



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCCHRPET/E372/2026

AMBROSE RACHIER VS STATE LAW OFFICE AND THE SPORTS REGISTRAR AND 1 OTHERS

JUDGMENT

BEFORE HON. JUSTICE DAVID MBURU

Introduction

1. The petitioner herein, vide a petition dated 15th June, 2026 which is supported by the petitioner's affidavit seeks the following reliefs:

- a) ***A declaration that the decision of the 1st Respondent contained in the letter dated 10th June 2026 violates Articles 27, 36, 38, 47 and 50 of the Constitution of Kenya, 2010.***
- b) ***A declaration that the decision of the 1st Respondent contained in the letter dated 10th June 2026 is unlawful, irrational, procedurally unfair, ultra vires the Sports Act and the Sports Registrar Regulations and therefore null and void.***
- c) ***A declaration that upon the registration of the officials elected on 13th April 2025 pursuant to Regulation 20(5) of the Sports Registrar Regulations, the said officials became entitled to hold office for a period of four (4) years in accordance with Regulation 20(6) of the Sports***



- d) An order of certiorari do issue removing into this Honourable Court and quashing the decision of the 1st Respondent contained in the letter dated 10th June 2026.**
- e) An order of prohibition do issue prohibiting the 1st Respondent from implementing, enforcing or giving effect to the decision contained in the letter dated 10th June 2026.**
- f) The costs of this Petition be awarded to the Petitioner.**
- g) Such further or other relief as this Honourable Court may deem fit and just to grant.**

The Petitioner's case

- 2. The petition is supported by an affidavit sworn by Ambrose Rachier, the Petitioner and Chairman of Gor Mahia Football Club, in support of the Petition and accompanying Notice of Motion.
- 3. He states that Gor Mahia is a registered sports organization under the Sports Act, 2013 and underwent a transitional process to align its governance structure with the Act, the Sports Registrar Regulations, 2016 and the Constitution. This culminated in the adoption of a new Club Constitution in 2019.
- 4. He states that the Club conducted its first elections under the new constitutional framework on 8th August 2020, when he was duly elected Chairman. He thereafter served continuously with the other elected officials. He maintains that throughout this period the Sports Registrar dealt with them as the lawful office bearers and never informed him that his tenure would be calculated from the Club's provisional registration in June 2018 or that he would not be entitled to hold office and contest subsequent elections.
- 5. He further deposes that as the 2020 officials' term approached its conclusion, disputes arose concerning fresh elections. The matter was referred to the Sports Disputes Tribunal in SDT Cause No. E022



of 2024, Bernard Agwera Omolo v Ambrose Rachier & 3 Others. The Tribunal assumed jurisdiction and extended the tenure of the Executive Committee pending fresh elections. A further dispute arose in SDT Cause No. E015 of 2025, concerning the impending elections, and the Tribunal issued directions regulating the electoral process. Rachier emphasizes that the Sports Registrar participated in those proceedings and was aware of the electoral arrangements.

6. He states that the fresh elections were eventually conducted on 13th April 2025 under the supervision and oversight of the Tribunal and in accordance with the Club Constitution. The deponent further states that he offered himself for re-election and was duly elected Chairman. The election results were communicated to the Sports Registrar, who, by a letter dated 14th May 2025, expressly acknowledged, recognised and registered the officials elected on 13 April 2025, including the petitioner as Chairman. He states that the registration was unconditional and was not accompanied by any reservation, qualification, objection or indication that his tenure would be curtailed.
7. The Petitioner avers that after his registration he continued discharging his responsibilities as Chairman alongside the other elected officials and that the Club continued operating on the understanding that the newly elected officials were lawfully registered and entitled to serve their respective terms. However, on or about 10th June 2026, the Sports Registrar unexpectedly issued a letter to the Club's Secretary General stating that Rachier's tenure had come to an end and directing the Club to conduct elections for the office of Chairman. According to Rachier, the Registrar calculated his tenure from June 2018, when the Club was provisionally registered, rather than from the elections subsequently conducted under the Club's constitutional framework.
8. He challenges the decision on the basis that he had never been notified of any complaint, allegation, eligibility issue or performance concern against him and had never been invited to respond before the decision was taken. He states that he was never supplied with a complaint, investigation report, findings or other material upon which the Registrar relied.
9. The Petitioner relies particularly on **Regulation 10 of the Sports**



Registrar Regulations, 2016, which, according to his advocate's advice, prescribes the procedure for removal of an office bearer of a sports organisation, including the existence of a complaint, consideration of the complaint, notification of the affected office bearer, an opportunity to respond and a determination communicated to the affected person. He contends that none of these procedural steps was undertaken before the impugned decision.

10. He further relies on **Regulation 20(6)**, which he states provides that newly elected office bearers hold office for **four years and may be elected for one further term**. Having been elected on 13 April 2025 and subsequently registered by the Sports Registrar, he contends that he legitimately expected to serve the prescribed term unless lawfully removed in accordance with the Sports Act and Regulations. He maintains that the Registrar's subsequent position is inconsistent with her previous conduct and representations and with the constitutional transition process undertaken by the Club.
11. The Petitioner contends that the impugned decision is **unlawful, irrational, unreasonable, procedurally unfair and ultra vires**, and violates Articles **27, 36, 38, 47 and 50** of the Constitution. He further contends that the decision undermines the Club's constitutional governance and the democratic mandate conferred upon him by the members who elected him. He asserts that implementation of the decision would effectively remove him from office before the expiry of his term without compliance with the procedure prescribed by law.
12. He also emphasizes the wider consequences for Gor Mahia Football Club. He states that the Club is the reigning Football Kenya Federation Premier League champion and is preparing to participate in the **CAF Champions League**, which involves licensing requirements, sponsorship and commercial arrangements, player recruitment and retention, budgeting and other administrative obligations requiring continuity and certainty in governance. He contends that compelling an election at that stage would destabilize the Club, undermine stakeholder confidence and prejudice its preparations and commercial relationships.
13. Finally, he maintains that unless conservatory orders are granted, the



Registrar's decision may be implemented before the Petition is determined, thereby rendering the Petition nugatory. He contends that the balance of convenience, public interest and interests of justice favour preservation of the existing governance structure pending determination of the dispute and asks the Court to grant the orders sought in the Notice of Motion and Petition.

The Respondents' Notice of Preliminary Objection and Replying affidavit

14. The 1st and 2nd Respondents raised a Preliminary Objection seeking to have the Petition and Notice of Motion dated 15th June 2026 struck out with costs. The objection is founded on three main grounds:
15. Premature invocation of the High Court's jurisdiction; the Respondents contend that the dispute concerns a regulatory decision of the Sports Registrar contained in the letter dated 10th June 2026 and falls within the original jurisdiction of the Sports Disputes Tribunal under section 58(c) of the Sports Act, 2013.
16. They contend that the petitioner failed to exhaust the statutory remedy; that the Petition is premature, incompetent and an abuse of the Court process because the Petitioner failed to first pursue the remedy available before the Sports Disputes Tribunal. They rely on the doctrine of exhaustion of alternative remedies, citing *Republic v National Environment Management Authority ex parte Mukono Highlands Limited* [2016] eKLR.
17. The respondents further rely on the doctrine of constitutional avoidance. The Respondents contend that the dispute can be completely resolved on the basis of the Sports Act before the specialized statutory forum. They therefore argue that the High Court should not determine constitutional questions while an adequate statutory remedy remains unutilised. They rely on ***Anyango v Attorney General & 2 others* [2024] KEHC 254 (KLR)**.



18. They equally filed a replying affidavit sworn by Rose M. N. Wasike, the Sports Registrar, in opposition to the Petition and Notice of Motion.
19. The Sports Registrar's primary position is that the Petitioner prematurely approached the High Court without first exhausting the dispute-resolution mechanisms under the Sports Act and the Sports Registrar Regulations.
20. She states that Section 58(c) of the Sports Act gives the **Sports Disputes Tribunal (SDT)** jurisdiction to hear appeals from decisions of the Sports Registrar. The Petitioner did not invoke that appellate mechanism before filing the Petition, Regulation 21 provides for arbitration and mediation as the primary dispute-resolution mechanisms, with an appeal to the Tribunal within 21 days from the decision of the arbitration/mediation panel and bypassing these mechanisms and approaching the High Court directly is characterized as an abuse of process and forum shopping.
21. The Registrar maintains that her office is not merely a registry but a continuing statutory regulator of sports organizations, she states that the Registrar is responsible for ensuring compliance by sports organizations with: the Constitution, the Sports Act, the Sports Registrar Regulations, the organisations' constitutions and applicable principles of good governance, transparency and accountability. She therefore rejects the Petitioner's contention that, once officials are registered, the Registrar becomes functus officio.
22. She relies on *Football Kenya Federation & 2 Others v Sports Registrar & 5 Others* [2022] KEHC 3387 (KLR), stating that the High Court affirmed the Registrar's continuing authority to inspect sports organisations, issue directions and require compliance notwithstanding previous registration or administrative action.
23. The Registrar states that **Gor Mahia Football Club** was registered under the Sports Act on 8th June 2018, subject to conditions including



alignment of its Constitution with the statutory framework and conducting elections within 90 days. According to the Registrar, those elections were not held within the prescribed period. The first elections under the Sports Act were instead conducted on 8th August 2020, approximately two years after registration. She contends that this delay affected the computation of the statutory maximum tenure of elected officials.

24. She confirms that following the 2020 elections, the elected officials were entered into the statutory register. However, she emphasizes that registration was purely administrative and did not amount to an endorsement or determination of the legality of their tenure.
25. She explains that following the 13th April 2025 elections, the election returns were again submitted and the elected officials, including the Petitioner, were entered into the register. The Registrar maintains that this registration likewise did not constitute a determination of the computation of tenure, nor did it prevent her from subsequently exercising her statutory oversight powers.
26. The Registrar states that her office received complaints concerning the governance of Gor Mahia and reviewed the Club's registration history, transition process and electoral history. She says that, on **23rd March 2026**, her office communicated its regulatory position to the Club/its advocates and raised concerns regarding compliance with the Sports Act and the Club Constitution.
27. Among the concerns was the statutory tenure of elected officials. The Registrar's position was that the maximum permissible tenure was eight years, and that officials who had reached that limit were required to vacate office and fresh elections be conducted.
28. The Registrar explains that the letter dated 10th June 2026 did not remove the Petitioner from office, dissolve the Club's governing organs, invalidate the 2025 elections or appoint replacement



officials. Rather, according to her, the letter, communicated the Registrar's position on the applicable legal framework, identified the alleged statutory non-compliance concerning tenure and directed Gor Mahia Football Club to take corrective steps and conduct elections for the Chairperson and other officials whose terms had expired. The Registrar therefore objects to the Petitioner's characterization of the letter as an unlawful removal from office.

29. She contends that the Petitioner's tenure should be calculated from 8th June 2018, when Gor Mahia was registered under the Sports Act, rather than from the subsequent elections. Under the Registrar's interpretation of the Second Schedule to the Sports Act and Regulation 20, an elected Chairperson serves four years and may be re-elected for one further term, giving a maximum cumulative tenure of eight years. Accordingly, she maintains that the Petitioner's maximum tenure expired on 8 June 2026.
30. The Registrar further asserts that the Petitioner had in fact served as Chairperson since 2008, but that the office adopted the more favourable computation beginning in 2018. Her position is that allowing the Petitioner to calculate his tenure only from the 2020 or 2025 elections would allow him to benefit from the delayed elections and the Club's earlier non-compliance.
31. The Registrar addresses the previous SDT proceedings concerning the Petitioner's eligibility to contest the 2025 elections. She acknowledges that the Registrar participated in those proceedings and that the Tribunal found the Petitioner validly cleared and eligible to contest the April 2025 elections. However, she argues that the Tribunal's decision was based on the particular transitional circumstances before it and did not grant the Petitioner a permanent exemption from future statutory term limits. She maintains that the Tribunal's decision concerned his **eligibility to contest the April 2025 elections**, rather than his entitlement to remain in office indefinitely thereafter.



32. The Registrar denies acting with malice, bias, discrimination or improper motive. She maintains that her actions were undertaken in good faith and pursuant to her statutory mandate to ensure compliance with the Sports Act and promote good governance.
33. She further invokes Articles 10 and 73 of the Constitution, arguing that integrity, accountability, transparency and good governance support enforcement of statutory term limits in sports organisations.
34. The Registrar insists that no disciplinary proceedings were instituted against the Petitioner, no finding of misconduct was made and no punitive sanction was imposed. Her position is that the 10th June 2026 communication was simply a regulatory determination concerning statutory compliance and tenure, rather than disciplinary action or removal from office.
35. The Registrar ultimately maintains that, the Petition is premature, the Petitioner failed to exhaust the statutory mechanisms under the Sports Act, the dispute falls within the specialised jurisdiction of the Sports Disputes Tribunal, the impugned letter was a lawful exercise of the Registrar's statutory mandate, no constitutional violation has been demonstrated and the Petition should therefore be dismissed with costs. Alternatively, she asks that the matter be transferred to the Sports Disputes Tribunal for determination.

Petitioner's further affidavit

36. The Further Affidavit is sworn by Ambrose Rachier, the Petitioner, in further support of the Petition and Notice of Motion and in response to matters arising after commencement of the proceedings.
37. The Petitioner states that the central issue underlying the Sports Registrar's impugned decision namely, his **eligibility to contest and hold office as Chairperson of Gor Mahia Football Club**

under the Sports Act and Sports Registrar Regulations, was already conclusively determined by the Sports Disputes Tribunal in Tribunal Case No. E019 of 2025, Benard Omondi Ang'ute v Gor Mahia Election Board & Others, in a Judgment dated 30 July 2025.

38. He states that the Tribunal specifically considered whether he was validly cleared to contest the 13th April 2025 elections, taking into account the Sports Act, Sports Registrar Regulations and Gor Mahia's transition into the statutory framework. According to the Petitioner, the Tribunal held that his term served **before the Club's transition into the new statutory framework could not be counted towards the statutory term limits**, and consequently found that he was validly eligible to contest the elections and that his subsequent election as Chairperson was lawful and constitutional.
39. The Petitioner states that the Sports Registrar was an **Interested Party in the Tribunal proceedings**, actively participated in them and supported the position challenging his eligibility. He therefore contends that the issue was fully ventilated and determined on its merits by a competent Tribunal.
40. He states that the Tribunal's judgment has never been reviewed, set aside, varied or appealed against and remains valid and binding. On advice from his advocates, he contends that the Sports Registrar therefore could not lawfully revisit or reopen the issue through the impugned administrative letter. He invokes the **doctrine of finality of litigation and res judicata**.
41. The Petitioner states that the Sports Registrar's letter has caused considerable confusion among Gor Mahia members, supporters and stakeholders, with different individuals issuing conflicting statements and communications concerning the Club's leadership and governance.
42. He contends that implementation of the impugned decision would substantially prejudice him by depriving him of an office to which he was lawfully elected and whose eligibility had, according to him, already been confirmed by the Tribunal. He further states that the decision threatens to destabilise Gor Mahia's governance at a critical period when the Club is preparing to represent Kenya in the CAF Champions League, thereby exposing the Club, its members and stakeholders to disruption and governance disputes.

43. He concludes by asserting that, in the interests of justice, the Court should grant the **interim orders sought**.
44. Directions were thereafter taken, pursuant to which the Notice of Motion and the Preliminary Objection were subsumed into the Petition. The parties were consequently directed to file their respective submissions on the substantive Petition.

Petitioner's submissions

45. The Petitioner, filed written submissions in support of the Petition and in opposition to the Preliminary Objection dated 27 June 2026. His case centers on the Sports Registrar's letter dated **10th June 2026**, by which the Registrar determined that his tenure as Chairperson of Gor Mahia had expired and directed the Club to commence fresh elections.
46. The Petitioner contends that the Registrar unlawfully calculated his tenure from 2018, when Gor Mahia received provisional registration, instead of from the 2020 elections, when he was elected under the new statutory and constitutional framework. He argues that the Registrar's decision was unlawful and procedurally unfair because:
- *the question of his eligibility and tenure had already been determined by the Sports Disputes Tribunal (SDT).*
 - *the Registrar participated in those proceedings,*
 - *he was not given prior notice of the proposed adverse decision or an opportunity to be heard;*
 - *the Registrar failed to follow the removal procedure under Regulation 10 of the Sports Registrar Regulations, 2016; and*



- *having been elected in 2025 and entered in the Register of Officials, he had a legitimate expectation that he would serve the applicable term.*

47. The Petitioner relies heavily on **SDT Case No. E019 of 2025, Bernard Omondi Ang’ute v Gor Mahia Election Board & Others**. He states that the Tribunal expressly considered whether his previous service could count towards the statutory term limits and held that the period served before Gor Mahia's transition into the statutory framework could **not** be counted as a term served under the 2016 Regulations.
48. The Tribunal consequently found that the Petitioner was validly cleared and eligible to contest the 13th April 2025 elections and that the elections were substantially compliant with the applicable legal framework. The Petitioner was thereafter elected Chairperson and states that the Sports Registrar acknowledged the election results and entered his name in the Register of Officials.
49. He therefore argues that the Registrar could not subsequently revisit the same question through the 10th June 2026 letter, particularly without appealing or seeking review of the Tribunal's earlier determination. He condensed the issues for determination into three broad questions:

i. Whether the Preliminary Objection is merited.

ii. Whether the Registrar's decision of 10 June 2026 was lawful and procedurally fair and;

iii. Whether the Petitioner is entitled to the reliefs sought.



50. On the 1st issues, the Respondent argues that the Petitioner failed to exhaust the statutory remedies under the Sports Act and should have challenged the Registrar's decision before the Sports Disputes Tribunal.
51. The Petitioner responds that exhaustion is not determined merely by deeming the impugned letter as a decision of the Registrar. The Court should consider the nature of the dispute, statutory framework, issues raised, history of the matter and suitability of the alternative forum.
52. He relies on *Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] KEHC 10266 (KLR) for the proposition that the High Court may entertain a matter notwithstanding failure to exhaust an alternative remedy where exceptional circumstances exist or where the statutory forum is unsuitable to determine the issues raised.
53. The Petitioner identifies what he considers an exceptional circumstance: the very Tribunal to which the Respondent seeks to send him had already determined the substantive question underlying the impugned decision.
54. He argues that the SDT already determined his eligibility and the treatment of his earlier term, the Registrar participated in those proceedings, the Tribunal's decision has not been appealed or set aside, the Registrar cannot indirectly overturn that determination through an administrative letter and requiring him to return to the SDT would merely require him to re-litigate an issue already determined. He therefore invokes *res judicata* and the finality of litigation.
55. He further submits that the Petition raises independent constitutional questions concerning **Article 47, procedural fairness and the exercise of public power**, which justify the High Court's intervention.



56. The Petitioner argues that the 10 June 2026 letter amounted to administrative action because it effectively determined that his tenure had ended and directed the Club to conduct fresh elections. He submits that Article 47 and section 4 of the Fair Administrative Action Act required the Registrar to, give him prior notice, disclose the allegations and material relied upon, give him an opportunity to respond and hear his representations before making the adverse decision. He states that none of these steps occurred. He was allegedly not notified of any complaint concerning his tenure or leadership, was not given an opportunity to respond, and was not subjected to any inquiry or hearing.
57. The Petitioner places particular emphasis on Regulation 10, which he says provides the statutory procedure for removal of a sports office bearer. His interpretation of the procedure is complaint - Registrar considers complaint - office bearer is notified and given an opportunity to respond - determination - removal where sufficient grounds are established.
58. He argues that none of these steps was followed. No Form M complaint was presented to him, no notice to respond was issued and no determination was made following his response.
59. He therefore contends that the Registrar could not circumvent Regulation 10 simply by describing the impugned communication as a determination that his tenure had expired.
60. The Petitioner further relies on Regulation 20(5) and (6), arguing that he was elected on 13 April 2025, the Registrar acknowledged the election and entered him in the Register; and Regulation 20(6) provides for a four-year term for newly elected office bearers. He therefore challenges the Registrar's decision to retrospectively calculate his tenure from the Club's 2018 provisional registration rather than from the election through which he acquired the office. He



argues that registration of the Club and election of its office bearers are distinct legal events and that the Registrar did not identify a lawful provision permitting her to treat the 2018 registration date as the commencement of his elected term.

61. The Petitioner argues that the Registrar's decision was ultra vires, irrational, unreasonable, procedurally unfair and contrary to the Sports Act and Regulations. He also argues that the Registrar's own conduct particularly recognising the 2025 elections and registering him as Chairperson created a legitimate expectation that his tenure would be respected unless lawfully terminated. He contends that the Registrar changed position approximately one year later without giving him an opportunity to address the proposed change.
62. The Petitioner argues that the Registrar used an administrative letter to achieve an outcome which could only lawfully be achieved through the prescribed regulatory procedure. He maintains that the issue is not merely whether the Registrar interpreted the law correctly, but whether she exercised her statutory power within the constitutional and statutory limits governing that power.
63. He further submits that the decision created uncertainty concerning Gor Mahia's leadership and governance at a critical period involving recruitment, sponsorship, licensing, financial planning and continental competition.
64. The Petitioner ultimately submits that the 10th June 2026 decision was unlawful, ultra vires, irrational, unreasonable and procedurally unfair, violated Article 47 and the Fair Administrative Action Act, and disregarded Regulations 10 and 20. He therefore asks the Court to, quash the decision by certiorari, prohibit the Registrar from implementing or giving effect to the 10 June 2026 decision and allow the Petition with costs.

Respondents' submissions

65. The 1st and 2nd Respondents filed submissions in support of their Preliminary Objection dated 27th June 2026 and in opposition to the



i. Whether the Preliminary Objection is merited.

ii. whether the Sports Registrar acted within her statutory mandate in issuing the letter dated 10 June 2026 and;

iii. Whether the Petitioner is entitled to the reliefs sought.

66. On the Preliminary Objection and jurisdiction, the Respondents submit that the Petition is prematurely before the High Court because the Petitioner failed to exhaust the statutory dispute-resolution mechanisms under the Sports Act and the Sports Registrar Regulations. They contend that the objection raises a pure point of law concerning jurisdiction and therefore satisfies the test in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd***. Relying further on ***Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd*** and ***Samuel Kamau Macharia v KCB***, they argue that jurisdiction must be determined at the outset and cannot be assumed or expanded by the Court.

67. The Respondents contend that section 58(c) of the Sports Act expressly confers jurisdiction upon the Sports Disputes Tribunal to hear appeals from decisions of the Sports Registrar. They further rely on Regulation 25, which permits a person aggrieved by a decision of the Registrar to appeal to the Tribunal, and Regulation 21, which provides mechanisms for arbitration and mediation of sports disputes. In their view, this statutory framework demonstrates Parliament's intention that disputes arising from sports regulation should first pass through the specialized statutory mechanisms before recourse to the High Court.



68. They rely particularly on ***James Mweu Maingi v Sports Registrar*** for the proposition that an appeal to the Sports Disputes Tribunal is an available and accessible remedy against decisions of the Registrar and that, absent exceptional circumstances, failure to exhaust that remedy renders proceedings before the High Court incompetent. They also invoke section 9 of the Fair Administrative Action Act and the general doctrine of exhaustion.
69. According to the Respondents, no exceptional circumstances have been demonstrated to justify bypassing the Tribunal. They argue that merely couching the dispute as a violation of Articles 27, 36, 38, 47 and 50 does not permit the Petitioner to circumvent the statutory mechanism because the constitutional complaints arise directly from the Registrar's decision regarding his tenure. They further invoke the doctrine of constitutional avoidance, arguing that the Court should not determine constitutional questions where the dispute can adequately be resolved through an existing statutory process. They consequently ask the Court to uphold the Preliminary Objection and strike out the Petition and Notice of Motion with costs.
70. On the merits, and without prejudice to the Preliminary Objection, the Respondents submit that the Sports Registrar acted lawfully and within her statutory mandate. They argue that the Petitioner has not met the constitutional pleading and evidentiary threshold established in ***Annarita Karimi Njeru, Mumo Matemu and Communications Commission of Kenya v Royal Media Services***, since his complaints essentially arise from disagreement with the Registrar's computation of his tenure rather than a demonstrated constitutional violation.
71. The Respondents maintain that the statutory framework limits the Chairperson's term to four years, renewable once, and that Gor Mahia was registered on 8th June 2018 subject to conducting elections within 90 days. Those elections were not held until 8th August 2020. They contend that the delay could not operate to extend the statutory tenure of an incumbent office bearer. Further,

although the Petitioner was re-elected on 13th April 2025 and subsequently entered into the Registrar's register, the Respondents argue that registration was merely an administrative act and neither created a fresh statutory term nor prevented the Registrar from subsequently enforcing statutory tenure requirements.

72. They reject the Petitioner's contention that the Registrar became *functus officio* after registering the 2025 officials. Their position is that the Registrar remains a continuing statutory regulator with responsibility for ensuring compliance by sports organizations. They further submit that the impugned letter neither removed the Petitioner from office as a disciplinary measure nor invalidated the 2025 elections; it merely communicated the Registrar's determination that his statutory tenure had expired and directed the Club to commence elections. Accordingly, Regulation 10, which governs removal of office bearers following complaints, was inapplicable because expiry of a statutory term is distinct from disciplinary removal.
73. On procedural fairness, the Respondents distinguish Articles 47 and 50. They submit that Article 50(1) was not engaged because the Registrar's action was administrative and regulatory rather than judicial or quasi-judicial. Regarding Article 47, they argue that procedural fairness is contextual; the Registrar was determining an objective question of statutory tenure from official records and applicable law rather than adjudicating disciplinary allegations. They further contend that the Registrar had previously communicated her position concerning tenure to the Club in March 2026.
74. The Respondents also dispute the Petitioner's reliance on the earlier SDT decision concerning his eligibility to contest the 2025 elections. They submit that the Tribunal determined his eligibility to contest those elections, not an entitlement to remain in office beyond the statutory maximum tenure. The Registrar's compliance with that decision by registering him following the election did not, in their view, extinguish her continuing duty to enforce statutory term limits.



75. They similarly reject the claim of legitimate expectation, arguing that registration following the 2025 election did not amount to a clear and lawful representation that the Petitioner would automatically serve a fresh four-year term irrespective of statutory limits. They further contend that no violations of Articles 27, 36 or 38 were established: the Registrar did not prevent Club members from associating or electing their leadership, nor was evidence presented of discriminatory treatment on a prohibited ground.
76. Finally, on reliefs, the Respondents submit that the Petitioner has not established any constitutional or statutory violation capable of supporting conservatory, declaratory, prohibitory or consequential orders. They argue that prohibiting implementation of the Registrar's decision would effectively restrain the Registrar from performing her statutory regulatory functions and preserve a state of affairs which she had determined to be inconsistent with statutory tenure requirements. They therefore ask the Court to dismiss both the Petition and the Notice of Motion dated 15th June 2026 with costs to the Respondents.

Analysis and determination

77. After analyzing the pleadings and submissions before court, I wish to condense the issues for determination as follows:

i. Whether the Preliminary Objection dated 27th June 2026 is merited.

Whether the Preliminary Objection dated 27th June 2026 is merited.

78. The objection goes to the jurisdiction of this Court and is founded principally on the contention that the Petitioner invoked the jurisdiction of this Court prematurely, without first exhausting the statutory appellate mechanism established under the Sports Act.



79. The Respondents contend that the decision impugned in these proceedings is a decision of the Sports Registrar and that section 58(c) of the Sports Act expressly vests the Sports Disputes Tribunal with jurisdiction to determine appeals arising from decisions of the Registrar. It is therefore their position that the Petitioner ought first to have challenged the Registrar's decision dated 10th June 2026 before the Tribunal.
80. The Petitioner does not dispute that he did not appeal the impugned decision to the Sports Disputes Tribunal. His position, however, is that the circumstances of this case fall within the recognized exceptions to the doctrine of exhaustion. In particular, he argues that the substantive question underlying the Registrar's decision had already been considered and determined by the Sports Disputes Tribunal in Tribunal Case No. E019 of 2025, **Bernard Omondi Ang'ute v Gor Mahia Election Board & Others**. According to him, requiring him to return to the same Tribunal would amount to requiring him to re-litigate an issue, which that Tribunal had already conclusively determined.
81. In the present Petition, the factor that comes to play is whether this Court is the proper forum to hear the Applicant's claim, in light of the provisions of section 58 of the Sports Act which provides as follows for the jurisdiction of the Sports Disputes Tribunal as follows:

“The Tribunal shall determine—

(a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including —

(i) appeals against disciplinary decisions;



(ii) appeals against not being selected for a Kenyan team or squad;

(b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and

(c) appeals from decisions of the Registrar under this Act.”

82. In addition, Regulation 25 of the Sports Registrar Regulations provides that a person aggrieved by the decision of the Registrar under the Regulations may appeal to the Tribunal within thirty days from the date of the decision of the Registrar. Therefore, Sections 9(2) (3) and (4) of the Fair Administrative Action Act are applicable to this application. The said provisions state as follows:

“(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the



obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”

83. It is now settled that where the Legislature has established a specific mechanism for the resolution of a dispute, a party is ordinarily required to invoke and exhaust that mechanism before approaching the Court. In **Speaker of the National Assembly v James Njenga Karume [1992] KECA 42 (KLR)**, the Court of Appeal emphasized that where a clear procedure for redress of a grievance is prescribed by the Constitution or statute, that procedure ought to be followed. The principle has subsequently been affirmed in numerous decisions.
84. Similarly, in **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR**, the Court of Appeal emphasized that where a dispute-resolution mechanism exists outside the Courts, it should ordinarily be exhausted before the jurisdiction of the Courts is invoked. The rationale is that Courts should ordinarily be fora of last resort rather than the first port of call where Parliament has established a competent mechanism for resolution of the particular dispute.
85. Exhaustion of alternative remedies is also now a constitutional imperative under Article 159 (2)(c) of the Constitution, and is exemplified by emerging jurisdiction on the subject, which was initially stated in **Speaker of National Assembly vs Karume (1992) KLR 21** in the following 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.”

86. The doctrine of exhaustion of alternative remedies was further explained by the Court of Appeal in **Geoffrey Muthinja Kabiru & 2**

“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.”

87. I am equally alive to the fact that the doctrine of exhaustion is not absolute. In **William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others; Muslims for Human Rights & 2 Others (Interested Parties) [2020] eKLR**, the Court recognized that exceptional circumstances may justify departure from the doctrine. In determining whether such circumstances exist, the Court must consider, among other things, the nature of the dispute, the statutory scheme and, importantly, the suitability of the alternative mechanism to determine the issues raised. This discretion is exercised pursuant to the provisions of Section 9(4) of the Fair Administrative Action Act.
88. The Petitioner's principal argument to the foregoing is that his circumstances are exceptional because the Tribunal had previously considered his eligibility to contest the elections held on 13 April 2025. He maintains that the Tribunal determined the treatment to be accorded to the period he had served before the Club's transition into the statutory framework and that the Sports Registrar, having participated in those proceedings, could not subsequently reopen that issue.



89. Section 58(c) of the Sports Act provides in express terms that the Sports Disputes Tribunal shall determine appeals from decisions of the Registrar under the Act. The provision is couched broadly and does not distinguish between different categories of decisions made by the Registrar.
90. The scope of that provision was considered by the High Court in **James Mweu Maingi v Sports Registrar; Richard Olakhi & 3 Others (Interested Parties) [2019] KEHC 4834 (KLR)**. In that case, the applicant sought judicial review orders directly against a decision of the Sports Registrar without first appealing to the Sports Disputes Tribunal. The Court held that section 58 did not limit the decisions of the Registrar amenable to appeal and that the statutory remedy before the Tribunal was both available and accessible. Having found that no exceptional circumstances had been demonstrated, the Court held that the proceedings were incompetently before it.
91. Indeed, the Sports Disputes Tribunal has continued to exercise that jurisdiction. In **Kibe (Suing as an official of Kenya Professional Esports Federation) v Sports Registrar & another [2024] KESDT 365 (KLR)**, the Tribunal held that a dispute arising from an act or decision of the Sports Registrar fell within its jurisdiction under section 58(c) of the Sports Act.
92. There is a material distinction between the earlier decision of the Sports Disputes Tribunal and the administrative decision which is presently impugned before this Court. The earlier proceedings were concerned with the Petitioner's eligibility to contest the elections held on 13th April 2025. The present proceedings, on the other hand, were precipitated by a subsequent decision of the Sports Registrar communicated through the letter dated 10th June 2026, in which the Registrar took the position that the Petitioner's tenure had come to an end and directed that elections be conducted.
93. The decision of 10th June 2026 did not exist at the time the earlier proceedings before the Tribunal were determined. It could not therefore have been challenged in those proceedings. Upon its issuance, a fresh cause for grievance arose and the Sports Act provided a specific avenue by which an aggrieved person could challenge it, namely an appeal to the Sports Disputes Tribunal under section 58(c).



94. Section 58 of the Sports Act does not limit which decisions of the Respondent shall be subjected to appeal, and provides that appeals shall lie from all decisions made by the Respondent under the Act, which includes the regulations made thereunder.
95. The existence of the earlier Tribunal decision does not extinguish that appellate mechanism. Neither does it transform the High Court into the forum of first instance for determining the validity of every subsequent decision of the Registrar touching upon matters previously considered by the Tribunal.
96. The remedy of an appeal to the Sports Disputes Tribunal was therefore available and accessible to the Petitioner under section 58 of the Sports Act, and he has not demonstrated any exceptional circumstances that would have exempted him from filing an appeal with the Tribunal.
97. Indeed, the Tribunal which rendered the earlier decision would be particularly well placed, in the first instance, to determine the effect of its previous findings upon the Registrar's subsequent decision. I am therefore unable to accept the proposition that returning to the Tribunal would necessarily amount to an exercise in futility. The Petitioner did not invoke the Tribunal's jurisdiction after the decision of 10th June 2026 but thereafter complains that the Tribunal was unable or unwilling to afford him an effective remedy.
98. To the extent that this statutory remedy has not been exhausted by the Petitioner, the instant petition is incompetent and is not properly filed before this Court.
99. The Petitioner further contends that this Petition raises constitutional questions, particularly alleged violations of Articles 27, 36, 38, 47 and 50 of the Constitution, and that those questions justify the direct intervention of this Court.
100. There is no dispute that this Court is vested with jurisdiction under Articles 22, 23 and 165 of the Constitution to determine claims concerning violations of constitutional rights and to supervise the exercise of public power. That jurisdiction, however, does not mean that every dispute acquires the character of a constitutional dispute merely because constitutional provisions have been invoked, nor does it invariably displace dispute-resolution mechanisms



deliberately established by Parliament.

101. The Court must look beyond the manner in which the pleadings have been framed and ascertain the true nature of the controversy. In the present case, the constitutional complaints arise directly from the Registrar's decision concerning the Petitioner's tenure. The allegations of procedural unfairness, legitimate expectation, irrationality and unlawfulness are all directed at the process and legal basis upon which the Registrar arrived at the decision of 10th June 2026.
102. Those are matters, which could have been raised in an appeal before the Tribunal. The mere invocation of constitutional provisions does not, in those circumstances, establish that the statutory forum is unsuitable.
103. The Court has not been shown that the Tribunal was inaccessible, incapable of determining the dispute, or incapable of granting an effective remedy in respect of the Registrar's decision. On the contrary, the Petitioner's own reliance upon an earlier judgment rendered by that very Tribunal demonstrates that he has previously had access to the specialized statutory forum and that the Tribunal has previously adjudicated disputes concerning the governance and electoral affairs of Gor Mahia Football Club.
104. I therefore find that the circumstances relied upon by the Petitioner do not constitute exceptional circumstances warranting exemption from the doctrine of exhaustion. The statutory appellate mechanism under section 58(c) of the Sports Act remained available to him and ought to have been invoked before resort was made to this Court.
105. Consequently, I find that the Petition dated 15th June 2026 was prematurely instituted before this Court and the same is for dismissing. The Preliminary Objection dated 27th June 2026 is merited and is hereby upheld with the result that the petition is hereby dismissed. Each party shall bear its own costs.

Dated, signed and delivered virtually at Nairobi this 15th day of October 2026.



SIGNED BY:
HON. JUSTICE DAVID MBURU



THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2026-10-15 13:07:09+03
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