REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CORAM: F. MUGAMBI, J

MISC. APPLN. NO. E1300 OF 2025

BETWEEN

GREENWHEEL ONLINE DRIVERS ..... APPLICANT

VERSUS

GREENWHEEL ELECTRIC MOBILITY SOLUTIONS LIMITED ..... 1ST RESPONDENT

UBER KENYA LIMITED ..... 2ND RESPONDENT

RULING

Background and Introduction

1. By a Ruling delivered on 17th December 2025 in **Misc. Appl. No. E853 OF 2025** this Court issued the following orders:

> *'the application dated 8th September 2025 is meritorious. It is allowed as prayed and consequently these proceedings are hereby stayed so as to allow parties proceed to arbitration. I make no orders as to costs...*

Accordingly, the application dated 8th September 2025 is meritorious. It is allowed as prayed and consequently these proceedings are hereby stayed so as to allow parties proceed to arbitration. I make no orders as to costs.'

2. What now falls for determination is a subsequent application dated 17th December 2025 brought pursuant to ***Section 7 of the Arbitration Act***, among other provisions, seeking interim relief pending the hearing and determination of the arbitration proceedings.

3. The respondents raised a preliminary objection to the application, dated 13th February 2026. They contend that the application is fatally defective for contravening the mandatory requirements of ***Rule 2 of the Arbitration Rules, 1997***. Specifically, they argue that the application has been presented by way of Notice of Motion rather than Chamber Summons, as expressly required, and further that it is not anchored on a suit. The Court heard and has considered the oral submissions of Learned Counsels; Mr Kadu for the applicants, Ms Lukoye for

the 1st respondent and Ms Mangich for the 2nd respondents.

Analysis and Determination

4. ***Rule 2 of the Arbitration Rules*** provides in clear terms that:

> ***"Applications under sections 6 and 7 of the Act shall be made by summons in the suit."***

5. The jurisprudence on the effect of non-compliance with this requirement is well settled. The Court of Appeal in ***Scope Telematics International Sales Limited V Stoic Company Limited & Another, [2017] KECA 545 (KLR)*** addressed circumstances materially similar to those before me. In that case, the Court emphasized that ***Rule 2*** is couched in mandatory terms and that failure to comply with the prescribed procedure is not a mere technicality but goes to the root of jurisdiction. The Court observed that while ***Article 159 of the Constitution*** enjoins courts to administer justice without undue regard to technicalities, it cannot be invoked to circumvent clear statutory imperatives.

6. For the avoidance of doubt, the Court stated as follows:

"It must be borne in mind that the substantive provision that the 1st respondent invoked was Section 7 of the Act. The 1st respondent was seeing an interim measure of protection pending arbitration. The procedure applicable in such circumstances is clearly spelt out by Rule 2 of the Arbitration Rules, 1997. Suffice it to say, that the rule is couched in mandatory terms. Our jurisprudence reflects the position that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or Statute, that procedure should be strictly followed (See Speaker of National Assembly v Njenga Karume, [2008] 1 KLR 425). The 1st respondent did not proffer any reason or excuse for its failure to premise its application upon a suit as was required by the rules. It however sought to rely on Article 159 of the Constitution for the

proposition that justice is to be administered without undue regard to technicalities. That Article also provides that alternative forms of dispute resolution mechanisms like arbitration should be promoted by the courts. There are however many decided cases to the effect that Article 159 of the Constitution should not be seen as a panacea to cure all manner of indiscretions relating to procedure (See Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Ors, [2010] eKLR."

7. Departing from earlier decisions of this Court where discretion had been exercised in reliance of ***Article 159***, the Court of Appeal held as follows:

"The manner of initiating a suit cannot be termed as a mere case of technicality. It is the basis of jurisdiction. Obviously, in overlooking a statutory imperative and the above authorities, the learned Judge cannot be said to

have exercised his discretion properly. There can be no other interpretation of Rule 2. The application should have been anchored on a suit. It was not about what prejudice the appellant or and 2nd respondent would suffer or what purpose the suit would have served. Discretion cannot be used to override a mandatory statutory provision. For these reasons, we are in agreement with the submissions of the appellant that the application was fatally and incurably defective."

8. In the present case, the application dated 17th December 2025 was brought as a miscellaneous application, by way of Notice of Motion, and not grounded on a suit. Learned counsel for the applicants, while candidly acknowledging this procedural lapse, nonetheless urged the Court to find refuge in ***Rule 43 of the Arbitration Rules, 2022***, contending that it affords flexibility in relation to the requirements under ***Sections 6 and 7 of the Arbitration Act***. With respect, I am not persuaded

by that submission. The language of ***Rule 2 of the Arbitration Rules, 1997*** is couched in mandatory terms, and it prescribes the precise manner in which applications under ***Sections 6 and 7*** are to be brought.

9. If indeed it had been the intention of Parliament that ***Rule 43*** should supersede or amend the requirements of ***Rule 2,*** nothing would have been simpler than to expressly provide so, either by way of clear statutory amendment or by repeal of the earlier provision. Absent such express legislative intervention, this Court cannot read into ***Rule 43*** a meaning that would have the effect of nullifying or overriding ***Rule 2***.

10. The applicants have sought to advance the argument that their application dated 17th December 2025 raises constitutional issues and that, absent the Court's intervention, they would be left without a remedy. That contention cannot be sustained. As correctly pointed out by the respondents, what is before this Court is not a constitutional petition but rather a miscellaneous application.

11. I am fully cognizant of the difficult position in which the applicants presently stand. Nevertheless, this Court is constrained by precedent and the doctrine of stare decisis, which obliges fidelity to the decisions of superior courts. The jurisprudence of the Court of Appeal has been unequivocal. I have no latitude to depart from that settled position. To do otherwise would be to arrogate to this Court a jurisdiction that the law does not confer.

Disposition

12. Accordingly, I find that the application dated 17th December 2025 is fatally defective and cannot be sustained. The preliminary objection dated 13th February 2026 is upheld and the application dated 17th December 2025 is hereby struck out for want of jurisdiction. I make no orders as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS *27TH* DAY OF *FEBRUARY* *2026*.

F. MUGAMBI
JUDGE

Delivered in presence of:
Mr Kadu for the applicants
Ms Mangich HB for Mr Lubano for the 2nd respondents
Ms Lukoye HB for Dr Nyaundi for the 1st respondent
Court Assistant: Lillian