



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

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

PETITION (APPLICATION) NO. E020 OF 2025

-BETWEEN-

DR OWISO OWISO..... 1ST PETITIONER/APPLICANT
KHELEF KHALIFA.....2ND PETITIONER/ APPLICANT
ASHIOYA BIKO..... 3RD PETITIONER/APPLICANT

-AND-

HON. ATTORNEY-GENERAL.....1STRESPONDENT
INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION.....2ND RESPONDENT

-AND-

LAW SOCIETY OF KENYA.....1STINTERESTED PARTY
KATIBA INSTITUTE.....2NDINTERESTED PARTY
KALONZO MUSYOKA.....3RD INTERESTED PARTY
RAILA ODINGA.....4TH INTERESTED PARTY
UNITED DEMOCRATIC ALLIANCE PARTY.....5THINTERESTED PARTY
DAVID MARAGA..... 6TH INTERESTED PARTY
OKOITI OKIYA OMTATAH..... 7TH INTERESTED PARTY
JIMI RICHARD WANJIGI.....8TH INTERESTED PARTY
FRED MATIANG'I..... 9TH INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION.....10THINTERESTED PARTY

(Being an Application to Withdraw Petition of Appeal pursuant to Sections 3A and 21 (2) of the Supreme Court Act, rule 27 (1) Supreme Court Rules and all other enabling provisions of the law)

Representation:

Dr. Owiso Owiso, Advocate, 1st Applicant

(Acting in person and on behalf of the 2nd and 3rd Applicants)

Mr. Emmanuel Bitta, for the 1st Respondent
(Attorney General Chambers)

Mr. Abdullahi Garane, Advocate for the 2nd Respondent
(Garane and Somane Advocates)

Mr. Paul Mwangi, Advocate for the 4th Interested Party
(Paul Mwangi & Company Advocates)

Hon. Okiya Omtata Okiiti, 7th Interested Party
(Acting in Person)

Mr. Nelson W. Osiemo, Advocate for the 8th Interested Party
(Osiemo Wanyonyi & Company Advocates)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 21st August 2025 and filed on the same day, seeking orders to withdraw the petition of appeal dated 23rd April 2025 and filed on 24th April 2025; and

[2] UPON READING the grounds in support of the application, and the supporting affidavits sworn on 21st August 2025 by **Owiso Owiso, Khelef Khalifa** and **Ashioya Biko**, wherein they aver that upon perusal of the Ruling of the Court dated 15th August 2025 in which the Court provided clarity on several issues, they consequently formed the opinion that it is no longer prudent or judicious to proceed with the appeal; and

[3] NOTING that the application was mentioned before the Deputy Registrar on 22nd August 2025, wherein the 1st and 2nd respondents, and the 4th, 7th and 8th interested parties stated that they did not oppose the application for withdrawal of the petition of appeal, and it being a public interest matter did not warrant any costs to be awarded; and

[4] Considering all that we have stated above, WE NOW OPINE AND DETERMINE AS FOLLOWS:

- i. The applicants right to withdraw a matter is anchored under Rule 27 (1) of the Supreme Court Rules, 2020. The rule provides that the applicant may, with the leave of Court, withdraw the proceedings at any time before delivery of judgment. This position was settled in the case of ***Lelli Vs Kenya Medical Training College & 2 Others*** [2021] KESC 21 (KLR) where the Court stated as follows:

“It therefore suffices to say that indeed a party’s liberty to withdraw a matter cannot be taken away and this court has to allow a party who has approached the court to withdraw such a matter, if he deems so fit to do.....”

- ii. In the instant case, the application to withdraw the petition of appeal was filed before the appeal was set down for hearing. In effect, the application to withdraw the appeal was filed on time and therefore stands allowed.
- iii. On costs, the 1st and 2nd respondents as well as the 4th, 7th and 8th Interested Parties, did not apply for costs citing that the appeal was a public interest matter. We are persuaded by their assertion and shall not make any orders as to costs.

[5] CONSEQUENTLY, and for the reasons aforesaid, we make the following orders:

- i. The Notice of Motion dated 21st August 2025 is allowed;***
- ii. The Petition of Appeal dated 23rd April 2025 and filed on 24th April 2025 is hereby marked as withdrawn;***
- iii. Each party shall bear its costs of the Application; and***
- iv. The sum of Kshs. 6,000/- deposited as security for costs upon lodging of this petition, be refunded to the depositor.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 14th day of November, 2025

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

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

.....
M.K IBRAHIM
JUSTICE OF THE SUPREME COURT

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

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

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

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

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

REGISTRAR,
SUPREME COURT OF KENYA

