



Nyongesa & 2 others v County Government of Bungoma & another (Employment and Labour Relations Petition E015 of 2023) [2024] KEELRC 630 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 630 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS PETITION E015 OF 2023**

**JW KELI, J
FEBRUARY 22, 2024**

BETWEEN

**DR EMMANUEL BARASA NYONGESA 1ST PETITIONER
WILFRED OSUNDWA WANJALA 2ND PETITIONER
BUMULA PROFESSIONAL CAUCUS 3RD PETITIONER**

AND

**COUNTY GOVERNMENT OF BUNGOMA 1ST RESPONDENT
COUNTY PUBLIC SERVICE BOARD BUNGOMA 2ND RESPONDENT**

RULING

1. This is a ruling on the Notice of Preliminary Objection by the Respondents dated 5th January 2024 and received in Court on an even date.
2. The Petitioners on the 27th of October 2023 filed in court petition dated 25th October 2023 seeking the following reliefs against the Respondents:-
 - a. A declaration be granted that the failure to appoint any of the applicants from Bumula and Sirisia contravened the provisions of sections 65, 68 A and 68C of the *County Governments Act* thereby a violation of Articles 10, 75 and 232 of the *Constitution*.
 - b. A declaration be granted that the failure to make public the score sheets of the Applicants was a violation of Article 35 of the *Constitution*.
 - c. A declaration be granted that the failure to consider Nurses that were already employed on either casual or contractual terms for permanent jobs was a violation of Article 41 on Fair Labour Practices.



- d. A declaration be granted that the appointment of Medical Officers failed to comply with legal requirements and is therefore void.
 - e. A declaration be granted that the failure to disclose the rationale and criteria for consideration while recruiting was a violation of Article 41 of the Constitution.
 - f. The appointments made pursuant to the advertisement on 17th February and 20th April with regard to positions of Medical Officer, Dental Officer, Assistant Public Health Officer, Pharmacists, Dental Technologists, Pharmaceutical Technologies, and nurses be revoked.
 - g. The Respondents be directed to commence fresh recruitment in strict conformity to the applicable rules of diversity and equity.
 - h. Costs be awarded to the Petitioners.
3. The Petition was supported by the affidavit of Emmanuel Nyongesa Barasa, affidavit of Wilfred Osundwa Wanjala and Aggrey Wekesa Fugututi all sworn on the 25th October 2023.
 4. The Petitioner in addition to the Petition, filed a Notice of Motion application under Certificate of Urgency of even date seeking an Order of the Court to issue summons to the Secretary of the County Service Board directing the County Service Board to avail the score sheets touching on the interviews as conducted for the applicants for Registered Nurse iii and Medical Officer for the interviews conducted under the advertisement on 17th February 2023 and 20th April 2023.
 5. The Court declined to certify the application as urgent. On the 7th December 2023 by consent of the parties, it was agreed the application be merged with the Petition.

Notice of Preliminary Objection

6. The Respondents in reaction to the Petition and the Application filed a Notice of Preliminary Objection dated 5th January 2024 raising the following grounds:-
 - a. That the Honorable Court lacks jurisdiction to hear and determine this Petition by virtue of section 77 of the County Governments Act and section 87 of the Public Commissions Act.
 - b. That the petitioner is incompetent, bad in law, and is otherwise an abuse of the due process of the court
 - c. That the petition and the notice of motion are still born, incompetent, bad in law, and otherwise an abuse of the due process of the court.
 - d. That the said application is misconceived, mischievous, unmeritorious, frivolous, and vexatious and hence an abuse of the due process of the court.
 - e. That the application and the Petition have been brought in bad faith and solely aimed at vexing the Respondents.
7. The court directed that the Notice of Preliminary Objection that challenged the jurisdiction of the court be heard first and canvassed by way of written submissions.
8. The Respondents' written submissions on their preliminary objection drawn by Makokha Wattanga & Luyali Associates were dated 5th January 2024 and received in court on an even date.
9. The Petitioners' submissions drawn by Wetaba, Were Associates Advocates were dated 29th January 2024.



Decision

Issues for determination

10. The Notice of Preliminary Objection discloses the issues for determination to be:-
- a. Whether the court lacks jurisdiction to hear and determine the petition by dint of section 77 of the [County Governments Act](#) and section 87 of the [Public Service Commission Act](#).
 - b. Whether the petition is incompetent, bad in law, and abuse of court process.

Whether the court lacks jurisdiction to hear and determine the petition by dint of section 77 [County Governments Act](#) and section 87 of the [Public Service Commission Act](#).

11. The Respondents submit that the court lacks jurisdiction according to section 77 of the County Government Act, 2012, and section 87 of the [Public Service Commission Act](#) 2017. The Black Law Dictionary 9th Edition defines jurisdiction as the Court's Power to entertain hear and determine a dispute before it. The Respondents to buttress their submissions relied on the decision of the Supreme Court in the case of [Samuel Kamau Macharia & Anor v Kenya Commercial Bank Ltd \(2012\)](#) KLR where the court stated that:-

“ A court's jurisdiction flows from the [Constitution](#) or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law.”

12. Section 77 of the [County Governments Act](#) provides for the jurisdiction of the Public Service Commission over disputes arising from the decisions of the County Public Service Board as follows:-

“77

- (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the “Commission”) against the decision.
- (2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—
 - (a) recruitment, selection, appointment and qualifications attached to any office;
 - (b) remuneration and terms and conditions of service;
 - (c) disciplinary control;
 - (d) national values and principles of governance, under Article 10, and values and principles of public service under Article 232 of the [Constitution](#);
 - (e) retirement and other removal from service;
 - (f) pension benefits, gratuity and any other terminal benefits; or
 - (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.



- (3) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.
- (4) The Commission shall not entertain an appeal more than once in respect to the same decision.
- (5) Any person dissatisfied or affected by a decision made by the Commission on appeal in a decision made in a disciplinary case may apply for review and the Commission may admit the application if— (a) (b) the Commission is satisfied that there appear in the application new and material facts which might have affected its earlier decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or there is an error apparent on record of either decision.
- (6) An application for review under subsection (5) shall be in writing and made within the time prescribed by the Commission in regulations governing disciplinary proceedings, but the commission may entertain an application for review later if, in the opinion of the Commission, the circumstances warrant it.”

13. The Jurisdiction conferred to the Public Service Commission under section 77 above was subsequently reinforced by the legislature in 2017 vide section 87(2) of the [Public Service Commission Act](#) as follows: -

“(2) A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.”

14. Relying on the provisions of section 77(1) and (2) of the [County Governments Act](#) and section 87(2) of the [Public Service Commission Act](#)(supra) the Respondents’ position is that the jurisdiction on the dispute before the court lies with the Public Service Commission.

15. To buttress the foregoing submissions the Respondents relied on this Court’s past decision in [Hussein Wanyama Mulebo & 5 others v County Public Service Board & 2 others](#) (2022)e KLR where the court held:-

“This court finds that it is the decision of the 1st Respondent which is the substance of the instant petition which is an issue under jurisdiction of the Public Service Commission pursuant to Article 234 (2) (i) of the [Constitution](#), Service public Commission and Section 77 of the County Government Act. This is also demonstrated by the prayers sought. Consequently, as jurisdiction flows from the [Constitution](#) and the written law, the court finds the instant petition is premature the petitioners having not exhausted remedy under Section 77 of the [County Government Act](#). The court finds it has no jurisdiction and as a consequence downs its tools.”

16. The Respondents further relied on the decision in [Ismael Noo Onyango & Another v Siaya County Public Service Board and another](#) (2018)e KLR where a preliminary objection being raised the Court held:-

“It is apparent from the petition itself that the Petitioners were suspended by letters dated 9th November, 2017 and filed this petition on 15th November, 2017 a few days later without following the laid down procedure under section 77 of the [County Governments Act](#), No. 17 of 2012. Although the jurisdiction of the Employment and Labour Relations Court is unlimited on matters employment and labour, where there is a clear procedure for redress



of any particular grievance prescribed by the Constitution or an Act of parliament, it should be strictly followed. There is no option given to a party to choose whether or not to file grievances with the commission.

For these reasons the petition has been filed before this court prematurely and the court upholds the preliminary objections raised and dismisses the petition with costs.”

17. The Respondents further submit that the Court of Appeal pronounced itself on the provisions of section 77 of the County Governments Act 2012 in *Secretary County Public Service Board and another v Hulbhai Gedi Abdulla* (2017)eKLR by allowing the appeal on basis that the Respondent had failed to utilize the process under section 77 of the County Governments Act as follows:-

“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.’

18. The Respondents relied on the provisions of section 59(J) of the County Governments Act to effect that the 2nd respondent had powers to make recommendations to the Salaries and Remuneration Commission on behalf of the county government on the remuneration, pensions and gratuities for county public service employees. That the petitioner ought to have appealed to the Public Service Commission if dissatisfied with decision by the Respondents.
19. The Respondents submits that based on the prayers before the court the issue relates to the recruitment of medical staffs by the 2nd respondent and those issues are for determination by the Public Service Commission which has the jurisdiction.
20. The Respondent further submit that the petition is incompetent and bad in law and otherwise an abuse of court process meant to vex the respondents.

Petitioners' submissions on the Preliminary Objection

21. The Petitioners relied on the decision in Secretary County Public Service Board and another v Hulbhai Gedi Abdille (2017)e KLR (also relied on by the Respondents) where the court addresses the issue of constitutional petitions being on merit unlike judicial review which was on process. The court's view was that this was not a constitutional petition that would remove the dispute from the alternative forum. The Court of Appeal in the said decision cited with approval its decision in Republic v National Environment Management Authority ExParte Sound Equipment Ltd, [2011] eKLR where the Court had observed:

“.....Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it....”

22. The Petitioner further relied on the decision in Robert Khamala Situma & 8 Others V Acting Clerk of the Nairobi City County Assembly (2022)e KLR where the High Court opined by use of the word “may’ under section 77 of the County Government Act it was optional for the complainant to appeal to the Public Service Commission.



23. The Petitioner further relied on the decision in *Kamau v Kenya Accreditation Service*(2021)e KLR where the Court held the view that the Public Service Commission was not a sufficient and adequate forum to resolve the dispute because it involved the interpretation of the Constitution. That the Commission had no power to interpret the Constitution.
24. The Petitioner further relied on the Court of Appeal decision in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others ; Muslims for Human Rights & 2 Others (interested parties)* (2020)e KLR where the Court of Appeal held there were exceptions to the doctrine of exhaustion and considered the threshold of determining whether or not exhaustion of the appeal process could be excused. The Court in the decision relied on the decision *R v Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, and stated:-

“After exhaustively reviewing Kenya’s decisional law on the exhaustion doctrine, the High Court descry bed the first exception thus:

“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* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. 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.”

The Court then concluded:-

- “60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court’s jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.62. In the instant case, the Petitioners allege a violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”.



25. The Petitioner further relied on the decision by the Court of Appeal in *Martin Nyaga Wambora & 3 others v Speaker of the senate & 6 others* (2014)eKLR where the court held that if the process was unconstitutional, wrong, unprocedural or illegal it cannot be said that the court had no jurisdiction to address the grievance arising therefrom. The Petitioner cited other cases of the court which the court read.

Decision of the Court

26. The Petitioners before the court were two applicants for advertised jobs and their trade union. They sought the following prayers in their Petition:-
- a. A declaration be granted that the failure to appoint any of the applicants from Bumula and Sirisia contravened the provisions of sections 65,68 A and 68C of the *County Government Act* thereby a violation of articles 10,75 and 232 of the *Constitution*.
 - b. A declaration be granted that the failure to make public the score sheets of the Applicants was a violation of Article 35 of the *Constitution*.
 - c. A declaration be granted that the failure to consider Nurses that were already employed on either casual or contractual terms for permanent jobs was a violation of Article 41 on Fair Labour Practices.
 - d. A declaration be granted that the appointment of Medical Officers failed to comply with legal requirements and is therefore null and void.
 - e. A declaration be granted that the failure to disclose the rationale and criteria for consideration while recruiting was a violation of Article 41 of the *Constitution*.
 - f. The appointments made pursuant to the advertisement on 17th February and 20th April with regard to positions of Medical Officer, Dental Officer, Assistant Public Health Officer, Pharmacists, Dental Technologists, Pharmaceutical Technologies, and nurses be revoked.
 - g. The Respondents be directed to commence fresh recruitment in strict conformity to the applicable rules of diversity and equity.
 - h. Costs be awarded to the Petitioners.
27. The Respondents raised objection to the petition for failure to exhaust the alternative dispute resolution process of appeal before the Public Service Commission as provided for under section 77 of the *County Governments Act* and section 87(2) of the *Public Service Commission Act* (supra).
28. The Respondents relied on the Court of Appeal decision in *Secretary County Public Service Board and Another v Hulbbhai Gedi Abdulla* (2017) eKLR which decision was also invoked by the Petitioners. In the said decision the Court of Appeal opined the case before the High Court challenged the process of the county public service board hence the Public Service Board had jurisdiction. The Court held that there was no constitutional petition before the High Court to create circumstances for an exception to the doctrine of exhaustion. The Court stated:

“In our view, this was a gross misdirection on the part of the learned judge. The respondent’s claim was not initiated on the basis of violation of fundamental rights and freedoms or alleged violation of the *Constitution*. The respondent’s case was that the process of recruitment was flawed and not in accord with the Act. Indeed, in her own pleadings, she is categorical that she was not challenging the merits of the decision but rather the process. If the considerations of enforcement or breach thereof of the fundamental rights



and freedoms were to come into play, then the challenge on that basis will be a matter of merit. Is it also not surprising therefore that even in the body of the application, the respondent does not cite any of the articles of the Constitution that were violated or breached; nor did the respondent in her initial affidavit in support of the application demonstrate how and in which manner her fundamental freedoms and rights were breached or violated in the recruitment exercise“ Reference to the Constitution only came through the supplementary affidavit and was merely peripheral. It is therefore apparent that the learned judge misapprehended the essence of the respondent’s case, took a totally different tangent which resulted in a decision that ran counter to the respondent’s real case..... There is no doubt that the respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The section provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent’s. In our view, the most suitable and appropriate recourse for the respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance. In terms of Republic v National Environment Management Authority (supra), we discern no exceptional circumstances in this appeal that would have warranted the bypassing of the statutory appellate process by the respondent. Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission. There is no requirement for instance that reasons for the decision be availed to an aggrieved party before he can prosecute an appeal before it.“

29. The Respondents further relied on the recent past decision of this Court in Hussein Wanyama Mulebo & 5 others v County Public Service Board & 2 others [2022] eKLR where I held that:-

“This court finds that it is the decision of the 1st Respondent which is the substance of the instant petition which is an issue under jurisdiction of the Public Service Commission pursuant to Article 234 (2) (i) of the Constitution, Service public Commission and Section 77 of the County Government Act. This is also demonstrated by the prayers sought. Consequently, as jurisdiction flows from the Constitution and the written law, the court finds the instant petition is premature the petitioners having not exhausted remedy under Section 77 of the County Government Act. The court finds it has no jurisdiction and as a consequence downs its tools.“

In the decision in Ismael Noo Onyango (supra) where the court held it was not optional for parties to choose whether or not to file their dispute before the Public Service Commission.

30. On the other hand the Petitioners submitted that their Petition was a Constitutional petition for interpretation of the Constitution hence outside the purview of the Public Service Commission.
31. The Court of Appeal considered the issue of doctrine of exhaustion indepth in NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) where it observed that;

“The principle running through these cases is where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the



context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it...”(emphasis given).

The foregoing decision was upheld by the Supreme Court in *Abidha Nicholas v Hon Attorney General and Others* (SC Pet. No. E007 OF 2023)

32. The Court of Appeal in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others ; Muslims for Human Rights & 2 Others (interested parties)* (2020)e KLR further explained exceptions to the doctrine of exhaustion and the threshold of determining whether or not exhaustion of the alternative mechanisms could be excused. The Court in the William Odhiambo Ramogi decision relied on the decision in *R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, and stated:-

“After exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

“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 (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. 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.”

The Court then concluded:-

- “60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised
61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.62. In the instant case, the Petitioners allege a violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”



The court adopts the foregoing jurisprudence to apply in the determination of whether or not it has jurisdiction.

33. The Court's burden in the instant case is to determine whether the petition raised issues that would justify an exception from the doctrine of exhaustion and place the petitioners outside the statutory mechanism as guided by the above Court of Appeal decisions. Whether the remedy under section 77 of the County Governments Act was suitable in the instant case as was the case in Hussein Wanyama Mulebo & 5 others v County Public Service Board & 2 others [2022] eKLR . In Mulebo case(supra) the Petitioner's prayers sought in that petition were :-

- (a) That a declaration order be issued that the decision by the 1st Respondent to appoint the Petitioner vide letter dated 31st October 2017 on a reduced salary is null and void the same is in consistent with the law.
- (b) That a declaration order issued that the terms of appointment of their letters dated 31st of October 2017 be reviewed and the same have the same salary scale as previous contract.
- (c) A declaration order be issued against the 1st and 2nd Respondent to absorb the Petitioners on permanent basis and on the same salary scale and terms as offered to all employees of County government in various cadre in Kenya.
- (d) That the cost of the Petition be provided for." The court found that this was a case of constitutional avoidance as the prayers fell within a normal claim consequently within the jurisdiction of the Public Service Commission.

34. In the instant Petition, the Petitioners sought declarations of violations of the Constitution(supra). Taking into consideration the prayers sought I find this was not an issue within the jurisdiction of the Public Service Commission. The Commission has no mandate to interpret the Constitution and declare violations. I am satisfied that the mechanism under section 77 of the County Government Act is not an adequate and suitable forum for the petitioners. This Petition is thus distinguished from the Mulebo decision(supra) in terms of prayers sought in the petition. I decline to send to the Petitioners before the Public Service Commission forum as the statutory appeal procedure is not suitable to determine the allegations of violation of the Constitution. I find the Petitioners have met the threshold to benefit from the exception rule from the application of doctrine of exhaustion applying the decision of the Court of Appeal in William Odhiambo Ramogi & 3 others v Attorney General & 4 others ; Muslims for Human Rights & 2 Others (interested parties) (2020)e KLR(supra) .

35. On the question of the competence of the Petition having made the foregoing decision, then it flows that the Petition is properly before the court.

36. In the upshot, the Notice of Preliminary Objection dated 5th January 2024 is dismissed. Parties to proceed to take directions on the disposal of the petition as merged with the application.

37. No order as to costs.

38. It is so ordered.

DATED ,SIGNED AND DELIVERED THIS 22ND FEBRUARY 2024 AT KAKAMEGA

J.W. KELI

JUDGE

In the presence of



C/A Lucy Macheso

Petitioners- absent

Respondent/ Applicant- Wekesa h/b Makokha

Further Court Order

Mention 9th April 2024 for pre-trial directions

Notice to issue.

It is so ordered.

J.W. KELI

JUDGE

In the presence of

C/A Lucy Macheso

Petitioners- absent

Respondent/ Applicant- Wekesa h/b Makokha

