

Case Note

CASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

ONE RULING, DIGESTED ON ITS OWN – THE FACTS, THE HOLDING, AND THE PRACTICE POINT

📅 [2026] KEHC 9074

Mental incapacity as a jurisdictional objection needs evidence, not just an assertion

Savla v Okonji

STRUCK OUTCASE NOTEDATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

A petitioner alleged an unauthorised letter had been written about him in breach of Articles 10 and 31. The respondent's preliminary objection on locus standi, grounded in an allegation of mental incapacity, was disallowed on the basis that incapacity is a factual question requiring evidence, not a matter for a preliminary objection. The petition itself, however, was struck out on a separate, cleaner ground: clear statutory processes existed under the Mental Health Act, the Kenya Medical Practitioners and Dentists Act, and the Data Protection Act, all of which had to be exhausted before the constitutional door opened.

PRACTICE POINT

A respondent cannot short-circuit a petition on disputed facts like capacity through a preliminary objection — but where multiple sector-specific statutory remedies exist and none has been tried, exhaustion will still dispose of the petition on a cleaner, undisputed ground.

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HOW THIS TOUCHES A LIVE ODPC MATTER

Whether you are defending a complaint, appealing a determination, or bringing a privacy claim of your own, the forum you choose and the procedural record you build early usually decide the outcome.

Muchangi Patrick & Co. Advocates represents complainants and respondents before the Office of the Data Protection Commissioner and on appeal, judicial review and constitutional petition before the High Court.

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