



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki & Lenaola SCJJ)

PETITION (APPLICATION) NO. E025 OF 2025

– BETWEEN –

LINET AKINYI.....APPLICANT

-AND-

JERUSHA AUMA OGWARI1ST RESPONDENT

IBRAHIM AISHA HERSI.....2ND RESPONDENT

(Being an application seeking review of the decision of the Deputy Registrar delivered on 23rd May, 2025, declining to admit the Applicant's Petition of Appeal filed against the Ruling of Magare, J. delivered on 9th May 2025)

Representation:

Mr. Joseph N. Musomba for the Applicant
(Kulecho, Musumba & Co. Advocates)

No appearance for the Respondents

RULING OF THE COURT

[1] UPON perusing of the applicant's Notice of Motion dated 19th May 2025 and filed before this Court on 28th May 2025 under Rule 6(2) of the Supreme Court Rules, 2020 seeking orders *inter alia* –

a. Spent;

- b. *This Court be pleased to review the decision of the Deputy Registrar made on 23rd May 2025 declining the lodging of her Petition of Appeal to this Court and allow the Petition of Appeal to be lodged; and*
- c. *The cost of the Application be in the cause; and*

[2] UPON CONSIDERING the grounds on the face of the application and the supporting affidavit sworn by Joseph N. Musomba, the learned counsel for the applicant, dated 26th May 2025 and filed on 28th May 2025 wherein the applicant contends that on 3rd July 2023 she was injured in a road traffic accident and as a result she filed a claim at the Small Claims Court on 2nd November 2023 being ***Milimani SCC/E969/2024; Linet Akinyi Vs James K Ng'ang'a.***; which was heard by Hon. P Makokha, Small Claims Court Adjudicator and on 4th March 2024, dismissed the suit on grounds that the court was deprived of jurisdiction to hear and determine matters under CAP 405, as had been held by *Magare J.* in a Judgment delivered on 3rd July, 2023 in ***Mombasa HCCA/223/2022 Jerusha Ouma Ogwari Vs Ibrahim Aisha Hersi Alias Aisha Hersi Ibrahim.*** Aggrieved by the decision of the Adjudicator, the applicant filed an application dated 11th May 2024 before the Mombasa High Court seeking clarity as to whether the said court had indeed ousted the jurisdiction of the Small Claims Court to hear and determine matters under CAP 405 following its decision in ***Mombasa HCCA/223/2022.*** The High Court (*Magare, J.*) consolidated the application with an application for review that had been filed by the parties in ***Mombasa HCCA/223/2022*** and delivered a ruling on 9th May 2024 declining to review his judgment. Aggrieved by the decision of the High Court, the applicant on 21st May, 2025 filed a Petition of Appeal dated 19th May, 2025 before this Court online. However, upon presenting physical copies of her Petition of Appeal together with the Record of Appeal, the Deputy Registrar of this Court declined to admit her appeal vide his decision delivered on 23rd May 2025 for reasons that the applicant had failed to attach to her record of appeal and a copy of a judgment or a ruling of

the Court of Appeal as required under Rule 40(1)(b) of the Supreme Court Rules; and

[3] FURTHER CONSIDERING that the applicant argues that her appeal falls under Article 163(3)(b)(ii) of the Constitution which grants this Court jurisdiction to hear appeals from any court or tribunal as prescribed by a national legislation. She also argues that since Rule 40 (1)(b) partly reads “**for purpose of instituting an appeal from the Court of Appeal decision**” the same does not apply to her appeal which is against a decision of the High Court under Article 163(3)(b)(ii) of the Constitution. She asserts that she filed her appeal before this Court because Section 38 of the Small Claims Court Act, expressly ousts the jurisdiction of the Court of Appeal to hear and determine appeals from the decisions of the High Court. She further asserts that Article 163(3)(b)(ii) does not require certification whatsoever. She urges that if the decision of the Deputy Registrar is allowed to stand, it would mean that all appeals filed under Article 163(3)(b)(ii) are inadmissible in this Court since they do not emanate from the Court of Appeal; and

[4] BEARING IN MIND that the primary issue before us is whether this Court has jurisdiction under Article 163(3)(b)(ii) as read together with Section 38 of the Small Claims Act to hear and determine an appeal from the High Court;

[5] WE NOW OPINE AND DETERMINE as follows:

- i. It is trite law that a court’s jurisdiction flows from either the Constitution or legislation or both. In the ***Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011***, this Court dealt with the question of jurisdiction extensively. The Court observed that 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.

ii. Article 163(3)(b)(ii) of the Constitution provides as follows:

“ 3)The Supreme Court shall have—

(a)

(b) subject to clause (4) and (5), appellate jurisdiction to hear and determine appeals from—

(i) the Court of Appeal; and

(ii) any other court or tribunal as prescribed by national legislation.

iii. Section 38 of the Small Claims Court Act on the other hand provides as follows:

“ 38. Appeals

(1)A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.

iv. The applicant argues that since Section 38 of the Small Claims Court Act ousts the jurisdiction of the Court of Appeal to hear and the determine appeals against the decisions of the High Court, Article 163(3)(b)(ii) of the Constitution which grants this Court jurisdiction to hear Appeals from **any court or tribunal** comes to her aid. However, we note that the applicant in her argument has failed to address the rider under Article 163(3)(b)(ii) of the Constitution that such appellate jurisdiction **must have been prescribed by a national legislation.** Outrightly, the Small Claims Court Act, which is the national legislation that governs all matters arising from the Small Claims Court, does not prescribe appellate jurisdiction to this Court as required under Article 163(3)(b)(ii) but

instead provides that the High Court shall be the final appellate court. Therefore, from the foregoing, this Court does not have jurisdiction to hear and determine the applicant's appeal. For the said reason, we find no merit in this application and accordingly dismiss it.

- v. Given that the respondents did not participate in these proceedings, it is appropriate that each party bears its own costs.

[6] CONSEQUENTLY and for the reasons aforestated, we make the following Orders:

i. The applicant's Notice of Motion dated 19th May 2025 and filed on 28th May 2025 be and is hereby dismissed.

ii. There shall be no order as to costs.

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd day of January 2026.

.....
M.K. KOOME
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT OF KENYA

.....
P.M. MWILU
DEPUTY CHIEF JUSTICE &
VICE PRESIDENT OF THE
SUPREME COURT OF KENYA

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR
SUPREME COURT OF KENYA

