



**Lumumba v Football Kenya Federation; Zoo Football Ltd (Interested Party)
(Petition E009 of 2023) [2025] KEELRC 821 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 821 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
PETITION E009 OF 2023
AN MWAURE, J
MARCH 7, 2025**

BETWEEN

BRIAN LUMUMBA PETITIONER

AND

FOOTBALL KENYA FEDERATION RESPONDENT

AND

ZOO FOOTBALL LTD INTERESTED PARTY

RULING

Introduction

1. The Petitioner filed a Petition dated 20th November 2023 through the law firm of D.C Ngeno Co. Advocate seeking the following reliefs:
 - i. A declaration be and is hereby issued that the Petitioner’s right to a fair hearing, as pertains the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 50 of *the Constitution* of Kenya, 2010 and hence invalid.
 - ii. A declaration be and is hereby issued that the Petitioner’s right to a Fair Administrative Action, as pertains the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 47 of *the Constitution* of Kenya, 2010 and hence invalid.
 - iii. A declaration be and is hereby issued that the Petitioner’s right to a Fair Administrative Action, as pertains the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 27 of *the Constitution* of Kenya, 2010 and hence invalid.



- iv. A declaration be and is hereby issued that the Respondent's Decision/Directive of 13.1.2023 subject hereof, is unconstitutional in view of the declaration (i), (ii), and (iii) above
 - v. An Order of Permanent injunction do issue immediately restraining the Respondent by itself or its servants or its members and or agents from giving effect to its Decision/Directive of 13.1.2023 subject hereof.
 - vi. General Damages
 - vii. Costs of this Petition to be awarded to the Petitioner.
2. The Respondent filed a Notice of Preliminary Objection dated 11th November, 2024 through the law firm of Litoro & Omwebu Advocates in opposition to the Petition dated 20th November 2023 on the following grounds that:
1. The Petitioner has not exhausted the Dispute Resolution Mechanisms available to him the provisions of the Respondent's statutes, to wit: Article 67(2) of the Football Kenya Federation (FKF) Constitution as read together with Article 69(5) and 70(2) thereof and as read alongside Rules 10.3.1 & 10.3.5 of the Rules and Regulations governing Kenyan Football, 2019.
 2. The Petitioner failed to make any complaint and has hence failed to exhaust all the available alternative dispute resolution mechanism as provided under FKF Constitution and the rules thereunder as read together with Article 159(2)(c) of *the Constitution* as held in the Court of Appeal case at paragraph 52-53 William Odhiambo Ramogi & 3 others vs AG & 4 others; Muslim Human Rights & 2 others (2020) eKLR.
 3. This Honourable Court ought, in the circumstances, to exercise restraint to hear and determine this matter since there is a clear procedure of redress for the grievances raised by the Petitioner as held in the case of Kibos Distillers Limited & 4 others vs Benson Ambuti Atega & 3 Others (2020) eKLR.
 4. The Petition as filed lacks constitutional underpinnings as observed by the Court of APPEAL Sumayya Athmani vs Paul Masinde Simidi & Another [2019] eKLR.
 5. The Petition is therefore incompetent and otherwise an abuse of the Court process and should be struck out with costs to the Respondent.
3. The Notice of Preliminary Objection was canvassed through written submissions.

Respondent's written submissions

4. The Respondent submitted that this Honourable Court lacked jurisdiction to handle the Petition as the Petitioner had not exhausted the internal dispute mechanisms as per the organisation's constitution together rules and regulation.
5. The Respondent relied on the case of Samuel Kamau vs Kenya Commercial Bank and 2 Others [2012] eKLR the Supreme Court emphasized that its jurisdiction is derived from *the Constitution* or legislation, and it cannot assume jurisdiction beyond what is legally conferred. The court's ability to entertain a matter hinges on having the proper jurisdiction; without it, the court cannot proceed with any case. In the Owner of the Motor Vessel "S" vs Caltex (Kenya) Ltd [1989] KLR 1 thus:

“By jurisdiction is meant the authority which a court has to decide matters presented in a formal way for its decision. The limits of this authority are imposed by the stature, charter,



or commission under which the court is constituted, and may be extended or restricted by the like mean...”

6. The Respondent submitted that before the court considers its jurisdiction to hear and determine a suit, it should ensure that all internal remedies have been exhausted to align with Article 159 of *the Constitution*, which encourages settling disputes through alternative dispute mechanisms. The Respondent relied on the case of Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others [2015] KECA 304 (KLR), where the Court of Appeal emphasized that before seeking judicial intervention, parties must exhaust any available dispute resolution mechanisms outside the courts. Courts should be the last resort, and the exhaustion doctrine supports this by ensuring that parties protect their interests through existing mechanisms first. This is in line with Article 159 of *the Constitution*, which encourages alternative dispute resolution. The court also noted that the exhaustion doctrine applies even when challenging the authority of the organs handling the dispute. The appellants failed to follow this process and prematurely filed suits, bypassing the available church mechanisms.
7. In Republic V Commissioner General, Kenya Revenue Authority, Ex-parte Sanofi Aventis Kenya Limited [2019] eKLR, the court held that the doctrine of exhaustion of administrative remedies requires a litigant to pursue available remedies before the agency itself before seeking Judicial Review. The court must decide whether to review the agency’s action or refer the case back to the agency, allowing Judicial Review only when all administrative proceedings have failed to produce a satisfactory resolution. This doctrine is well-established in Kenyan jurisprudence.
8. The Respondent argued that the court should not entertain the instant suit as it would undermine the established dispute resolution mechanisms created by the members of the Football Kenya Federation (FKF) through the FKF Anti-Match Manipulation Regulations, 2016. Therefore, the Respondent submitted the suit should be struck out in limine. The Respondent relied on the case of William Odhiambo Ramogi and 3 others vs Attorney General and 4 others; Muslims for Human Rights and 2 others (Interested Parties) [2020] eKLR the court observed as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine 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 resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 Others [2017] eKLR, where the Court opined thus:

“This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and



rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision, which provides the Constitutional rationale and basis for the doctrine. This is *Geoffrey Muthiga Kabiru & 2 Others – vs- Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that:

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 resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution*, which commands Courts to encourage alternative means of dispute resolution.”

9. The Respondent urged this Honourable Court to strike out the suit as the Petitioner had not exhausted the remedies as per the FKF constitution and failed to properly utilise the court’s jurisdiction.

Petitioner’s submissions

10. In the case of *Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696, it defined what constitutes a preliminary objection as follows:

“A preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose off the suit.”

11. Sir Charles Newbold, in the same case, stated as follows:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. 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 points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

12. The Respondent relied on several authorities that defined a preliminary objection, including *Oraro vs Mbaja* (2005) eKLR, *BMW vs JMC* (2018) eKLR, and *Moses Mbatia vs Joseph Wamburu Kihara* [2021] eKLR.

13. The Respondent submitted that it is governed by its constitution, rules, and regulations, which include an internal dispute resolution mechanism and emphasized that the facts in question require evidence, which has not been provided. The Respondent also submitted on the court’s jurisdiction by relying on the Court of Appeal case in *Nakuru Civil Appeal No. 119 of 2017 Public Service Commission and 2 others vs Eric Cheruiyot and 16 others consolidated with Civil Appeal No. 139 of 2017 County Government of Embu and another vs Eric Cheruiyot and 15 Others* (unreported) the court stated that jurisdiction is the authority of a court to decide matters brought before it, defined by statutes, charters, or commissions. Without jurisdiction, a court cannot proceed with any case. This was emphasized in the case of *Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd* [1989] eKLR, where it was held that jurisdiction is essential for any court to act. A decision made without jurisdiction is null



and void. The Supreme Court, in *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, stated that court jurisdiction is regulated by *the Constitution*, statutes, and judicial precedent. Courts cannot assume jurisdiction beyond what is clearly stated in the legislation. In *Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, it was reiterated that a court's jurisdiction is derived from *the Constitution* or legislation, and it cannot exceed this conferred jurisdiction.

14. In Halsbury's Laws of England (4th Ed.) Vol. 9 defined jurisdiction as "the authority which a court has to decide matters are litigated before it or to take cognizance of matters presented in a formal way for decision while Black's Law Dictionary 9th Edition defines it as the court's power to entertain, hear and determine a dispute before it. The Black's Law Dictionary further define competence and jurisdiction as referring to the authority of a court to handle specific matters. Competence refers to a court's legal ability to exercise jurisdiction over a person or property involved in a lawsuit. Jurisdiction is the authority to hear and decide a case, granted to a court by *the constitution*.
15. The Respondent relied on Rule 10 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, states that any person that wishes to file a Petition, must do so in accordance with *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of *the Constitution*) Practice and Procedure Rules. The Petitioner filed this Petition and an application dated 20.11.2024 based on Sections 2, 3, 4, 5, and 7 of the Fair Administrative Actions *Act No. 4 of 2015*.
16. The Respondent also relied on section 12 (1) (h) of the *Employment and Labour Relations Court Act*, which grants the court exclusive original and appellate jurisdiction to hear and determine all disputes related to employment and labour relations, including disputes between an employer's organization or a federation and its members. Both the Petitioner and the Interested Party are members of the Respondent's Federation. The Court can issue interim preservation orders, prohibitory orders, reinstatement orders, declaratory orders, and other appropriate reliefs as sought in the Petition.
17. The Respondent further relied on Articles 22 and 23 (1) and (3) of *the Constitution* of Kenya, which provide that every person has the right to institute court proceedings claiming a denial, violation, infringement, or threat to a right or fundamental freedom in the Bill of Rights. These provisions grant jurisdiction to the High Court and this court, in accordance with Article 162(2) read together with Article 165, to hear and determine Applications for redress of such denials, violations, infringements, or threats.
18. However, the Petitioner submitted that the court has exclusive jurisdiction to hear the Petition and not any other judicial body, including the Respondent's internal dispute resolution mechanisms. The Petitioner contended that exhaustion of administrative remedies applies when a litigant seeks judicial review or appeals without pursuing available agency remedies. The court must decide whether to review the agency's action or remit the case to the agency if administrative proceedings fail to resolve the issue satisfactorily. In exceptional circumstances, the court may permit the suit to proceed even if internal remedies have not been exhausted, especially in cases involving breaches of constitutional rights. The determination of "exceptional circumstances" depends on the facts and nature of each case citing the cases of *MV Ais Mamas Seatrans Maritime V Owners, MV Mamas and another* 2002 (6) SA 150 (C) at 156H, *Republic vs Independent Electoral and Boundaries Commission (IEBC) and others Ex-parte the National Super Alliance (NASA) Kenya* (2017) eKLR and *Republic V Cabinet Secretary of the National Treasury & 5 others Ex-parte Gitson Energy Ltd* [2021] eKLR in support of the proposition.
19. The Petitioner urged this Honourable Court to dismiss the Preliminary Objection with costs and allow the Petition to proceed to the hearing on merit.



Analysis and determination

20. The court has considered the preliminary objection and the submissions by both parties, and the issue for determination is whether the preliminary objection is merited.
21. This Honourable Court will reiterate the case of *Mukisa Biscuit Manufactures Ltd V Westend Distributors*(supra), which has been precluded in the earlier part of this ruling.
22. In *Geoffrey Muthinja & another vs Samuel Muguna Henry & 1756 others* (supra), the Court of Appeal stated 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 the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. 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 resolution outside of courts. This accords with Article 159 of *the Constitution*, which commands Courts to encourage alternative means of dispute resolution.

We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs’ disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after the exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely.”

23. In *Independent Electoral and Boundaries Commission (IEBC) and others Ex-parte the National Super Alliance (NASA) Kenya*(supra), the Court held as follows:

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“(46) What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case*, the High Court may, in exceptional circumstances, find that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it.

[47]. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake.”

24. In this instant suit, the Petitioner was suspended from the Respondent’s football club on 13.1.2023 on allegations for match-fixing. Despite the Respondent having an internal dispute mechanism according to its constitution together with the rules and regulations, the internal dispute mechanism has not been



concluded since the Petitioner was placed for suspension to pave the way for investigation to be done so that charges can be preferred against him.

25. The court should not intervene with the internal dispute mechanism, which has not been exhausted unless there is an abuse of the process. In *Chief Justice and President of the Supreme Court of Kenya & Another v Khaemba* [2021] KECA 322 (KLR), the Court of Appeal stated as follows:

“This position notwithstanding, courts still retain the residual jurisdiction to intervene in exceptional circumstances despite the existence of an alternative remedy, as was explained by this court in *Fleur Investments Limited v Commissioner of Domestic Taxes & another*, [2018] eKLR:

“Whereas courts of law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

26. The Petitioner was placed on suspension from 13th January 2023 for an unspecified term. He was informed he would be on suspension pending completion of investigations. Two years down the road it cannot be that investigations have not been completed.
27. The Petitioner wrote a reminder to the Respondents asking for the outcome of the investigation. This was by his letter of 13th July 2023.
- Clearly the Petitioner did not have much chance of having this matter heard before the disciplinary committee of the Respondent.
28. Persuaded by the above cited authority – Chief Justice and President of the Supreme Court of Kenya & Another -Vs-Khaemba (Supra) the court gives a resounding nod that it has jurisdiction to determine all employment and labour cases where there is clear derogation and abuse of authority by such bodies mandated to settle matters through alternative dispute resolution mechanisms.
29. The court holds that it has jurisdiction to hear this petition and therefore dismisses the Preliminary objection dated 11th November 2024.
30. Court’s order is that the costs of this application be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF MARCH, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

