



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

PETITION (APPLICATION) NO. E015 OF 2025

– BETWEEN –

**ATTORNEY GENERAL ON BEHALF OF
THE CABINET SECRETARY, MINISTRY OF
INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT APPELLANT/ APPLICANT**

– AND –

NGURUMAN LIMITED RESPONDENT

(Being an application for extension of time to file a response to the respondent's cross appeal dated 8th May 2025 or in the alternative, leave to amend the response dated 16th May 2025 and filed on 21st May 2025 to the cross appeal in SC Petition No. E015 of 2025)

Representation

Mr. Oscar Eredi for the Appellant/ Applicant
(Attorney General Chambers)

Ms. Jerioth Muthoni for the Respondent
(Ahmednassir Abdullahi Advocates LLP)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 15th August 2025 and filed on 21st August 2025 by the appellant/applicant pursuant to Sections 3 and 21(2) of the

Supreme Court Act, Cap 9B; and Rules 3, 15(2) and 31 of the Supreme Court Rules, 2020 which seeks Orders that:

- i. *The application be certified urgent and heard on priority basis (spent);*
- ii. *The directions issued by the Deputy Registrar on 11th July 2025 (suspending compliance with respect to the appeal and cross appeal in SC Petition E015 of 2025 pending the determination of the application for joinder of interested parties to the appeal) be set aside;*
- iii. *This Honourable Court be pleased to extend time for the applicant to file a response to the respondent's cross appeal dated 8th May 2025;*
- iv. *Alternatively, leave be granted to the applicant to amend the document titled grounds of opposition which is dated 16th May 2025 and filed on 21st May 2025 to read as grounds of objection; and that the document titled grounds of objection dated 16th May 2025 and filed on 30th May be expunged from the record of this Court; and*

[2] UPON CONSIDERING the grounds on the face of the Motion, the affidavit sworn by Oscar Eredi, the Chief State Counsel, and submissions in support thereto of even date, the tenor of which is that, on 9th May 2025, the Deputy Registrar of this Court directed the respondent to effect service of its cross appeal dated 8th May 2025 upon the applicant by the close of business of the same day; the applicant do file a response thereto within 14 days of service of the cross appeal; and thereafter, the respondent do file a rejoinder, if need be, within 7 days of service of the response. According to the applicant, it prepared its response dated 16th May 2025 and filed the same on 21st May, 2025 within the requisite time frame. However, the applicant's counsel later learnt that the filed response was erroneously titled as grounds of opposition as opposed to grounds of objection; as such, on 30th May 2025, the applicant filed a replica of the earlier response dated 16th May 2025 save that the title therein reads as grounds of objection; the second response was filed out of the

prescribed time line without leave of the Court; thereafter, the respondent, by a letter dated 10th July 2025, raised concern that it was unable to comply with the directions requiring it to file a rejoinder, as it could not ascertain which of the two responses it was expected to address; and

[3] FURTHERMORE that, on 11th July 2025, the respondent reiterated the aforementioned concern when the matter was mentioned before the Deputy Registrar; in turn, the applicant's counsel made an oral application to withdraw its first response, which application was declined; instead, the Deputy Registrar directed the applicant to file a formal application and suspended compliance with respect to the appeal and cross appeal pending the determination of the Notice of Motion dated 16th April 2025 seeking joinder of interested parties. The applicant urges that, the error in the first response was inadvertent and the instant Motion has been brought without inordinate delay. Consequently, should this Court extend time for filing the response, it may either direct the applicant to file a fresh response in line with *Salat Vs Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR), or deem the second response which was filed on 30th May 2025 as being properly before it as it did in *Independent Electoral and Boundaries Commission Vs Cheperenger & 2 others* [2018] KESC 46 (KLR). In the alternative, this Court may grant leave to the applicant to amend the first response filed on 21st May 2025 and expunge the second response; that, the respondent will not suffer any prejudice should the instant Motion be allowed; and

[4] UPON EXAMINING the respondent's preliminary objection dated 8th September 2025, its replying affidavit sworn by Martin Richard Steyn, its Director, on even date and submissions dated 12th September 2025, to the effect that, the Motion is omnibus in nature and therefore fatally defective; in that, the Motion seeks an array of orders which can only be considered by different Benches of this Court. For instance, the respondent asserts that the prayers for certifying the Motion as urgent and setting aside of the Deputy Registrar's direction of 11th July 2025 are matters which are handled by a single Judge of the Court; whilst the prayers for

extension of time and amendment of pleadings can only be entertained by a Bench made up of 2 or more Judges of this Court. Be that as it may, the respondent submits that should this Court find that the Motion is not incurably defective, it does not oppose the prayer to amend the applicant's first response to read grounds of objection or the withdrawal of the second response; and

[5] UPON DELIBERATIONS on the Motion and the rival arguments, **WE NOW OPINE** as follows:

- i. Beginning with the respondent's preliminary objection, we understand its position to be that the Motion is defective for being omnibus in nature. In that regard, this Court is urged to strike out the Motion.
- ii. An omnibus application seeks multiple reliefs, some of which fall within the jurisdiction of a single Judge of the Court, while others may only be determined by more than one Judge or a full Bench of the Court. It is for that reason that such an application poses difficulties when it is placed before a single Judge or full Bench of the Court. How then is the Court to handle such an application? Should it strike out the entire application or delve only into the reliefs that fall within its jurisdiction? In our view, the position to be taken will be on a case by case basis.
- iii. Turning to the Motion at hand, Section 23 of the Supreme Court Act sets out the nature of applications that may be considered by a single Judge and by two or more Judges of this Court. With respect to this Motion, the prayer for certification of the same as urgent and setting aside of the Deputy Registrar's directions as rightly pointed out by the respondent are matters for a single Judge. However, the prayer seeking an order of certification of the Motion as urgent is clearly overtaken by events. In that case, what then is the fate of the other remaining reliefs sought in the Motion? Should the Motion be struck out?

- iv. Cognizant that our paramount duty as a Court is to do justice, we invoke our inherent jurisdiction under Section 3A of the Supreme Court to sustain the Motion as opposed to striking it out in its entirety. In doing so, we sever the relief which falls for determination by a single Judge from the other reliefs which can be entertained by this six Judge Bench of the Court. Consequently, we elect not to pronounce ourselves on the prayer for setting aside of the Deputy Registrar's directions of 11th July 2025.
- v. It is common ground that the respondent herein does not oppose the applicant's prayers for extension of time and in the alternative, leave to amend its response. Be that as it may, having considered the aforementioned reliefs, we find that the amendment of the first response is well suited in line with Rule 17A of the Supreme Court Rules. More so, since the second response having been filed out of time, as we held in the ***Salat Case***, is a nullity and only fit to be struck out. Accordingly, we hereby grant the applicant's alternative prayer for leave to file an amended response to the cross appeal within seven days of this ruling.

[6] CONSEQUENTLY, and for the reasons afore-stated, we make the following Orders:

a) The Motion dated 15th August 2025 and filed on 21st August 2025 is allowed to the extent that only the applicant's alternative prayer is hereby granted namely,

i. The applicant is hereby granted leave to amend its response dated 16th May 2025 and filed on 21st May 2025 within seven days of this ruling.

ii. The applicant's grounds of objection dated 16th May 2025 and filed on 30th May 2025 is hereby struck out.

b) The costs of this Motion shall abide by the outcome of the appeal.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 15th day of May, 2026.

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

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

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

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**NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT**

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

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**W. OUKO
JUSTICE OF THE SUPREME**

**I certify that this is a true copy
of the original**

**REGISTRAR
SUPREME COURT OF KENYA**