

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPELLATE DIVISION
CIVIL TRIBUNAL APPEAL NO. E045 OF 2025

UNITED DEMOCRATIC ALLIANCE (UDA)
ELECTORAL NOMINATION & DISPUTE
RESOLUTION COMMITTEE..... APPLICANT

VERSUS

GLORIA MAGOMA ORWOBA.....1ST RESPONDENT
FESTUS OMWAMBA..... 2ND RESPONDENT
HENRY MURIITHI..... 3RD RESPONDENT
OFFICE OF THE REGISTRAR OF
POLITICAL PARTIES.....4TH RESPONDENT

AND

INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION.....1ST INTERESTED PARTY
THE SENATE.....2ND INTERESTED PARTY

RULING

1. For determination before this Court is motion dated **22.08.2025** and Preliminary Objection (PO) dated **22.09.2025**.
2. **United Democratic Alliance (UDA) Electoral Nomination & Dispute Resolution Committee** (*hereafter the Applicant*) filed the motion dated 22.08.2025 as against the **Gloria Magoma Orwoba, Festus Omwamba, Henry Muriithi** and **Office of the Registrar of Political Parties (ORPP)** (*hereafter the 1st, 2nd, 3rd & 4th Respondent*) and **Independent Electoral & Boundaries Commission** and **The Senate** (*hereafter the 1st & 2nd Interested Party*) seeking *inter alia*-;
 - a) *Spent*.

b) Pending hearing and determination of the appeal, the honorable Court be pleased to grant stay of execution of the judgment and order of the honorable Tribunal delivered on 20.08.2025 in PPDT Complaint No. E006 of 2025 – Gloria Orwoba v United Democratic Alliance & Others

c) The appeal be heard on priority basis.

d) The honorable Court be at liberty to issue such further and other reliefs that may be just and expedient.

e) Costs of the application be borne by the 1st Respondent.

3. The motion is brought pursuant to **Section 1A & 3A** of the **Civil Procedure Act (CPA)** and **Order 42 Rule 6** of the **Civil Procedure Rules (CPR)** on grounds amplified in the supporting affidavit sworn by **Hon. Hassan Omar Hassan** on even date, who cites being the Secretary General of the Applicant. The gist of his deposition is that vide a decision rendered on 16.05.2025, the Applicant's disciplinary committee procedurally expelled and removed the 1st Respondent from being a member of the Applicant in accordance with provisions of its constitution. That the 1st Respondent thereafter moved the **Political Parties Dispute Tribunal** (*hereafter Tribunal*) challenging the Applicant's decisions, to wit, judgment was delivered on 20/08/2025 allowing the 1st Respondent's complaint with costs. He goes on to depose that being aggrieved by the whole decision of the Tribunal the Applicant intends to appeal the same.
4. That the Applicant is reasonably apprehensive that the impugned judgment and orders of 20.08.2025 shall be executed at any time against the UDA - Electoral Nomination and Dispute Resolution Committee who risks being cited for contempt. Yet the organ was a non-party in the dispute before the Tribunal whereas the orders

emanating from the latter shall undermine UDA - Electoral Nomination and Dispute Resolution Committee autonomy as enshrined under **Article 38** as read with **Article 98(1)(b)** of the **Constitution** and its internal disciplinary as well as governance structures shall be rendered nugatory.

5. He goes on to depose that the Applicant is likely to suffer substantially and irreparably as it will be permanently restrained from enforcing its disciplinary mandate as enshrined under **Article 68** of the **UDA Constitution** and **Political Parties Act**. In conclusion he states that unless this Court intervenes, the 1st Respondent shall continue enjoying party membership and Senate privileges despite valid disciplinary decisions from the Applicant hence defeating the substratum of the appeal which will be rendered nugatory or a mere academic exercise.
6. **Gloria Magoma Orwoba**, opposes the motion by way of a **replying affidavit** dated **26.08.2024**. At the outset, she assails the motion as being an afterthought, unmeritorious, mischievous, frivolous, incompetent and an abuse of the Court process. She states that the Tribunal only quashed the decision by the Applicant's Disciplinary Committee as such there is no positive order issued by the Tribunal that can be the subject of enforceability and or stay of execution. That the Applicant, 4th Respondent and Interested Parties in a bid to defeat execution or enforcement of the Tribunal's decision, hurriedly proceeded to orchestrate the swearing in of one Consolata Nabwire as a nominated Senator, purporting to replace her, on the same day the Tribunal rendered its decision.
7. That the Applicant's conduct throughout the proceedings before the Tribunal has been in bad faith with unclean hands and therefore it is shocking that it has the audacity of approaching this honorable

Court vide the instant motion. And yet expects this Court to entertain and assist it with stay of execution orders to justify their contempt and continued state of contempt. She deposes that the instant motion is merely an attempt to sanitize the Applicant's contemptuous actions, to wit, the Court ought to decline to grant the order sought and determine the appeal on its merits. That in any event the Applicant has not demonstrated what prejudice it will suffer in the event the orders sought herein are denied.

8. In rejoinder by way of a Supplementary affidavit dated 27.08.2025, **Hon. Hassan Omar Hassan** states that the judgment before the Tribunal was against the Applicant yet the disciplinary action sought to be challenged was rendered by the UDA Disciplinary Committee. That latter are two (2) distinct organs of the UDA party, to wit, the Tribunal having issued adverse order against the wrong party, its decision is irredeemably invalid. He goes on to state that the 1st Respondent's insinuation that the Applicant is in contempt of Court orders is misleading given that the 1st Respondent despite moving the Tribunal did not succeed in obtaining any conservatory orders before it. He concludes by stating that it is fair and just that the orders sought be granted so as to protect and preserve the rights of the Applicant to a fair hearing and allow this Court to determine the issues raised in the appeal on merit, and to obviate imminent difficulties, prejudice and injustice to the Applicant.
9. The 1st Respondent thereafter filed the Preliminary Objection (PO) dated 22.09.2025 challenging the appeal and motion on the following grounds-;
 - a) ***The purported Applicant, UDA Electoral Nomination and Dispute Resolution Committee, is an unknown, unrecognized, and unincorporated entity in law with no capacity to sue or be sued.***

- b) The purported Applicant, UDA Electoral Nomination and Dispute Resolution Committee lacks locus to institute an Appeal by virtue of having not been a party at the Political Parties Dispute Tribunal.*
- c) That the purported Applicant UDA Electoral Nomination and Dispute Resolution Committee being no juridical or natural person cannot then purport to instruct or authorize the UDA Party to sue on its behalf.*
- d) That no Application for leave/joinder by the purported UDA Electoral Nomination and Dispute Resolution Committee has been filed in these proceedings to enable the said Appellant to participate in these proceedings.*
- e) That the express provisions of the Law require a party disenfranchised by a decision it isn't a party to, to file an Application to set aside the said Judgement. No such party can file an Appeal in absence of an Application to set aside at the first instance.*

10. Directions were taken on disposal of both the Applicant's motions and 1st Respondent Preliminary Objection (PO) by way of written submissions. The respective parties duly complied.

11. That said, the Court has considered the rival material alongside the submissions, to wit, the Court's postulation that the issues for **determination concerns:**

- a) Whether the 1st Respondent's Preliminary Objection is merited?*
- b) Whether pending hearing and determination of the appeal, this Court ought to grant stay of execution of the judgment and order of the Tribunal delivered on 20.08.2025?*
- c) Whether the appeal ought to be heard on priority basis?*
- d) Who ought to bear the costs?*

Whether the 1st Respondent's Preliminary Objection is merited?

12. As to the nature of a PO, the same has since been settled within our jurisdiction in the celebrated decision of **Mukisa Biscuits Manufacturing Company Ltd.** It was held therein that -;

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.....

A preliminary objection is in the nature of what used to be a demurrer: It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, or occasion, confuse the issues, and this improper practice should stop.”

13. In the case of **Oraro v Mbaja (2005) KLR 141, Ojwang J** (as he then was) reiterated the above by stating that-;

“A preliminary objection correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested, and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed.

Where a court needs to investigate facts; a matter cannot be raised as a preliminary point.... Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

14. Meanwhile, the Court of Appeal in **Kigwor Company Limited v Samedy Trading Company Limited [2021] KECA 810 (KLR)** cited with approval the decision of the Supreme Court in **Independent Electoral & Boundaries Commission v Cheperenger & 2 others [2015] KESC 2 (KLR)** where the latter court emphasized that:-

***“[16] It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law. (See Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others, Civil Application No. 14 of 2014, [2014] eKLR).*”**

15. This Court had earlier set out the gist of the 1st Respondent’s preliminary objection. *Ex facie*, it not premised on provision of stature and or settled/crisps point of law. The issues canvassed therein in the Court’s reasoned deduction appear to be blurred by factual details liable to be contestation. The objections as can be garnered concern capacity to sue or be sued; *locus standi*; and joinder or misjoinder, all of which present factual elements that are liable to challenge by the Applicant.

16. In essence, the objections avails room for further interrogation wherein the Applicant would be in possession or position to advance evidentiary material towards deflecting the objections raised by the 1st Respondent. While I concede that the objections by the Applicant would properly present as preliminary questions *in limine*, in my estimation they are nevertheless not synonymous to a preliminary objection founded upon a settled and crisp point of law. Consequently, the 1st Respondent’s preliminary objection dated 22.09.2025 cannot sustain in the circumstance and is accordingly declined.

Whether pending hearing and determination of the appeal, this Court ought to grant stay of execution of the judgment and order of the Tribunal delivered on 20.08.2025?

17. It is trite that the power of the Court to grant stay of execution of a decree pending appeal is discretionary, however the discretion should be exercised judicially. See **Butt v Rent Restriction Tribunal [1982] KLR 417**. The Applicant's prayer for stay of execution pending appeal, is brought under **Order 42 Rule 6** of the **CPR** which provides that: -

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the Applicant unless the order is made, and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant”.

18. From the said provisions, it is clear that in order to succeed in an application for stay of execution, an applicant must demonstrate that substantial loss may result unless the order of stay is issued; that the motion seeking stay pending appeal has been brought without

undue delay; and must give security for the due performance of any decree or order that may ultimately be found to be binding on the applicant.

19. Further, the test on substantial loss and or prejudice likely to be occasioned to a party, where the decree sought to be appealed, is a money decree, appertaining, *difficulty in paying, or loss of money if payment is made since the Respondent would be unable to repay the decretal sum* was conclusively addressed in the of-cited decision of **Kenya Shell Ltd v Kibiru & Another [1986] KLR 410**.
20. With above in reserve, there is no dispute that the Applicant moved with alacrity in filing the instant motion given the fact that the impugned judgment of the Tribunal was delivered on 20.08.2025 and the instant motion filed on 22.08.2025.
21. On substantial loss, the decree in question is not expressly a money decree. That said, the Court has taken the liberty of perusing the judgment of the Tribunal rendered on 20.08.2025. In essence, it rendered a declaration that the decision of Applicant in expelling the 1st Respondent was unlawful and illegal; quashed the Applicant's decision expelling the 1st Respondent; declared disciplinary proceedings conducted by the Applicant as unprocedural and unlawful; granted an injunction restraining the Applicant from removing the name of the 1st Respondent from the register of members of the UDA Party; restrained the 4th Respondent from effecting the impugned decision of the Applicant & directed the former to reverse any decision it may have made effecting the impugned decision of the Applicant; and declared the letter by the Applicant Party Secretariat to the speaker of the 2nd Interested Party

purporting to expunge the 1st Respondent from the UDA Party List as ultra vires, unconstitutional and void ab initio.

22. Why do I digress, the 1st Respondent has contended that there was no positive order issued by the Tribunal that can be the subject of enforceability and or stay of execution? In other words, I garner it to be the 1st Respondent's contention that the orders emanating from the Tribunal were negative in nature and thus incapable of execution.
23. On the latter, the position on whether a negative order can be stayed is rather settled within our jurisdiction. The Court of Appeal in **Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Millimo, Muthomi & Co. Advocates & 2 others [2022] KECA 491 (KLR)** pithily observed that-;

“As submitted by learned counsel for the 1st respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in Western College of Arts and Applied Sciences vs Oranga & Others (1976-80) 1 KLR, where the Court stated in respect of stay of execution as follows:

“But what is there to be executed under the judgment, the subject of the intended appeal” The High Court has merely dismissed the suit with costs. Any execution can only be in respect of costs. In Wilson v Church, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in and application for stay, it is so ordered.”

Further, in the more recent case of Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7

Others [2016] eKLR, the Court of Appeal expounded on stay of execution stating:“

16.In Kanwal Sarjit Singh Dhiman vs Keshavji Juvraj Shah [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows:“The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & Applied Sciences vs. Oranga & Others__ [1976] KLR 63 at page 66 paragraph C).”

24. As earlier set out, there were a raft of orders issued by the Tribunal in which some had a directive element and or positive connotation requiring certain actions to be done by the 4th Respondent and the Speaker of the 2nd Interest Party. In totality of the forestated, it cannot be concluded that the orders issued therein were negative and incapable of execution. Therefore, the 1st Respondent's objection that the order of the Tribunal issued on 20.08.2025 constituted a negative order cannot sustain.
25. Thus, to address whether the Applicant has demonstrated substantial loss, the gist of the Applicant's deposition on the issue had equally and earlier been set out in this ruling. That said what I understand to be the highlighted substantial loss is that there is risk of citation for contempt of a party who was a non-party to the dispute before the Tribunal; undermining the autonomy of the Applicant with reference to **Article 38** and **98(1)(b)** of the **Constitution**; irreparable harm to the Applicant disciplinary

mandate under Article 68 of the Applicant's constitution and the **Political Parties Act**; and rendering the appeal nugatory given that the 1st Respondent will continue to enjoy party membership and Senate privileges despite valid disciplinary decisions by the Appellant.

26. As to the risk of contempt, the Court is not convinced that it constitutes a valid reason on substantial loss. The Court notes from the record before it, that the complaint before the Tribunal was amended to reflect the 1st Respondent as United Democratic Alliance in place of United Democratic Alliance (UDA) Electoral Nomination & Dispute Resolution Committee as captured in the instant proceedings. Further, I gather from the decree emanating from the Tribunal that the latter's orders were specifically against the **UDA Party** and not the United Democratic Alliance (UDA) Electoral Nomination & Dispute Resolution Committee. Therefore, the question of contempt as against the latter does not arise.
27. It is also disingenuous of the counsel to argue contempt by a non-party yet by implication of his own pleadings he fails to properly capture the parties as amended before the Tribunal. In my estimation the title of the parties as they appear in the judgment seems to be an inadvertent omission by the Tribunal.
28. On autonomy of the Applicant, its disciplinary mandate under article 68 of its constitution & the **Political Parties Act**, and rendering the appeal nugatory, in the Court's reasoned deduction, the argument equally cannot hold on the backdrop of this Court's appellate jurisdiction pursuant to **Article 165** of the **Constitution** and **Section 65** of the **Civil Procedure Act**. In any event should the Applicant succeed on its appeal, its decision rendered on 16.05.2025 and 19.05.2025 would be upheld. Whereas it is also

notable that the 13th parliamentary cycle has yet to lapse thereby it cannot be posited that the appeal will be rendered nugatory. Concerning autonomy of the Applicant, the orders emanating from the Tribunal were specifically in relation to Applicant's decision expelling the 1st Respondent. The orders do not hinder the Applicant from continuing to carry out disciplinary functions as against errand party members of the Applicant.

29. Thus, in totality of the aforestated, the Court reasonably believes that the Applicant has failed to demonstrate substantial loss should this Court fail to grant an order of stay of execution pending appeal. It is trite that substantial loss in its various forms is the cornerstone of the Court's jurisdiction for granting stay, and is what has to be prevented. As stated in the **Shell** case, without a demonstration of substantial loss, it would be rare that any other event would render the appeal nugatory. Consequently, the Applicant's motion lacks merit and is therefore dismissed.

30. As to the question of costs, given that the dispute emanates from a political party and member, or former member, as the case may be, applying my mind to the provisions of **Section 27** of the **Civil Procedure Act (CPA)**, I direct that each party bears its own costs.

31. **Orders Accordingly!**

DATED DELIVERED VIRTUALLY AND SIGNED THIS 13TH DAY OF APRIL 2026.

**L. P. KASSAN
JUDGE**

ORIGINAL