



**THE SUPREME COURT OF KENYA**  
**NATIONAL ASSEMBLY VS. H.E. RIGATHI GACHAGUA & 66 OTHERS**  
**SC PETITION (APPLIC) NO. E032 OF 2025**

**DATE OF RULING: 30<sup>th</sup> January, 2026**

**MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

***Orders: The Court dismisses the consolidated applications.***

**Background**

The dispute arose in the aftermath of the impeachment of former Deputy President Hon. Rigathi Gachagua in October 2024. Following the impeachment in the National Assembly, six (6) petitions were filed in the High Court across the country by different parties, including Hon. Gachagua, challenging various aspects of the parliamentary proceedings. The petitions raised significant constitutional questions and were required to be heard by special benches of more than one High Court judge. Consequently, the petitions were referred to the Hon. Chief Justice to constitute special benches of the High Court to hear and determine them in line with Article 165(4) of the Constitution. On 14<sup>th</sup> October 2024, the Chief Justice empaneled a three-judge bench consisting of Ogola, Mrima, and F. Mugambi, JJ. to hear the first cluster of six (6) petitions. The bench began hearing applications, including requests to stop the Senate from proceeding with the impeachment.

As the events unfolded, a second cluster of petitions was filed, including new petitions by Hon. Gachagua and others seeking to block the Senate's confirmation of the impeachment and the swearing-in of Prof. Kithure Kindiki as the Deputy President. Like the first cluster, these petitions raised significant constitutional issues and were referred to the Hon. Chief Justice for the appointment of a special bench. At the time, the Hon. Chief Justice was away from office, and the Hon. Deputy Chief Justice appointed the same three-judge bench to hear three of the cases from this second cluster. It was this second round of empanelment by the Hon. Deputy Chief Justice that sparked the dispute. Hon. Gachagua instituted two sets of challenges before the High Court. First, he contested the Deputy Chief Justice's authority to empanel the bench, and in the second challenge, Hon. Gachagua sought the recusal of all three judges on the grounds of bias and conflict of interest.

In a ruling delivered on 23<sup>rd</sup> October 2024, the High Court rejected the challenge to the bench's empanelment, holding that assigning judges is an administrative function that the Chief Justice may delegate, and that the Deputy Chief Justice could lawfully exercise that power in her absence. In a separate ruling on 25<sup>th</sup> October 2024, the judges also dismissed applications seeking their recusal, finding no factual or legal basis to doubt their impartiality.

The dispute then moved to the Court of Appeal through two consolidated appeals. The appellate court held that the power to empanel High Court benches belongs exclusively to the Chief Justice and is not a delegable administrative function under the law. It further held that the Deputy Chief Justice may only exercise this power in clearly demonstrated and publicly communicated exceptional circumstances. Regarding the recusal, the court agreed with the High Court that the evidence presented did not warrant the recusal of any of the three judges.

The finding that the Deputy Chief Justice lacked authority to empanel the High Court bench precipitated the filing of **SC Petition No. E032 of 2025**, by the National Assembly, the appellant, before this Court. Hon. Gachagua was also aggrieved by part of the judgment and cross-appealed. For purposes of clarity, it is the empanelment that is in question in the appeal before the Supreme Court and not the challenge of the impeachment proceedings concerning Hon. Gachagua, which is still pending before the High Court.

After the institution of the appeal and cross-appeal before the Supreme Court, two applications were brought. The first is an omnibus application by Hon. Gachagua seeking an order of stay of the proceedings before the High Court, the striking out of the appeal, and the expunging of certain documents from the Supplementary Record of Appeal. The second application is by the National Assembly, seeking to strike out Hon. Gachagua's Notice of Cross-Appeal.

Upon consideration of the consolidated applications:

- i) The first omnibus application by Hon. Gachagua is dismissed for the reasons that the Supreme Court can only stay proceedings before the Court of Appeal and not the High Court as prayed for; the appeal by the National Assembly is not one that was capable of summarily being dismissed and warrants determination on merit; and the documents sought to be expunged are integral to the determination of the appeal before the Supreme Court and were referred to by both the High Court and the Court of Appeal in their determination of the dispute.
- ii) The second application by the National Assembly is dismissed for the reason that the cross appeal by Hon. Gachagua equally does not fall within the parameters of summary dismissal.

Accordingly, the Supreme Court dismisses both applications with no orders as to costs.

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