REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION No. 177 of 2026
IN THE MATTER OF THE CONTRAVENTION AND THREATENED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 22,23,38 and 47 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE FAIR ADMINSTRATIVE ACT, 2015
AND
IN THE MATTER OF THE UNIVERSITY OF NAIROBI STUDENTS ASSOCIATION ELECTIONS

BETWEEN

DAVID MWANGI……

……PETITIONER

VERSUS

THE UNIVERSITY OF NAIROBI STUDENT'S ASSOCIATION INDEPENDENT ELECTORAL COMMISSION ……1ST RESPONDENT

THE UNIVERSITY OF NAIROBI STUDENT'S ASSOCIATION INDEPENDENT ELECTORAL COMMISSION CHAIRPERSON……2nd RESPONDENT

JUDGMENT

INTRODUCTION

1. David Mwangi, the Petitioner herein, presents this Petition dated 12th March 2026 under Articles 22, 23, 38, and 47 of the Constitution of Kenya. He is a student in the Faculty of Science and Technology at the University of Nairobi and seeks redress for the violation of his political rights and his right to fair administrative action, as encapsulated in Articles 38 and 47 of the Constitution of Kenya.
2. He is aggrieved that, as a consequence of the Respondents' actions, his team was locked out of the University Student Elections. In compliance with the election rules sent to him on 3rd March 2026, he submitted a team name and symbol for approval through the 1st Respondent's official submission platform. His symbol was accepted, but his team name 'Harbingers' was rejected. The reason given was that it was a title of a copyrighted book.
3. Notwithstanding that he was not persuaded by the grounds of the disqualification, he resubmitted another team name, 'Team Dacynter', on the 9th March 2026 on the 1st respondent's official submission platform at 1.33 am, well ahead of the 1 pm deadline that had been set.

4. He learnt only that his submission had not been transmitted when the 1st respondent released the list of approved team names, and his name was missing. He contends that he duly submitted his team name and that there was no indication that the transmission had failed.
5. He emailed the Respondents on 10th March 2026 at 8:58 am and received no response; he therefore sent a follow-up email. Both communications were within the appeal window. He did not receive a response from the Respondents until Wednesday, 11th March 2026, by which time the time to lodge an appeal had lapsed. In that communication, the Respondents informed him that there was no record of the submission in their system and declined to reconsider the matter.
6. It is submitted that the respondent acted outside the scope of their guidelines and exercised its power in an arbitrary and unreasonable manner. He therefore seeks the following orders-

    a. A declaration that the respondent's actions violated the Petitioner's rights under Articles 38 and 47 of the Constitution.
    b. A declaration that the rejection of the Petitioner's team name on grounds not provided for in the election guidelines was unlawful and unreasonable

c. Spent

d. An Order compelling the Respondent to consider and approve the Petitioner's team name and symbol or otherwise allow the Petitioner to participate in the nomination process

e. Any other order that this Honourable Court may deem just and appropriate in the circumstances.

f. Costs of this Petition

7. The Respondent opposes and relies on an affidavit sworn by Prof. Collins Odote, the 2nd Petitioner. It is submitted that the University elections are governed by the Universities (Amendment) Act 2016 and the University Students Association Constitution 2017 (Amended 2021). Elections are conducted at two levels, namely the Faculty and Campus levels, and at the Council or University-wide level. It is the 1st Respondent that has the mandate to conduct the elections.

8. In accordance with the electoral calendar, significant ground had been covered and the elections were at an advanced stage before the Petitioner secured the conservatory orders herein. It is submitted that, contrary to the Petitioner's averments, he was treated fairly and in accordance with the UNSA Constitution and the rules governing the conduct of student elections at the University of Nairobi.

9. At the commencement of the process on 5th March 2026, the respondent convened a sensitisation session for students regarding the Submission of Campaign teams and names.

10. It is averred that following the rejection of the Petitioner's team name 'Harbingers', he was duly informed and given until 1 pm on 9th March 2026 to submit an alternative name. A Google election platform was developed and shared with him. When the respondent checked their system, they found that only two teams had resubmitted their names. The Petitioner's resubmission was not captured in the system within the set time. A decision was made that teams that had not resubmitted were deemed to have withdrawn from the electoral process. The respondent attaches the minutes of the meeting held by the Electoral Commission on 9th March at 7pm The record shows that the meeting concluded at 10pm and that one of the resolutions was to update the list of cleared team names and symbols that were published.

11. It is averred that, upon reviewing the documents submitted by the Petitioner, it was concluded that they had been edited and that there was no evidence of

submission. The respondent also examined the platform for resubmissions for Faculty and Campus Teams and did not find the Petitioner’s submission. The respondent concluded that the Petitioner was not genuine, informed him that he had failed to resubmit his team name as requested, and therefore was time-barred under the circulated timelines, and accordingly dismissed his appeal. Minutes of the meeting held on 10th March 2026 at 8pm show that the Petitioner's case was handled under the heading ‘Appeals’.

12. The resolution of the meeting was that the Petitioner’s appeal was rejected for his failure to adhere to the timelines set.

13. It is averred that the Petition and the Notice of Motion through which the applicant secured the existing conservatory orders were based on falsehoods and misrepresentations. It is argued that the respondent failed to complete the submission process because he did not click the send button. There was no issue with the platform, as it had worked for other teams without issue.

14. It is submitted that the Petitioner had the option of contacting the respondent's ICT team for assistance, but failed to do so. It is argued that the resubmission was improperly lodged, and therefore, the Commission was unable to determine it on appeal.

15. It is further argued that the right to participate in elections is not absolute and depends on the Petitioner having complied with the rules and regulations governing elections.

16. The Petitioner swore a further affidavit on 31st March 2026. He asserts that neither the published Election Guidelines nor the UNSA Constitution provides for the disqualification of a team name on the basis that the name selected is a copyrighted book. Therefore, the introduction of this criterion was extraneous, unlawful and beyond the Respondent's mandate.

17. He reiterates that he resubmitted the team name as required, but the platform failed. He communicated with the Respondents in good time, but they responded only after the appeal period had lapsed.

18. The respondents have sworn a further affidavit by Prof Collins Odote. Attached to the affidavit is a sample submission that clearly indicates a form was properly submitted, as the system generates a message confirming the response has been sent. He also annexes the Commission interface for the submissions, which, alongside other information, would include a timestamp of the time the application was sent.

19. The Petition was canvassed through written submissions, and both parties highlighted their submissions on 27th April 2026. The Petitioner's submissions are undated. He reiterates his averments in his affidavits and concludes that the respondents acted outside their mandate, applied non-existent rules, and failed to ensure a fair process.

20. The Respondents' Submissions are dated 23rd April 2026. It is submitted that the Petition ought to fail, as the Petitioner had not exhausted the Internal Dispute Resolution provided for in the UNSA Constitution. Reference is made to the decision in **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696** and

Bichanga & 2 Others v KNUT & 4 Others (Petition E007 of 2026 & Trade Union Election Petition E008 & EOO9 of 2026 (consolidated)) [2026] KEELRC 135 (KLR).

ANALYSIS AND DETERMINATION

21. Having considered the pleadings and submissions filed herein I frame the issues for determination as-

a. Whether the Petition offends the Doctrine of Exhaustion?
b. If the answer to (a) is negative, whether the Petitioners' rights were violated as alleged?
c. If the answer to (b) is in the affirmative, what are the appropriate remedies?
d. Who should pay the costs of the Petition?

22. The Doctrine of Exhaustion derives its force from Article 159(2)(c) of the Constitution and Section 9(2) of the Fair Administrative Action Act, which requires that, in exercising judicial authority, Courts should promote alternative forms of dispute resolution, with Courts as a forum of last resort. The doctrine was well articulated by the **Supreme Court in Petition (Application) No. 4 of 2021; United Millers Ltd v The Kenya Bureau of Standards & 5 Others.**

[26] We also take judicial notice that the superior courts' findings on jurisdiction is in harmony with our finding in Albert Chaurembo Mumbo & 7 others v Maurice Munyao & 148 others; SC Petition No 3 of 2016, [2019] eKLR, wherein we stated that, even where superior courts had

jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to 12 Petition (Application) No. 4 of 2021 deal with the dispute as provided for in the relevant parent statute. We emphasized that where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by the constitution and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance.

23. Section 9 (4) of the Fair Administrative Action Act allows exceptions to this rule where it is in the interest of justice under exceptional circumstances. In **Krystalline Salt Limited v Kenya Revenue Authority (2019) eKLR** expressed its view on the definition of "*exceptional circumstances*" as follows:

What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Thus, where an internal remedy would not be effective and/ or where its pursuit would be futile, a court may permit a litigant to approach the court directly. So too where an internal appellate

tribunal has developed a rigid policy which renders exhaustion futile.

The Fair Administrative Action Act does not define 'exceptional circumstances'. However, this court interprets exceptional circumstances to mean circumstances that are out of the ordinary and that render it inappropriate for the court to require an applicant first to pursue the available internal remedies. The circumstances must in other words be such as to require the immediate intervention of the court rather than to resort to the applicable internal remedy

24. The Respondent submits that the Petitioner did not utilize the mandatory internal dispute resolution procedures established in Part VII of the UNSA Constitution, rendering this petition premature. This assertion contradicts the record. The minutes signed on 11th March 2026 by the Independent Electoral Commission Committee are headed 'on the Nominations and Election Operations to consider the Outcome of Disciplianry Proceedings of Faculty Health Sciences (FHS) cases and **Appeals on resubmitted team**

names and symbols held Virtually on Tuesday 10th March 2026'

(Emphasis Supplied)

25. The Petitioner's case was on the agenda of that meeting and is captured at Min 3 (b) as follows-

Appeals

- It was noted that one student by the name David Mwangi, who had a submission for the Student Council appealed against his team not being cleared.
- The student shared some edited screen shots to prove that he resubmitted his name in good time as required by the Commission.
- It was also noted that he had called several members of the Commission, complaining of the same and also threatened to seek legal redress if his tema name was not cleared.
- The committee went ahead and verified his claims by combinng through the resubmission google form that was sent to him but his submission was not found.
- The Commission went further to verify with the google form that was used to resubmit and symbols for the Favculty and Campus teams to ensure that he did not send in the wrong location, but still no resubmission was found.
- The Commission found the student not genuine in his submission and therefore recommended that he be communicated to of the outcome that he failed to resubmit his team name as requested and therefore was time barred as per the circulated timelines.

Agreed

That the appeal by David Mwangi be rejected for his failure to adhere to the timelines given.

26. The communication by the Petitioner to the respondent is headed ‘Appeal for Consideration of Team Names Submission- UNSA 2026 Elections’.

27. From the foregoing, it is evident that the Petitioner lodged an appeal challenging the omission of this team’s name from the published list of approved team names. For this reason, I find that the Petitioner has exhausted the alternative dispute resolution mechanism provided by the UNSA Constitution, and therefore, this Petition is properly before this Court. The challenge based on the doctrine of exhaustion must fail. In any event, the Petition seeks a declaration on violation of rights which the internal mechanism does not have the mandate to consider.

Were the Petitioner’s rights violated as alleged?

28. It is well established that a Petition alleging a violation of rights must, with a reasonable degree of precision, establish the nature of the violation or breach complained of, and the provision violated. This position was succinctly laid out in the case of **Annarita Karimi Njeru vs Republic [1979]eKLR** by Trevelyan & Hancox, JJ, as follows;

We would, however, again stress that if a person is seeking redress from the High Court on a matter which involvesareferenceto the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.

29. This was affirmed by the Supreme Court in the decision in **Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others [2014] eKLR** as follows:

[349] ...Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened,a party invoking this Article has to show the rights said to be infringed,as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role,as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement

30. The Petitioner contends that his Article 38 (Political) and Article 47 (Fair Administration) rights were violated when the respondent disqualified his team name ‘Harbinger’ and when the respondent dismissed his appeal on the failed resubmission and exclusion from the published list of approved names and symbols.

31. He submits that his rights were infringed because the disqualification of the initial team name was based on a ground not set out in the circulated guidelines. When the team name ‘Harbinger’ was rejected, the Petitioner had two options, either to resubmit or to appeal the decision. He elected to resubmit an alternative name.

32. The question I ask myself is whether the issue remained live after the Petitioner opted to resubmit the name. My conclusion is that it did not. The election rules gave him two options; he elected to resubmit. He was aware of the guidelines at that time. The moment he resubmitted alternative names, he waived his right to challenge the Respondent's decision. He cannot have his cake and eat it. The decision to disqualify his name cannot be said to have been arbitrary, as he

was notified of the decision and afforded an opportunity to either appeal or resubmit.

33. The Petitioner is also aggrieved that, although he resubmitted a team name (Team Dacynter) as required, he was again excluded from the nomination process on the respondents' allegation that his submission was not received on the portal. He contends that this must have been due to a system failure. He takes issue with the exclusion from the process on this ground.

34. It is trite law that he who alleges must prove. Section 107 of the Evidence Act provides:

1.Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2.When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

35. The burden of proof lay with the Petitioner, who was required to prove that he resubmitted the form with the alternative name as required. It is not in dispute that the elections were conducted on a calendar basis. It is also not in dispute that the elections commission had set up a portal for candidates to resubmit their team names. The Petitioner contends that he submitted his application and that the

responsibility lay with the respondents to explain why it was not reflected.

36. It was always for the Petitioner to demonstrate that he submitted the application. What was presented to the Court was the form he completed. I deliberately distinguish between completing the form and submitting. Submitting entails completing the application and then dispatching it electronically on the platform provided.

37. In a further affidavit, the respondent demonstrated the interface of the submitted application. The Google Doc form is configured to generate a message indicating successful submission. The Petitioner did not challenge this averment, nor did he present his completed and submitted application to the Court. What I can see is the completed form. As a candidate in that electoral process, he was bound to colour within the lines so as to remain in play.

38. For this reason, I find that the Petitioner failed to demonstrate that the decision he had failed to submit was arbitrary and without basis. His claim of a violation

of the right to political participation and fair administrative action must fail.

39. The Petition is therefore dismissed in its entirety with no order as to costs.

40. The earlier issued conservatory orders are vacated, and the respondent is at liberty to proceed with the elections.

SIGNED, DATED and DELIVERED VIRTUALLY at NAIROBI this 12th day of May, 2026.

P .M NYAUNDI
JUDGE

In the Presence of
Fardosa Court Assistant
David Mwangi Petitioner
Omondi for Respondents