



**Karani v Kenya Private Sector Alliance (Civil Case E120 of 2024)
[2025] KEHC 3788 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E120 OF 2024

JN MULWA, J

MARCH 27, 2025

BETWEEN

BILAL KARANI PLAINTIFF

AND

KENYA PRIVATE SECTOR ALLIANCE DEFENDANT

RULING

1. By a plaint dated 26/06/2023 the plaintiff Bilal Karani sued the Defendant seeking declarations for alleged violations of his fundamental right to privacy by airing the plaintiff's story for commercial purposes by advertisements without his consent, as well as using the said story voice and images without his authority for the said purposes.
2. The plaintiff also sought compensation in damages arising from the alleged violations as well as costs of the suit.
3. Upon service of the pleadings, the defendant filed a Memorandum of Appearance Dated 14/07/2023 as well as a statement of defence dated 25/07/2023 contending that the plaintiff had consented to the production and recording of the program in writing and also participated in the shooting and airing of the clips and therefore denies all the plaintiff allegations of lack of consent and generally being liable to the plaintiff for the damages he seeks.
4. On 27/09/2024 the defendant by its counsel, B. M. Musau & Co. Advocates issued a Notice of Preliminary Objection (PO).
 1. This Honourable Court lacks jurisdiction to hear and entertain this suit as it offends the mandatory provisions of sections 56 and 57 of the *Data Protection Act*, 2019 which



designates the Data Protection Commissioner as the primary authority responsible for handling complaints related to personal data protection, including image rights.

2. The Plaintiff's suit is premature and unripe for determination by this Honourable Court as the Plaintiff has not invoked or exhausted the available administrative avenues having failed to lodge a complaint with the Office of the Data Protection Commissioner first as required under section 56 of the [Data Protection Act](#) 2019.
 3. The orders sought by the Plaintiff are statutory remedies available under section 65 of the [Data Protection Act](#), 2019 and the Data Protection Commissioner has the Jurisdiction to grant them and therefore this Honourable Court ought to discourage invocation of the trial process where there is an alternative statutory remedy.
 4. The suit is incompetent, bad in law, improperly filed and an abuse of the Honourable Court's process.
 5. Further and other grounds to be canvassed at the hearing.
5. The defendant proceeded to file submissions dated 2/12/2024 on the Preliminary Objection (PO). Likewise, the plaintiff, by its counsel Ajaa Olubayi & Co. Advocates filed its submissions dated 30/10/2024 from the above pleadings and submissions, the issues that arise for determination are:-
- a. Whether the Preliminary Objection is sustainable in law
 - a. Whether this court has jurisdiction to entertain the suit
 - b. Whether the court is barred by the doctrine of exhaustion from hearing the suit.

Whether this court has jurisdiction

6. Jurisdiction of a court is everything and without it, whether it does amount to zero as held in the case of [Owners of Motor Vessel "Lilian S" v. Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1 wherein Nyarangi J. rendered:

"Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction... where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

And by the Supreme Court of Kenya in [Samuel Kamau Macharia & Another v. Kenya Commercial Bank Ltd & 2 Other](#) [2012] eKLR, thus:-

"A Court's jurisdiction flows from either 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 upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings where the [Constitution](#) exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament



confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

7. The above brings me to the doctrine of exhaustion, which is an administrative remedy that a party ought to seek redress from before proceeding to invoke the jurisdiction of the court as may be provided in legislation in various agencies and authorities.

It is mandatory that all available avenues of dispute resolution ought to be pursued before court action.

8. This is clearly expressed in the case of Mwangi & Another v Naivasha County Hotel t/a Sawela Lodges (Petition E003 of 2021) [2022] KEHC 10975 (KLR) cited with approval the position in Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi and 3 Others v Attorney General & 4 Others; Muslims for Human Rights & 2 others (Interested Parties) (2020) KLR. where a 5-judge bench stated 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 v Independent Electoral and Boundaries Commission (LEB.C) ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR where the Court opined as follows:

"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 Kaname* [1992] KLR 21 in the following often-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."

9. The plaintiff expresses clearly that his complaint by the suit that his right to privacy and human dignity were breached by the defendant. Agreed, the Data protection Act did not intend to prevent parties from seeking recourse of their fundamental rights before a court of law, and particularly the High Court, which has original jurisdiction expressed at Article 165(3) of the Constitution.
10. However, with the coming into force, the Data Protection Act 2019, is the first port of call by dint of Section 65 of the Act that provides:-

"a person who suffers damage by reason of a contravention of a requirement of this Act is entitled to compensation for that damage from the data controller or the data processor."

11. Section 64 thereof gives an aggrieved party by a decision of the Data Protection Commissioner right to appeal to the High Court. The framers of the said legislation envisaged and purposed that the High



- Court would be the Appeal Court and not the primary court, as the plaintiff would wish the court to find.
12. In the case of *Mwangi & Another v. Naivasha County Hotel t/a Sawela Lodges* [2022] eKLR in very similar circumstances to this suit, wherein the plaintiff had filed its case at the High Court held that:

“...I find that the petitioners have not sufficiently demonstrated why the petition ought to be exempted from the exhaustion rule. I am inclined to find that the petition is barred by the doctrine of exhaustion...

The preliminary objection dated 12th August, 2021 is hereby upheld and the petition is hereby struck out with costs to the Respondent”
 13. The above decision is a cognition of the application of Article 159 (2) of the 2010 Constitution that promotes the principles that shall guide the courts in exercising their judicial authority by promoting alternative form of dispute resolution in their various forms.
 14. Further, the court having considered the remedies sought by the plaintiff in the suit finds that the said remedies are provided under Section 65 of the Data Protection Act. The court begs to differ from the plaintiff’s interpretation of Section 65 where it submits that the remedies sought by the plaintiff cannot be fully compensated by the Data Protection Commissioner, citing Article 31 and 38 of the *Constitution* stating that fundamental right to privacy and human dignity underpinned thereon can only be granted by the High Court, and not by the Data Protection Commissioner for lack of such powers.
 15. To emphasize the above, the decision of the Court of Appeal in *Samuel Cberatsi Munga James Marangu M’uketyha & 1750 others* (Civil Appeal 10 of 2016) [2015] KECA 304, and cited with authority in the *Mwangi & Another v. Naivasha Hotel Sawela Lodges* (*supra*) held 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.”
 16. For the foregoing, just as in the above “Sawela lodges decision, the court finds that the plaintiff has not sufficiently demonstrated why the suit ought to be exempted from the exhaustion rule as the Data protection Commission is empowered under the Act to interrogate an aggrieved party and issue the remedies sought in thee plaint in the instant suit.
 17. Where there is a clear procedure for redress of any particular grievance as prescribed by the *Constitution* or an Act of Parliament that procedure should be strictly followed, and there are good reasons for special procedure as was elucidated by the Court of Appeal in *Speaker of National Assembly v. Karume* [1992] KLR 21.
 18. The upshot of that the Preliminary Objection mounted by the Defendant by the Notice of Preliminary Objection dated 27/09/2024 is upheld.
 19. Consequently, this suit is struck out with costs to the defendant.
- Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF MARCH, 2025



JANET MULWA.
JUDGE

