



**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

(Coram: Mwilu; DCJ & VP)

PETITION NO. E010 OF 2025

-BETWEEN-

YUSUF GITAU ABDALLAH..... APPLICANT

—VERSUS—

THE INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

(Being an application for review of the Decisions of the Deputy Registrars in Petition No. E010 of 2025 delivered on 7th April 2025 and 17th June 2025 respectively)

Representation:

Mr. Yusuf Gitau Abdallah for the Applicant (In person)

No appearance for the Respondents

RULING OF THE COURT

[1] UPON PERUSING the applicant's Notice of Motion application dated 16th July 2025 and filed on 18th July 2025, seeking a review of the rulings of the Deputy Registrars, Hon. Bernard Kasavuli (dated 7th April 2025) and Hon. Alice Mukenga (dated 17th June 2025), which declined to have the applicant's pleadings lodged before Court for non-compliance with the Supreme Court Rules as cited in the respective rulings; and

[2] UPON CONSIDERING the applicant's grounds as set out on the face of the application and in his supporting affidavit sworn on 16th July 2025 which can be summarized as follows: that the Deputy Registrars overstepped their administrative

authority by making substantive determinations, effectively "behaved as judges," and created a situation akin to *res judicata*; that the technicalities raised should not be used to stifle a "serious dialogue" on matters of critical national importance; that the e-filing system should simplify the process, and the Deputy Registrars' actions have been retrogressive and obstructive; and that the subject matter of his intended petition concerning the Constitution, national dialogue, and electoral integrity is of such overriding public importance that it warrants the Supreme Court's direct attention, transcending procedural technicalities; and

[3] APPRECIATING the provisions of Rule 6(2) of the Supreme Court Rules, 2020 and Section 11 of the Supreme Court Act, which anchor this Court's jurisdiction to review a decision of the Registrar, a discretionary power that must be exercised judiciously; and

[4] BEARING IN MIND the foundational principle of our legal system that necessitates that all who seek legal remedies must follow the established procedural framework, as this Court stated in *Yusuf Gitau Abdalla Vs Building Centre (K) Limited & 4 others*, Petition 27 of 2014 [2014] eKLR; and

[5] HAVING CONSIDERED the application and the Applicant's grounds and submissions in support of the application, **I OPINE** as follows:

- (i) The role of the Registrar under Rule 6 of the Supreme Court Rules is to provide an administrative check and ensure that any matter presented to this Court complies with the minimum mandatory requirements set by the Constitution and the Court's Rules. Specifically Rule 6(1)(b) indicates the role of the Registrar "*to decline pleadings that are not in accordance with the Constitution, the Act, these Rules, or the Court's practice directions for filings*";
- (ii) From my perusal of the record, I note that the two impugned rulings identified distinct yet related procedural defects. The ruling by Hon. Bernard Kasavuli dated 7th April 2025, declined to lodge an undated Notice of Motion on grounds that the applicant had not filed a Notice of Appeal against a decision of the Court of Appeal; had failed to attach the requisite judgments from the High Court and Court of Appeal, contrary to Rules 36-40 of the Supreme Court Rules, 2020; and had filed the Notice of Motion prematurely before a petition

of appeal, contrary to Rule 31(2) of the Supreme Court's Rules. The subsequent decision of Hon. Alice Mukenga dated 17th June 2025, declined to lodge a "Record of Appeal" on grounds that the applicant had still not filed a valid Notice of Appeal with the superior court below; had premised his Notice of Appeal on the repealed Section 17 of the Supreme Court Act; had failed to file a proper Petition of Appeal as stipulated by Rule 39; and had filed a Record of Appeal that was deficient for lacking the Court of Appeal judgment and other relevant pleadings, contrary to Rule 40.

- (iii) From the foregoing, the Deputy Registrars did not adjudicate the applicant's grievances against the Independent Electoral and Boundaries Commission or the Attorney General; they merely pointed out that the documents filed were not in the correct form to initiate an appeal or a reference, pointing out the applicable Rules that the applicant had fallen short of. The applicant's contention that the Registrars "behaved as judges" is therefore not borne out by the facts. They were performing their statutory duty. Their findings did not relate to judicial determinations on the merits but are factual observations on non-compliance with the Rules. There is no evidence of shifting goalposts or creation of *res judicata*; and the two rulings are consistent in their identification of the procedural defects.
- (iv) Regarding the applicant's plea for substance over form, this Court reiterates the long-standing principle that the law of procedure is intended to facilitate, not obstruct, the administration of justice. The procedural rules governing appeals to the Supreme Court, particularly Rules 36, 39, and 40, are not mere technicalities. They serve the vital purpose of ensuring that this Court has a proper record upon which to base its decisions and that the parties against whom an appeal is brought are properly apprised of the case they have to meet. Consequently, total non-compliance with these rules cannot be waived.
- (v) This Court's appellate jurisdiction is triggered only in specific circumstances outlined in Article 163 of the Constitution, primarily after a matter has been heard by the Court of Appeal. The applicant has not demonstrated that he has pursued or exhausted that prerequisite avenue. The Supreme Court cannot be a court of first instance for matters, however passionately held, that have not navigated the prescribed judicial hierarchy.

(vi) Consequently, I find that the applicant has not demonstrated any error in law, procedural unfairness, or any other sufficient reason to warrant this Court's intervention to review the Deputy Registrars' decisions. The application is devoid of merit.

[6] CONSEQUENTLY, for reasons aforesaid, I make the following orders:

- (i) *The Notice of Motion application for review dated 16th July 2025 and filed on 18th July 2025 is hereby dismissed;***
- (ii) *For the avoidance of doubt, the rulings of the Deputy Registrars declining to lodge the applicant's pleadings are upheld; and***
- (iii) *There shall be no order as to costs.***

Orders accordingly.

DATED and DELIVERED at NAIROBI this 20th day of February, 2026.

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

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA