, brought under articles 2, 3, 10, 19, 20, 21, 23, 47, 48, 50, 159, 162, 165, 169, 177, 227, 258 and 259 of the Constitution. The Petitioner alleges infringement of articles 2, 3, 10, 19, 20, 23, 47, 50, 159, 162, 165, 169, 177, 227, 258 and 259.
7. The Petition is supported by the Affidavit of Charles Maina Kariuki dated 9th June 2025.
8. Through the Petition the Petitioner seeks the following reliefs:
 - a. A declaration that the Debarment guidelines issued by the 2nd Respondent are illegal and unconstitutional therefore null and void.
 - b. A writ of certiorari to quash all the decisions issued by the 2nd Respondent under the impugned Debarment guidelines or any such guidelines that may be issued prior to the said guidelines
 - c. A declaration that any regulation that does not adhere to the rigors set out in the statutory instruments Act does not have any force of law

- d. An order of mandamus compelling the 2nd Respondent to subject the Debarment Guidelines to the rigors of the Statutory Instruments Act
 - e. An order of permanent injunction against using and or applying the Debarment Guidelines of 2022
 - f. Costs
9. According to the Petitioner, this Petition was triggered by the development of the **Public Procurement and Asset Disposal Debarment Proceedings Manual, 2022** to guide the conduct of the debarment proceedings by the 2nd Respondent.
10. The Petitioner contends that the development of the manual was not undertaken in strict compliance to the requirements of the Statutory Instruments Act. therefore, the same was unconstitutional and ought to be quashed. The constitutionality of the manual is challenged on the basis that the 2nd Respondent violated the doctrine of separation of powers in usurping the legislative mandate of parliament by failing to develop the manual in conformity to the Statutory Instruments Act.
11. The Petitioner asserts that the manual vests the 2nd Respondent the role of investigator, prosecutor and adjudicator contrary to the principles of natural justice as the Debarment Committee created under the manual is a quasi-judicial tribunal exercising judicial authority. Therefore, the creation of the Debarment Committee was in violation of Article 27, 10, 159, 165 and 50 (1) of the Constitution.
12. The Petition was also accompanied by an application seeking conservatory orders pending the determination of the Petition.

13. When parties appeared before court, it was agreed by consent that the Application be subsumed into the Petition. Consequently, parties were directed to file their responses to the Petition. Nevertheless, none of the Respondents filed any responses despite entering appearance and seeking time to respond to the Petition.
14. Accordingly, the court directed that the Petition be disposed of through written submissions. The Petitioner filed written submissions dated 22nd October 2025. While the Respondents failed to file any written submissions. Consequently, the matter was set down for judgment without responses or submissions from the Respondents.

PETITIONERS' SUBMISSIONS:

15. The Petitioner submitted that the Petition violates the doctrine of separation of powers which is a foundational; doctrine of Kenya's constitutional architecture. He contended that the principle of Separation of powers provides for a system of checks and balances as elaborated in **Commission for the Implementation of the Constitution vs National Assembly of Kenya, Senate & 2 others [2013] eKLR.**
16. It was further submitted that the 2nd Respondent violated **Article 10 of the Constitution** by putting in place guidelines that are likely to impede on fundamental rights and freedoms through an opaque process which totally lacks public participation and in total contravention to the Statutory Instruments Act. Therefore, the manual was void pursuant to **Article 2 (4) of the Constitution.**

ANALYSIS AND DETERMINATION:

17. A review of the pleadings and submissions by the Petitioner shows that the Petitioner is seeking a determination of the

constitutional validity of the **Public Procurement and Asset Disposal Debarment Proceedings Manual, 2022**.

18. The Constitution specifically legislates on the issue of *locus standi* in Articles 22 and 258. These provisions allow persons with or without direct interest in a matter to approach the courts to protect rights and fundamental freedoms of individuals or to protect the Constitution itself.
19. In the instant case, the Petitioner alleges contravention of the **Constitution and Articles 2, 3, 10, 19, 20, 23, 47, 50, 159, 162, 165, 169, 177, 227, 258 and 259** automatically grants him the standing to approach this Court in the public interest on the claim that the Constitution has been contravened or is threatened with contravention by the Respondent.
20. In considering the principles of constitutional interpretation, the starting point is to appreciate the requirement that the spirit of the Constitution preside and permeate the process of judicial interpretation and judicial discretion. This foundational interpretation principle springs from **Article 259** which calls for the interpretation of the Constitution in a manner that promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the Bill of Rights; permits the development of the rule of law; and, contributes to good governance. This principle is reinforced by the command in **Article 159(2)(e)** that in exercising their judicial authority, the courts should protect and promote the purposes and principles of the Constitution.
21. Another principle of constitutional interpretation is that the Constitution should be interpreted holistically. In this regard, the Supreme Court in its decision in **the Matter of Kenya National Commission on Human Rights [2014] eKLR** spoke thus:

“[26] In his written and oral submissions, Mr. Kitonga has persistently urged us to holistically, broadly and robustly interpret the Constitution, so as to find that Article 163(6) means all persons, and not just the entities mentioned therein, can apply for advisory opinions. Counsel is, in effect, asking us to find that Article 163(6) of the Constitution does not mean what it says, through “a holistic interpretation”. But what is meant by a ‘holistic interpretation of the Constitution’” It must mean interpreting the Constitution in context. It is the contextual analysis of a constitutional provision, reading it alongside and against other provisions, so as to maintain a rational explication of what the Constitution must be taken to mean in light of its history, of the issues in dispute, and of the prevailing circumstances. Such scheme of interpretation does not mean an unbridled extrapolation of discrete constitutional provisions into each other, so as to arrive at a desired result.”

22. The Petitioner contends that the **Public Procurement and Asset Disposal Debarment Proceedings Manual, 2022** should be voided for failure to comply with the Statutory Instruments Act, 2013. The question that needs to be answered is whether the provisions of the Statutory Instruments Act, 2013 were applicable to the **Public Procurement and Asset Disposal Debarment Proceedings Manual, 2022**. If the answer is in the affirmative, then the next question is whether the provisions of the Act were complied with.
23. A reading of the introduction to the 2022 Manual Guidelines discloses that the Manual outlines the procedures, processes

and structural set ups to guide the Authority, the Board and the Debarment Committee in undertaking their roles of debarring suppliers as provided in the Act and Regulations. In essence the Manual aims to guide the 2nd Respondent in promoting good governance in public procurement and asset disposal, promoting fair competition and transparency in public procurement and asset disposal, penalizing errant suppliers, contractors and consultants, deterring suppliers, contractors and consultants from engaging in unethical practices and increasing public confidence in procurement and asset disposal.

24. In view of the fact that the 2022 Manual was not promulgated pursuant to a specific authority granted by the law to the 2nd Respondent, they cannot be termed a statutory instrument which is clearly defined by **Section 2** of the **Statutory Instruments Act, 2013** to mean:

“Any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.”

25. Any of the instruments mentioned in the above definition only become a statutory instrument if it is *“issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.”* The impugned manuals cannot be traced to any particular provision of the **Public Procurement and Asset Disposal Act**. In my view, the Manual consist of mere

internal rules as they were not issued under any statutory authority granted to the 2nd Respondent. They are an operation manual meant to assist the 2nd Respondent in the discharge of their day-to-day duties.

26. The Manual can be equated to a memo issued by the Head of a State organ to guide the performance of duties by the persons working for the State organ. This fact can be discerned by the clear statement in the Preface that states that:

“It is important to note that the Public Procurement and Asset Disposal Act 2015 and the Public Procurement and Asset Disposal Regulations 2020 take precedence over this manual.”

27. It therefore follows that the 2022 Manual did not fall into the definition of a statutory instrument as defined by the **Statutory Instruments Act, 2013** and the Act was therefore not applicable to them. The Petitioner’s assertion that the Manual is void for not complying with the Statutory Instruments Act, 2013 is therefore without merit. It therefore follows that the question as to whether the 2022 Manuals issued by the 2nd Respondent complied with the **Statutory Instruments Act, 2013** does not arise in the circumstances of this case.
28. Having found that the 2022 Manual was not a statutory instrument within the meaning of the **Statutory Instruments Act**, then it follows that the Manual was not to be subjected to the rigors of the **Statutory Instruments Act**.
29. The upshot of the matter therefore is that the Petition fails as all the reliefs sought by the Petitioner were hinged on the assumption that the 2022 Manual was a Statutory Instrument

within the meaning of the **Statutory Instruments Act, 2013**. I will therefore proceed to dismiss it.

30. Final Orders: *Petition is hereby dismissed with no orders as to costs.*

Dated, Signed and Delivered Virtually on this 14th day of May 2026.

**HON. T. W. OUYA, OGW
JUDGE**

In the presence of:

Mbugua for Petitioner

No appearance for other parties

Hamza/Kevin - Court Assistants