Julius v Chief Registrar of the Judiciary & 14 others (Application E001 of 2025) [2025] KESC 7 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KESC 7 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

APPLICATION E001 OF 2025

MK KOOME, CJ, PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ

MARCH 14, 2025

BETWEEN

MIIRI JULIUS .... APPLICANT

AND

CHIEF REGISTRAR OF THE JUDICIARY .... 1ST RESPONDENT

AHMEDNASSIR MAALIM MOHAMUD .... 2ND RESPONDENT

ALI OSMAN MOHAMUD .... 3RD RESPONDENT

PETER MUCHOKI GICHURU .... 4TH RESPONDENT

COHEN KYAMPENE AMANYA .... 5TH RESPONDENT

IRENE JELAGAT KOECH .... 6TH RESPONDENT

ESTHER AMBOKO WANGA .... 7TH RESPONDENT

KHADIJA SAID ALI .... 8TH RESPONDENT

ELIZABETH WANGUI MUNGAI .... 9TH RESPONDENT

TONY KIPROTICH TOWET .... 10TH RESPONDENT

MOHAMMED BILLOW ABDI .... 11TH RESPONDENT

JERIOTH MUTHONI GATERE .... 12TH RESPONDENT

OMAR ATHMAN MWARORA .... 13TH RESPONDENT

HILDA MULWA NDULU .... 14TH RESPONDENT

JEMIMAH AILEEN MASUDI .... 15TH RESPONDENT

A miscellaneous application at the Supreme Court cannot be filed outside existing proceedings

The application sought among other orders, the review and setting aside of the court's recusal decision as against the 2nd to 15th respondent. The court found from a reading of rule 31 of the Supreme Court Rules that an interlocutory application ought to be anchored on a petition or appeal filed. The rule did not contemplate the filing of a miscellaneous application outside existing proceedings. The court further held that it could not invoke its inherent jurisdiction to correct a deviation from clear and well laid out procedure.

Reported by Kakai Toili

Civil Practice and Procedure *– pleadings – miscellaneous applications – filing of miscellaneous applications at the Supreme Court - whether a miscellaneous application at the Supreme Court could be filed outside existing proceedings – Supreme Court Act (cap 9B), section 21A; Supreme Court Rules, 2020, rule 31.*

Jurisdiction *– jurisdiction of the Supreme Court – inherent jurisdiction - whether the Supreme Court could invoke its inherent jurisdiction to correct a deviation from constitutional and statutory guidelines as to the filing of pleadings before it.*

Constitutional Law *– locus standi – locus standi to file applications seeking review of Supreme Court decisions - whether a person who was not a party to a suit at the Court of Appeal had the locus standi to file an application seeking review of the decision of the Supreme Court in that matter – Constitution of Kenya, article 159(d).*

Brief facts

The court sent communication to Mr. Ahmednasir Abdullahi SC to the effect that he had conducted a campaign in the broadcast, print and social media aimed at scandalizing, ridiculing and out-rightly denigrating the court and that action would therefore be taken against him. Subsequently, the court made an order wherein all the seven judges of the court recused themselves from hearing *Zehrabanu Mohammed S.C. (Suing as the executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi & Anor v Nathaniel K. Lagat & 4 Others SC* Petition No. 17 (E021) of 2022 as consolidated with Petition No. 24 (E027) of 2022 as long as Mr. Ahmednasir was appearing either by himself, through an employee of his firm, or any person holding his brief, or acting pursuant to his instructions. Similar orders were issued in *Fatuma Athman Abud Faraj v Rose Faith Mwawasi & 2 Others* SC Petition No. E035 of 2023 where the firm of M/s Ahmednasir Abdullahi Advocates LLP was acting for the appellant.

The applicant filed the instant application seeking among other orders, the review and setting aside of the court's recusal decision as against the 2nd to 15th respondent. The applicant averred that being a practicing advocate, he had *locus standi* to bring the proceedings for the reasons that he had a direct and substantial interest in the subject matter of litigation, to wit, the recusal of the entire bench of the court and how it affected the role of advocates in the representation of their clients.

Issues

i. Whether a miscellaneous application at the Supreme Court could be filed outside existing proceedings.

ii. Whether the Supreme Court could invoke its inherent jurisdiction to correct a deviation from constitutional and statutory guidelines as to the filing of pleadings before it.

iii. Whether a person who was not a party to a suit at the Court of Appeal had the *locus standi*to file an application seeking review of the decision of the Supreme Court in that matter.

Relevant provisions of the Law

Supreme Court Act (Cap 9B)

Section 21A - Review of own decision

The Supreme Court may review its own decision, either on its own motion, or upon application by a party in any of the following circumstances—

(a) where the judgement, ruling or order was obtained through fraud, deceit or misrepresentation of facts;

(b) where the judgement, ruling or order is a nullity by virtue of being made by a court which was not competent;

(c) where the court was misled into giving a judgement, ruling or order under the belief that the parties have consented; or

(d) where the judgement, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision.

Supreme Court Rules 2020

Rule 31 - Interlocutory applications

(1) Every interlocutory application to the Court shall be filed together with written submissions and shall be determined by way of written submissions.

(2) An interlocutory application shall not be originated before a petition of appeal or a reference is filed with the Court.

(3) An interlocutory application together with written submissions shall be served within seven days of filing.

(4) A response to the interlocutory application together with written submissions shall be filed and served within seven days.

(5) The applicant, upon service of the response, shall file a rejoinder which may include supplementary submissions within seven days.

(6) An interlocutory application shall be by way of a Notice of Motion.

Held

1. The Supreme Court Rules, 2020 was specific as to the mode of filing interlocutory applications before the court. From a reading of rule 31 of the Rules, an interlocutory application ought to be anchored on a petition or appeal filed. The rule did not contemplate the filing of a miscellaneous application outside existing proceedings. Further, the motion as filed sought to review certain decisions made by the court. Section 21A of the Supreme Court Act in that context anticipated the filing of an application against a decision sought to be reviewed. The applicant had not filed the application in the matters where the decision for recusal was made by the court. From a concise reading of section 21A of the Supreme Court Act and rule 31 of the Supreme Court Rules therefore, the applicant ought to have anchored his review application on those two specific appeals.
2. While article 159(d) of the Constitution mandated that justice ought to be administered without undue regard to procedural technicalities, where there existed clear constitutional and statutory guidelines as to the filing of pleadings before the court, a deviation of the same could not warrant the protection afforded under article 159(d). The court could not invoke its inherent jurisdiction to correct a deviation from clear and well laid out procedure. The filing of the instant miscellaneous application was procedurally flawed.
3. The issue of *locus standi* raised a point of law which touched on the jurisdiction of the court, and it should be resolved at the earliest opportunity. The applicant was neither a party to the proceedings, the subject of which he had raised respective arguments in the application nor had he sought to be enjoined to those proceedings. The issues pertinent to the review orders sought only related to the 2nd to 15th respondents. Those respondents on their part had not filed an application seeking review of the court's recusal orders, a right available to them if they were minded to invoke it. They had equally not filed pleadings in support of nor in opposition to the instant application. Their letter of February 7, 2025 was not a pleading and remained mere correspondence to the court and was of no value in determining the application on its merits or otherwise.
4. A person seeking to file an appeal only extended to a party who was aggrieved by a decision issued against him by the Court of Appeal and wished to prefer an appeal to the Supreme Court. A person in that context should therefore be a party with *locus standi* in the matter. The definition did not open the door for any passer-by who was disgruntled with a decision delivered by the appellate court to approach

the court. That finding also applied to matters relating to public interest. The applicant, while well intentioned, had no *locus standi* to bring the instant miscellaneous application.

Application struck out; no orders as to costs.

Citations

Cases

Kenya

1. *Aramat & another v Lempaka & 3 others* Petition 5 of 2014; [2014] KESC 21 (KLR) - (Explained)
2. *Asanyo & 3 others v Attorney General* Petition 21 of 2015; [2018] KESC 15 (KLR) - (Applied)
3. *Equity Bank Limited v West Link Mbo Limited* Civil Application 78 of 2011; [2013] KECA 320 (KLR) - (Applied)
4. *Fatuma Athman Abud Faraj v Rose Faith Mwawasi & 2 others* Petition No E035 of 2023 - (Applied)
5. *Kaluma v NGO Co-ordination Board & 5 others* Application E011 of 2023; [2023] KESC 72 (KLR) - (Applied)
6. *Law Society of Kenya Nairobi Branch v Malindi Law Society , Attorney General, Chief Justice and President of The Supreme Court, National Assembly, Law Society of Kenya, National Land Commission & Parliamentary Service Commission* Civil Appeal 287 of 2016; [2017] KECA 231 (KLR) - (Applied)
7. *Law Society of Kenya v Communications Authority of Kenya & 10 others* Petition 8 of 2020; [2023] KESC 27 (KLR) - (Explained)
8. *Matemu v Trusted Society of Human Rights Alliance & 5 others* Civil Application 29 of 2014; [2014] KESC 6 (KLR) - (Explained)
9. *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* Petition 3 of 2018; [2021] KESC 34 (KLR) - (Applied)
10. *Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others* Petition 5, 3 & 4 of 2013 (Consolidated); [2013] KESC 6 (KLR) - (Explained)
11. *Outa v Okello & 3 others* Petition 6 of 2014; [2017] KESC 25 (KLR) - (Applied)
12. *Rai & 3 others v Rai & 4 others* Petition 4 of 2012; [2014] KESC 31 (KLR) - (Explained)
13. *Silvanus Kizito v Edith Nkirote Mwiti* Civil Appeal 46 of 2017; [2021] KEHC 8783 (KLR) - (Applied)
14. *Zehrabanu Mohammed S.C. (Suing as the executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi & Anor v Nathaniel K. Lagat & 4 Others* SC Petition No. 17 (E021) of 2022 as consolidated with Petition No. 24 (E027) of 2022 - (Applied)

South Africa

1. *Lieschieng and Others v S* (CCT304/16) [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) (29 August 2018) - (Applied)
2. *S v Bruintjies* (676/2002) [2003] ZASCA 4; 2003 (2) SACR 575 (SCA) (25 February 2003) - (Applied)

United Kingdom

R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet [1998] UKHL 41; [2000] 1 AC 61 - (Applied)

India

Manohar Lal Chopra v Bahadur Rao Raja Seth Hairalal 1962 AIR 527, 1962 SCR Sup (1) 450, AIR 1962 SC 527, 1963 All L J 169 - (Applied)

Statutes

Kenya

1. Constitution of Kenya articles 2; 3(1); 10; 19; 20(1); 20(2); 20(3); 22(1); 22(2); 25; 47; 48; 50(1); 159; 163(7); 258; 259- (Interpreted)
2. Law Society of Kenya Act (cap 18) section 4 - (Interpreted)
3. Supreme Court Act (cap 9B) sections 3; 14(5); 21(7); 21A - (Interpreted)

4. Supreme Court Rules, 2020 (cap 9B Sub Leg) rules 3; 20; 31; 32- (Interpreted)

Advocates

Julius Miiri (Miiri & Associates) for the applicant

RULING

Representation:-

Julius Miiri for the Applicant

(Miiri & Associates)

No Appearance for the 1st Respondent

No Appearance for the 2nd to 15th Respondents

(Ahmednasir Abdullahi Advocates LLP)

A. Introduction

1. This courton 18th January 2024 sent communication to Mr. Ahmednasir Abdullahi SC, to the effect that he had relentlessly and unabashedly conducted a campaign in the broadcast, print and social media aimed at scandalizing, ridiculing and out-rightly denigrating the court and that action would therefore be taken against him.

2. Subsequent to the above communication, the court, on January 23, 2024, made an Order wherein all the seven (7) judges of the courtrecused themselves from hearing *Zehrabanu Mohammed S.C. (Suing as the executrix of the Estate of the Late H.E. Daniel Toroitich Arap Moi & Anor v Nathaniel K. Lagat & 4 Others* SC Petition No. 17 (E021) of 2022 as consolidated with Petition No. 24 (E027) of 2022 as long as Mr. Ahmednasir Abdullahi, SC was appearing either by himself, through an employee of his firm, or any person holding his brief, or acting pursuant to his instructions. Similar orders were issued on January 25, 2025 in *Fatuma Athman Abud Faraj v Rose Faith Mwawasi & 2 Others* SC Petition No. E035 of 2023 where the firm of M/s Ahmednasir Abdullahi Advocates LLP was acting for the appellant.

3. It is in light of the above circumstances that the applicant herein moved this court, through a notice of motion dated January 3, 2025 and filed on February 4, 2025 anchored on articles 2, 3(1), 10, 19, 20 (1), (2) & (3), 22 (1) & (2), 25, 47, 48, 50 (1), 163 (7), 258 & 259 of the *Constitution of Kenya 2010*, Sections 3, 14 (5) and 21 (7) of the *Supreme Court Act* No. 7 of 2011 and rules 3, 20, 32 of the *Supreme Court Rules* seeking the following reliefs:

> " a ......Spent
>
> b. That the recusal decision made by this honourable courtdated January 23rd, 2024 and January 22nd 2025 be and is hereby reviewed and set aside as against the 2nd respondent to 15th respondent. In (the) Alternative, the recusal decision made by this honourable court dated January 23rd, 2024 and January 22nd 2025 be and is hereby reviewed and set aside as against the 3rd to 15th respondents.
>
> c. That any consequential administrative communication dated January 18, 2024by the 1st Respondent be and is hereby reviewed and set aside as against the 2nd Respondent to 15th Respondent".

B. Applicant's Case

4. The application is supported by the sworn affidavit of Miiri Julius of even date to the motionwherein he avers that being a practicing advocate, he has *locus standi* to bring these proceedings for the reasons that he has a direct and substantial interest in the subject matter of litigation, to wit, the recusal of the entire bench of this court and how it affects the role of advocates in the representation of their clients. That this honourable court also has inherent and residual jurisdiction to deal with recusal of judges which is a sui generis matter akin to contempt of court. That this furthermore court retains post decisional jurisdiction to change any of its decisions for good cause just like the jurisdiction conferred on it to act should a contemnor purge his/her action found to be in contempt of court and, the court therefore has jurisdictional powers to review its decision in exceptional circumstances so as to meet the ends of justice. That the application is thus brought to correct the misconception and misunderstanding created by the general public that this court also intended to punish the 3rd to 15th respondents.

5. The applicant further avers that the net effect of the court's decision is that the 2nd to 15th respondents have been restricted from appearing before the Supreme Court and the order has also limited advocates who may later join the firm from ever practicing before the Apex Court. The court in effecting the recusal order against the 2nd respondent thus affected all advocates in the firm and vicariously distributed liability to the 3rd to 15th respondents together with their clients for actions attributed to the 2nd respondent.

6. The applicant has also contended that, since the firm of M/S Ahmednasir Abdullahi Advocates is registered as an LLP and has other partners who have the power and/or authority to receive instructions and appear in their personal capacities, the other partners can therefore also issue instructions to advocates to hold their briefs before courts. The decision to decline to give audience to the 3rd to 15th respondents is thus disproportionate to the alleged infractions committed by the 2nd respondent and it affects clients who might have little to do with the 2nd respondent. The associates and partners of M/S Ahmednasir Abdullahi Advocates LLP have also demonstrated, as shown in the decision of this court dated January 22, 2025, that they have the capacity to handle cases on their own away from Advocate Ahmednasir Abdullahi, SC.

7. Upon filing of the application, the courton February 5, 2025, certified the matter as urgent and directed the same to be served upon the respondents and the respondents, upon service, do file their responses and submissions within five (5) days. The firm of M/S Ahmednasir Abdullahi Advocates LLP did not file any formal response to the Motion but instead sent a letter dated 7th February 2025 highlighting that they have serious issues with the procedural flaws and in the manner in which the Motion was instituted before the court, and that they were even more perturbed by the directions of the court requiring the 2nd to 15th respondents to file responses before it, bearing in mind the "ban" the court has issued against them. That therefore and in light of the subsisting "ban" against the 2nd to 15th respondents, they were incapacitated from making any responses to the application.

8. The applicant filed a supplementary affidavit sworn on February 17, 2025in response to the letter dated February 7, 2025wherein he averred that the recusal order does not bar the 2nd to 15th respondents from participating in the proceedings that seek to set aside the impugned orders of January 23, 2024. That the orders do not also ban the 2nd to 15th respondents from appearing in court where they have been sued personally in their individual capacity; the recusal order only relates to them when they are representing the firm of the 2nd respondent in court. As for the procedural flaws, the applicant averred that a miscellaneous application is the right route to follow where a collateral issue has no bearing or does not concern the main suit.

9. The applicant also filed submissions and list of authorities dated February 4, 2025wherein he submitted that articles 22 and 258 of the *Constitution* have expanded the scope of persons to institute proceedings alleging violation of the Bill of Rights and such person need not be generally affected or have a direct stake in a matter and one can therefore do so in public interest. In this respect he cites the court's decisions in *Matemu v Trusted Society of Human Rights Alliance & 5 Others* (Civil Application 29 of 2014) [2014] KESC 6 (KLR) (9 December 2014) (Ruling), *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 Others*, Civil Appeal 287 of 2016; [2017] eKLR. He further argued that, unlike the decision of the court in *Kaluma v NGO Coordination Board & 5 Others* (Application E011 of 2023) [2023] KESC 72 (KLR), this application does not seek to review the merits of the underlying cases but review of a miscellaneous process that would affect legal representation by lawyers in general.

10. To urge that the court has an obligation to resort to its inherent powers to review its decision on recusal of judges and ensure that the ends of justice are met, the applicant cited the court's decisions in *Geoffrey M. Asanyo & 3 Others v Attorney General* Sup. Ct. Pet No. 21 of 2015 [2018] eKLR, *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai Estate & 4 Others*; SC Petition No. 4 of 2012 [2013] eKLR, and the United Kingdom decision in *Re Pinochet* [1998] [1999] HL where a five judge bench decision was reviewed by a different set of five judges. On the inherent jurisdiction on recusal matters, the applicant submits that a court may become *functus officio* with respect to substantive issues in a case, yet still retain the administrative capacity to issue directives regarding the procedural management of a case. A court thus retains the duty and powers to handle other issues facilitative to the matter citing *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR, *Mitubell Welfare Society v Kenya Airports Authority & 2 Others* [2021] eKLR, the persuasive authority of the High Court in *Silvanus Kizito v Edith Nkirote Mwiti* [2021] eKLR and of the Court of Appeal in *Equity Bank Limited v West Link Mbo Limited* [2013] eKLR. To this point he posited that the recusal decision of the court, unlike a merit decision, is an exception to the general rule of *functus officio*.

11. As to whether the review is warranted, he opined that, given the amorphous nature of the term 'special circumstances' or 'exceptional circumstances', a court, while exercising its discretion in dealing with an application for review on recusal, must consider all relevant factors, evidence and determine whether the circumstances of an exceptional or special nature exist which justify the review. That there are exceptional circumstances in this case and the courtis obligated to resort to its inherent powers, to ensure that the ends of justice are met. The applicant relied on this court's decision in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others* SC Petition No. 6 of 2014 on exceptional circumstances to vary the court's decisions, the South African decisions in *S v Bruintjies* 2003 (2) SACR 575 (SCA), *Lieschieng and Others v S* (CCT304/16) [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC) (29 August 2018) on the meaning of exceptional circumstances and the Indian Supreme Court decision in *Manohar Lal Chopra v Bahadur Rao Raja Seth Hairalal* (1962) SC 527 on a court resorting to its inherent powers to meet the ends of justice.

C. Issues for Determination

12. Upon considering the motion, the affidavit in support, the supplementary affidavit and the submissions of the applicant, we find the following issues are pertinent for our consideration:

    a. Whether the motion as filed is procedurally flawed.

    b. Whether a non- party to proceedings has the legal standing to seek a review of the Court's decisions.

    c. Whether the motion meets the threshold for granting the orders sought.

D. Analysis

a. Whether the motion as filed is procedurally flawed

13. The applicant has opined that the filing of a 'miscellaneous application' is the right route to take where a collateral issue has no bearing or does not concern a main suit. The *Supreme Court Rules 2020* is however specific as to the mode of filing interlocutory applications before this court. Rule 31 provides that:

> " 31. Interlocutory applications
>
> 1. Every interlocutory application to the court shall be filed together with written submissions and shall be determined by way of written submissions.
> 2. An interlocutory application shall not be originated before a petition of appeal or a reference is filed with the court.
> 3. An interlocutory application together with written submissions shall be served within seven days of filing.
> 4. A response to the interlocutory application together with written submissions shall be filed and served within seven days.
> 5. The applicant, upon service of the response, shall file a rejoinder which may include supplementary submissions within seven days.
> 6. An interlocutory application shall be by way of a notice of motion." [Emphasis Ours]

14. A reading of rule 31 is clear that an interlocutory application ought to be anchored on a petition or appeal filed. The ruledoes not contemplate the filing of a miscellaneous application outside existing proceedings as suggested by the applicant. Further, the motionas filed seeks to review certain decisions made by this Court. Section 21A of the *Supreme Court Act* in that context anticipates the filing of an application against a decision sought to be reviewed. The section specifically provides:

> " 21A. Review of own decision
>
> The Supreme Court may review its own decision, either on its own motion, or upon application by a party in any of the following circumstances—
>
> a. where the judgement, ruling or order was obtained through fraud, deceit or misrepresentation of facts;
> b. where the judgement, ruling or order is a nullity by virtue of being made by a court which was not competent;
> c. where the court was misled into giving a judgement, ruling or order under the belief that the parties have consented; or

d. where the judgement, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision." [Emphasis Ours]

15. In this instance, the applicant has not filed the application in the matters where the decision for recusal was made by the court, to wit the case of *Zehrabanu Mohammed SC (Suing as the executrix of the Estate of the Late HE Daniel Toroitich Arap Moi & Anor v Nathaniel K. Lagat & 4 Others* SC Petition No. 17 (E021) of 2022 as consolidated with Petition No. 24 (E027) of 2022 or in the case of *Fatuma Athman Abud Faraj v Rose Faith Mwawasi & 2 Others* SC Petition No. E035 of 2023 where the firm of M/s Ahmednasir Abdullahi Advocates LLP was acting for the appellant. From a concise reading of section 21A of the *Supreme Court Act* and rule 31 of the *Supreme Court Rules* therefore, the applicant ought to have anchored his review application on these two specific appeals.

16. Having stated as above, and while we are mindful that article 159 (d) of the *Constitution* mandates that justice ought to be administered without undue regard to procedural technicalities, where there exist clear constitutional and statutory guidelines as to the filing of pleadings before the court, a deviation of the same cannot warrant the protection afforded under article 159 (d). This court in *Aramat & another v Lempaka & 3 others* [2014] KESC 21 (KLR), for example held that the filing of election petitions within the 28-day requirement was a constitutional imperative that stood out by itself and as such article 159 would not apply, as this was not an ordinary issue of procedural compliance. Similarly, in *Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others* (Petition 5, 3 & 4 of 2013 (Consolidated)) [2013] KESC 6 (KLR) (16 April 2013) this court, while interpreting the provision of article 159 (d), held as follow- at paragraph 218:

> ...The essence of that provision is that a court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone and which suits all situations of dispute resolution. On the contrary, the court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case, and conscientiously determine the best course. The time-lines for the lodgement of evidence, in a case such as this, the scheme of which is well laid-out in the *Constitution*, were in our view, most material to the opportunity to accord the parties a fair hearing, and to dispose of the grievances in a judicial manner. Moreover, the *Constitution*, for purposes of interpretation, must be read as one whole: and in this regard, the terms of article 159(2)(d) are not to be held to apply in a manner that ousts the provisions of article 140, as regards the fourteen-day limit within which a petition challenging the election of a President is to be heard and determined."

17. Flowing from the above and even in our expanded procedural space, this courtcannot invoke its inherent jurisdiction to correct a deviation from clear and well laid out procedure. We therefore find and hold that the filing of the miscellaneous application before us is procedurally flawed.

b. Whether a non- party to proceedings has the legal standing to seek a review of the Court's decision

18. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2014] eKLR the court held that the issue of *locus standi* raises a point of law which touches on the jurisdiction of the court, and it should be resolved at the earliest opportunity. The applicant in this case, we reiterate, was neither a party to the proceedings, the subject of which he has raised respective arguments in this application nor has he sought to be enjoined to those proceedings. The issues pertinent to the review orders sought only relate to the 2nd to 15th respondents. Those respondents on their part have not filed an application

seeking review of the court's recusal orders in the two matters above, a right available to them if they are minded to invoke it. They have equally not filed pleadings in support of nor in opposition to the present application. Their letter of February 7, 2025 is not a pleading and remains mere correspondence to the court and is of no value in determining the application on its merits or otherwise.

19. In *Law Society of Kenya v Communications Authority of Kenya & 10 others* [2023] KESC 27 (KLR) we defined that a person seeking to file an appeal only extended to a party who was aggrieved by a decision issued against him by the Court of Appeal and wished to prefer an appeal to the Supreme Court. A person in that context should therefore be a party with *locus standi* in the matter. The definition did not open the door for any passer-by who was disgruntled with a decision delivered by the appellate court to approach the court. That finding also applies to matters relating to public interest and there was difficulty in the Law Society of Kenya matter in granting relief at the appellate stage to a party who did not litigate those issues before the superior courts.

20. The courtin the above matter further held that a proper party must have a designed, subsisting, direct and substantive interest in the issues arising in the litigation which interest would be recognizable in a court of law being an interest, which the court would enforce. While the court therefore recognized the objectives of the Law Society as provided for in section 4 of the *Law Society of Kenya Act*, it was not and could not be a proper party in that appeal. Further that, while article 22 of the *Constitution* provided a pathway for parties to contest the denial, violation or infringement of a right or fundamental freedom, the proper point of entry for such a party would be at the High Court which the *Constitution* has granted jurisdiction to determine questions of denial, violation or infringement of a right or fundamental freedom. The Supreme Court did not therefore have the jurisdiction to hear and determine an appeal originated before it by a party who had not appeared at the High Court or Court of Appeal.

21. Similarly and applying our determination in *LSK v CAK* (*supra*) we find that the applicant, while well intentioned, had no *locus standi* to bring the miscellaneous application that is before us.

c. Whether the motion meets the threshold for granting the orders sought.

22. Having arrived at the determination that the application as filed is procedurally flawed and that the applicant lacks the *locus standi* to file the same, we must reach the inescapable conclusion that the application as filed is incurably defective and must be struck out.

23. Given that none of the respondents filed a substantive response to the application and guided by our decision in *Jasbir Singh Rai & 3 other v. Tarlochan Singh Rai & 4 others* SC Petition No 4 of 2012; [2014] eKLR we make no orders as to costs.

24. For the aforestated reasons we make the following orders:

    i. The notice of motion dated January 30, 2025 and filed on February 4, 2025 is hereby struck out.

    ii. There shall be no orders as to costs.

25. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

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M. K. KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT OF KENYA

……………………………………………

P.M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT OF KENYA

……………………………………………

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