Orwoba v United Democratic Alliance & another (Petition E284 of 2025)
[2025] KEHC 11910 (KLR) (Constitutional and Human Rights) (13 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11910 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E284 OF 2025

LN MUGAMBI, J

AUGUST 13, 2025

BETWEEN

GLORIA ORWOBA ..... PETITIONER

AND

UNITED DEMOCRATIC ALLIANCE ..... 1ST RESPONDENT

REGISTRAR OF POLITICAL PARTIES ..... 2ND RESPONDENT

RULING

Introduction

1. The Petitioner in the Petition dated 15th May 2025 challenges the 1st Respondent's summons to her to attend a disciplinary hearing scheduled for 16th May 2025.

2. This summons emanated from a complaint addressed to her by the Respondent in its letter dated 7th May 2025.

3. The Petitioner protests that the disciplinary proceedings were instituted improperly as there are no laid down disciplinary rules and guidelines to guide the process thus contends that the proceedings are a threat to her constitutional right to a fair trial and a fair administrative action.

4. In answer to the Petition, the Respondent filed a Notice of Preliminary Objection challenging this Court's jurisdiction as well as a Notice of Motion Application to strike out the instant Petition.

5. Subsequently, the Petitioner also went ahead and filed a Notice of Motion application seeking conservatory orders and citing the 1st Respondent and its Disciplinary Committee members for contempt of Court. The three applications are the subject of the instant ruling.

Petitioner's Application

6. The Petitioner in her Notice of Motion application dated 20th May 2025 seeks orders that:

   i. Spent.

   ii. Pending the hearing and determination of this Application a conservatory order do issue staying and suspending any further implementation by any person(s) of the decision of the UDA Party Disciplinary Committee dated 16th May, 2025 expelling the Petitioner herein as member of the UDA Party and/ or a nominated senator.

   iii. Pending the hearing and determination of this Application, a conservatory order be issued reinstating the status quo ante obtaining on the 15th May, 2025 when this Court issued Orders barring the 1st Respondent from conducting the impugned disciplinary hearing of 16th May, 2025.

   iv. Pending the hearing and determination of this Petition, a conservatory order do issue staying and suspending any further implementation by any person(s) of the decision of the UDA Party Disciplinary Committee dated 16th May, 2025 expelling the Petitioner herein as member of the UDA Party and/or a nominated senator.

   v. Pending hearing and determination of this Petition, a conservatory order be issued reinstating the status quo ante obtaining on the 15th May, 2025 when this Court issued Orders barring the 1st Respondent from conducting the impugned disciplinary hearing of 16th May, 2025.

   vi. This Court be pleased to set aside and/or quash the decision of the 1st Respondent issued on 16th May, 2025 on account of it being in contempt of this Court's Order issued on 15th May, 2025.

   vii. The Court do cite the following persons for being in Contempt of a Court Order issued on the 15th May, 2025 and the orders therein.

      a. United Democratic Alliance

      B. Charles Njenga

      C. Mr Paul Karuga

      D. Fatuma Ahmed Ali

      E. Georgiadis Majimbo

      F. Carolyne Mulondo Bosco

      G. Hassan Omar Hassan

      H. Cecily Mbariremr. Charles Njeng

      I. Mr. Paul Karuga

      J. Mr. Georgiadis Majimbo

      K. Dr. Fatuma Ahmed Ali

      L. Ms. Carolyne Mulondo Bosco

   viii. In an order of committal to civil jail be made against:

a. Charles Njenga

B. Mr Paul Karuga

C. Fatuma Ahmed Ali

D. Georgiadis Majimbo

E. Carolyne Mulondo Bosco

F. Hassan Omar Hassan

G. Cecily Mbariremr. Charles Njeng

H. Mr. Paul Karuga

I. Dr. Fatuma Ahmed Ali

J. Mr. Georgiadis Majimbo

K. Ms. Carolyne Mulondo Bosco

for such period as this Court may deem fit and just in that they have blatantly disobeyed and frustrated the express Orders made herein by this Court on 15th May, 2025.

ix. In the alternative to (7) and (8) above, the Court do impose appropriate fine penalties to the persons listed in (6) and (7) above for being in Contempt of a Court Order issued on the 15th May, 2025 and the Orders therein.

x. This Court do issue any other orders it may deem just, fit and fair in the circumstances.

xi. Cost of this Application be in the cause.

7. The application is supported by the Petitioner's affidavit, sworn on even date and the grounds on the face of the application.

8. The Petitioner avers that this Court on 15th May 2025 issued conservatory orders restraining the 1st Respondent from proceeding with the disciplinary hearing scheduled for 16th May 2025.These orders were served on the 1st Respondent on 16th May 2025 and the said hearing was suspended in the presence of the Petitioner.

9. The Petitioner asserts that without her knowledge or her Advocate's knowledge, the 1st Respondent secretly proceeded with the hearing on the same date and rendered a Ruling, dismissing her as a member of the UDA Party and as nominated Senator. The Petitioner decries that this pronouncement was made in contravention of the conservatory order in place hence was in contempt of Court.

10. The Petitioner further depones that the impugned decision was swiftly conveyed to the 1st Respondent's National Executive Committee who then ratified the decision on 19th May 2025.

11. Furthermore, the decision was communicated to the Speaker of the Senate, the Independent Electoral and Boundaries Commission (IEBC) and the Registrar of Political Parties. Equally, she informs that the 1st Respondent has proceeded to nominate another member although that is yet to be actualized.

12. The Petitioner on this premise contends that there is great need for the orders sought to be issued failing which IEBC and the Speaker of the Senate will proceed to swear in another member. The Petitioner further urges the Court to cite the cited persons for contempt. She is apprehensive that if these orders are not issued, this Petition will be rendered futile and become a mere academic exercise.

Respondents' Case

13. These parties' response to this application are not in the Court file or Court Online Platform (CTS).

1st Respondent's Preliminary Objection

14. In reaction to the Petition the 1st Respondent filed its Notice of Preliminary Objection dated 20th May 2025 on the premise that:

    i. The jurisdiction of this Court has been improperly invoked since it's expressly ousted by dint of Section 40 of the *Political Parties Act*, which mandates that a dispute as enunciated herein, be referred to the Political Parties Disputes Tribunal in the first instance. Accordingly, this Court lacks jurisdiction to entertain the instant Petition and connected applications.

    ii. The Petition violates the provisions of Section 9 (2) of the *Fair Administrative Action Act*, since the High Court is precluded from reviewing an administrative action or decision unless the internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

    iii. The Petition herein offends the doctrine of exhaustion, hence is irredeemably defective, null and void ab initio for breach of mandatory legal procedure.

    iv. The instant Petition is glaringly incompetent, an abuse of the due process of court, having been lodged in outright disregard of express provisions of the law.

    v. It is in the interest of proper administration of justice that the Petitioner approaches the legally prescribed judicial forum in the event of any valid grievance, of which none is discernible in this instance.

1st Respondent's Application

15. The 1st Respondent filed its Notice of Motion application dated 26th May 2025 and seeks orders that:

    i. Pending the hearing and determination of this Application herein the Court be pleased to set aside the orders issued ex parte on 21st May, 2025.

    ii. This Court be pleased to strike out the Petitioner's application dated on 20th May, 2025.

    iii. The Court be pleased to strike out the entire Petition herein, dated 15th May, 2025 and all attendant applications and consequential orders thereto.

    iv. Costs of and incidental to this application be provided for.

    v. The Court be at liberty to grant such further or other reliefs that may be just and expedient.

16. The application is supported by Hon. Hassan Omar's affidavit, sworn on even date and the grounds on the face of the application. He avers that the Petition and application are tainted with numerous anomalies and irregularities thus ought to be struck out.

17. He avers that the Petitioner has since the onset lodged various applications dated 15th, 19th and 20th May 2025. Vide the application dated 20th May 2025, the Petitioner was issued with ex parte orders dated 21st May 2025.

18. He claims that these orders were procured through misleading information, fundamental disclosure and concealment of crucial material. Moreover, he asserts that the Court never pronounced itself on

the pending application dated 19th May 2025 and the purported notice of withdrawal. As such, he argues that the Petitioner ought not to have commenced a similar application.

19. He informs that the Petitioner subsequent to filing the application dated 20th May 2025, filed simultaneously Complaint No. E006 of 2025: Gloria Magoma Orwoba vs United Democratic Alliance on 21st May 2025 before the Political Parties Disputes Tribunal. He asserts that the Petitioner having filed multiple suits over the same subject matter in different forums is guilty of forum shopping which is an abuse of the Court process.

20. Furthermore, he states that the Petitioner has failed to disclose that there were two other separate complaints against her before the 1st Respondent's Disciplinary Committee being, summons by the UDA Disciplinary Committee Ref UDA/7/DISP/25 dated 7th May 2025 and UDA Disciplinary Complaint No. 2 of 2025: Festus Omwamba & Henry Muriithi vs Hon. Gloria Orwoba.

21. It is additionally alleged that although the Petition is filed in the Constitutional & Human Rights Division in Nairobi, on its face is addressed to the Kisumu High Court Constitutional & Human Rights Division hence this Court lacks territorial and administrative jurisdiction.

22. He depones as well that the Petitioner in her application added the 2nd to 8th alleged contemnors yet these parties were not in the original Petition and neither did she seek leave of the Court to amend the Petition. He stresses therefore that the Petitioner seeks to arbitrarily maneuver the judicial process contrary to the dictates of justice. On this premise, he urges that the relief sought herein should be granted.

Petitioner's Case

23. In reaction to the 1st Respondent's application, the Petitioner filed a Replying Affidavit sworn on 30th May 2025.

24. To commence with, the Petitioner avers that the Application is an afterthought, frivolous and incompetent lacking in merit so should be dismissed. The Petitioner asserts that striking out of a suit is draconian and offensive to the provisions of Article 159(2)(d) of *the Constitution*.

25. According to the Petitioner, the Application is a delay tactic so as to defeat the timely dispensation of the contempt application and the Petition since the 1st Respondent is yet to file a substantive response to the Petition. In addition, it is noted that the 1st Respondent failed to comply with this Court's orders issued on 15th May 2025.

26. With reference to the Application dated 19th May 2025, the Petitioner avers that the Court declined to entertain the Application on account of failure to seek leave before addition of parties thus the Application was rejected. The Petitioner subsequently withdrew this Application vide her Notice of Withdrawal dated 20th May 2025.She stresses that nothing prevents her from withdrawing an application or filing a new one.

27. She further argues that the 1st Respondent is estopped from denying existence of its own decision dated 16th May 2025 that is now subject of an appeal before the Tribunal. She contends that this Court has supervisory power to call the file from the Tribunal so as to hear and determine both issues together, in the event that the issues raised in both are intertwined.

2nd Respondent's Case

28. The 2nd Respondent's response and submissions in relation to the Petitioner's and 1st Respondent's case are not in the Court file or Court Online Platform (CTS).

Petitioner's Submissions

29. The Petitioner through Mabeya and Mabeya Advocates filed submissions dated 31st July 2025. Counsel identified the issues for determination as: contempt of court, sub judice and Section 40(1) of the *Political Parties Act* and Application for conservatory orders and the opponent application to strike out.

30. On the first issue, Counsel submitted that the 1st Respondent was guilty of contempt in light of the issued Court orders. Counsel added that the disciplinary committee ought not to have on their own accord interpreted the Court order, instead should have approached this Court. Counsel pointed out that the 1st Respondent was personally served with the Court Orders as evidenced in the affidavit of service. It is noted that the 1st Respondent proceeded to suspend the hearing as a result of the Court orders.

31. Counsel stated that a court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To buttress this point reliance was placed in Johnson Vs Grant, 1923 SC 78 where it was held that:

> " The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged."

32. Similar reliance was placed in Hadkinson V. Hadkinson [1952] 2 ALL ER 567 at page 567, at 569 – 570.

33. In light of this, Counsel submitted that where this Court finds that the 1st Respondent and the alleged contemnors are in contempt, then their application and preliminary objection, ought not to be heard until they purge the contempt. Counsel stressed that one cannot seek to set aside the same orders he is in contempt of and thus this Court should not entertain the 1st Respondent until then.

34. Furthermore, Counsel added that the 1st Respondent had not controverted the contempt of Court Application. Reliance was placed in Kennedy Otieno Odiyo & 12 Others v. Kenya Electricity Generating Company Limited [2010] eKLR where it was held that:

> " The respondents only filed grounds of opposition to the application reproduced elsewhere in this ruling. Grounds of opposition addresses only issues of law and no more. The grounds of opposition aforesaid are basically general averments and in no way respond to the issues raised by the applicant in its supporting affidavit. Thus, what was deposed to was not countered nor rebutted by the respondents. It must be taken to be true. In the absence of the replying affidavit rebutting the averments in the applicant's supporting affidavit, means that the respondents have no claim against the applicant".

35. Counsel further submitted that in addition to violating the cited constitutional rights, the 1st Respondent was in breach of Article 103(1) and 104 (1) of *the Constitution* which provide the threshold for removal of a member of Parliament. As such, being a constitutional office, Counsel submitted that the Petitioner's ouster ought to be carried in a procedural and fair manner that upholds her rights.

36. On the second issue, Counsel submitted that for a preliminary objection to succeed, a party must only rely on pure points of law as affirmed in Mukisa Biscuit Manufactures Limited vs West End

Distributors Limited (1969) EA. Counsel stated that in this matter much needs to be ascertained based on the opposing position taken by the parties, and that any reference to any affidavit or even prayers cannot be done within the context of a Preliminary Objection.

37. Reliance was placed in Cyrus Mucebiu Irungu vs Martha Wanjiru Irungu & Another [2022]eKLR where it was held that:

> " I agree with the submission by counsel for the plaintiff that the issue of sub-judice does require the ascertaining of facts or probing of evidence in the two earlier suits mentioned by the 1st defendant which this honorable court is not privy to. It therefore follows that the issue of sub-judice is not a pure point of law capable of being considered as a preliminary objection properly raised and does not meet the litmus test of what in law amounts to a preliminary objection." In the present case, it is not in doubt that this court is not privy to the alleged proceedings before the Lower Court or if the same has abated or stand dismissed as has been alleged by the Respondent."

38. Like dependence was placed in Kenya National Commission on Human Rights vs Attorney General, Independent Electoral and Boundaries Commission & 16 Others (Interested Parties) (2020) eKLR, Henry Wanyama Khaemba –Vs- Standard Chartered Bank LTD & Another (2014) eKLR and George Kamau Kimani & 4 Others Vs County Government of Trans Nzoia & Another (2014) eKLR.

39. Counsel contended that the Preliminary Objection in this case is misguided as, a plea of sub judice can only be raised in the subsequent suit and not in a previous suit. In this matter, Counsel stressed that the Petition had been filed prior to the Tribunal's case.

40. Counsel submitted moreover that this Court has the power to call the file from the Tribunal so as to hear and determine both issues together in the event that the issues raised in both are intertwined. Reliance was placed in Republic v Chief Magistrate's Court at Milimani Law Courts; Director of Public Prosecutions & 2 others (Interested Parties); Exparte Applicant Pravin Galot [2020] eKLR where it was held that:

> " There is a clear distinction between supervisory jurisdiction, judicial review jurisdiction and appellate jurisdiction. Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs."

41. On conservatory orders, Counsel submitted that this Court had on 21st May 2025 issued conservatory orders suspending the implementation of the decision of the 1st Respondent's Disciplinary Committee dated 16th May 2025 expelling the Petitioner herein as member of the party and a nominated Senator.

42. Counsel averred that soon after the 1st Respondent having failed to file a response in the application, went on to file its application, seeking to suspend the orders and strike out both the application and the Petition. Counsel submitted that the Application to strike out is unmerited and is not a substitute to of a Replying Affidavit.

43. In sum, Counsel submitted that the Petitioner had demonstrated a prima facie case with a likelihood of success and that in the absence of the conservatory orders she was likely to suffer prejudice. Reliance

was placed in Centre for Rights Education and Awareness and 7 Others –v- The Attorney General [HCCP No. 16 of 2011] where it was held that:

> " At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*".

44. Additional dependence was placed in Daniel Mugendi –v- Kenyatta University [2013] eKLR, SIM –v-Robinson [1892] 12 LR 665 and the Spiliada [1987] AC 460.

1st Respondent's Submissions

45. The 1st Respondent's through Adrian Kamotho Njenga and Company Advocates filed submissions dated 18th July 2025. Counsel sought to discuss whether the 1st Respondent's Notice of Preliminary Objection is merited; whether the orders issued on 21st May, 2025 ought to be set aside and whether the Petition and all attendant applications should be struck out.

46. On the first issue, Counsel relying in Mukisa Biscuit Manufacturing Co. Ltd submitted that the objection was a pure point of law as challenges this Court's jurisdiction by virtue of the doctrine of exhaustion. Counsel submitted that this suit is in breach of Section 40(1) and (2) *Political Parties Act* and Section 9(2) of the *Fair Administrative Action Act*.

47. Counsel stated that the key contention in this matter is the Petitioner's challenge to the 1st Respondent's disciplinary proceedings against her. Counsel stressed that this dispute is between a member of a political party and a political party thus the same falls under the disputes specified under Section 40(1) of the *Political Parties Act*. As such is required to be presented to the Tribunal under Section 40(2) of the Act. Counsel stressed that instead of utilizing this mechanism, the Petitioner proceeded to file the instant Petition failing to exhaust the provided mechanisms.

48. To buttress this point reliance was placed in Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (2015) eKLR where it was held that:

> " It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

49. Like dependence was placed in Narok County Council v TransMara County Council, (2000) 1 EA 161 and Speaker of the National Assembly v Karume (2008) 1 KLR.

50. On this premise, Counsel relying in the opine in Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited (1989) eKLR submitted that this Court does not have the requisite jurisdiction to entertain this matter. Comparable reliance was placed in Kalpana H Rawal & 2 others vs Judicial Service Commission & 2 others [2016] eKLR and Cleophas Malala & another v Speaker of the Senate & 2 others; Stewart Madzayo & another (Interested Parties) [2021] eKLR.

51. Turning to the second issue, Counsel submitted that under Rule 25 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, this Court can set aside its Orders. Additional reliance was placed in CMC Holdings Ltd vs. Nzioki [2004] KLR 173 where it was held that:

> " In an application for setting aside ex parte judgement, the Court exercises its discretion in allowing or rejecting the same. That discretion must be exercised upon reasons and must be exercised judiciously...In law the discretion that a court of law has, in deciding whether or not to set aside ex parte order was meant to ensure that a litigant does not suffer injustice or hardship."

52. Additional dependence was placed in Uhuru Highway Development Limited v Central Bank of Kenya & 2 others Civil Appeal No. 126 OF 1995 [1995] eKLR.

53. Counsel recapping the averments in the 1st Respondent's replying affidavit submitted that the Petitioner had failed to disclose salient information before the Court including the existence of the two pending complaints against her. Considering this, Counsel submitted that the Petitioner's application dated 21st May, 2025 was flawed and that the ex parte conservatory orders were obtained irregularly through non- disclosure of all the relevant facts pertaining the issues herein. Accordingly, Counsel urged that the same be set aside.

54. Turning to the third issue, Counsel submitted that in view of the foregoing the Petition and the attendant applications constitute an abuse of the Court process and so should be struck out. Counsel highlighted that the Petitioner had maliciously dragged the parties before Court while blatantly disregarding the existing mechanisms. To buttress this point reliance was placed in Kenya Section of the International Commission of Jurists v Attorney-General and 2 others [2012] eKLR where it was held that:

> " The concept of "abuse of the process of the Court: bears no fixed meaning, but has to do with the motives behind the guilty party's actions: and with a perceived attempt to maneuver the Court's jurisdiction in a manner incompatible with the goals of justice (emphasis added). The bottom line in the case of abuse of Court process is that, it "appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption..." [D. T. Dobbie & Company (Kenya) Ltd. V. Muchina [1982] KLR 1 – per Madan, JA at p.9]. Beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process."

Analysis and Determination

55. It is my considered view that the issues that arise for determination are:

    i. Whether the 1st Respondent is guilty of contempt of Court.

    ii. Whether the Petition offends the doctrine of exhaustion.

    iii. Whether the 1st Respondent's application has met the threshold for striking out of the Petitioners' Petition and attendant Applications.

1st issue- Whether the 1st Respondent is guilty of contempt of Court.

56. The law governing contempt of Court proceedings in Kenya was explicated in Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others [2017] KEHC 8755 (KLR) as follows:

> " According to Black's Law Dictionary;
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> " Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."
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> In Halsbury's Laws of England it is stated:-
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> "It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment .....an application to court by him not being entertained until he had purged his contempt"
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> In book The Law of Contempt learned authors Nigel Lowe & Brenda Sufrin state a follows:-
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> "Coercive orders made by the courts should be obeyed and undertakings formally given to the courts should be honoured unless and until they are set aside. Furthermore it is generally no answer to an action for contempt that the order disobeyed or the undertaking broken should not have been made or accepted in the first place. The proper course if it is sought to challenge the order or undertaking is to apply to have it set aside."
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> In Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another[11]Ibrahim J (as he then was) stated as follows:-
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> "It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void."
>
> Rule of law makes it incumbent for all persons, without exception to respect court orders at all times. The whole purpose of litigation as a process of judicial administration is lost if court orders are not complied with. A party who knows f an order whether null or valid, regular or irregular cannot be permitted to disobey it.[12] It would be most dangerous to hold that suitors or their solicitors could themselves judge whether an order was null or valid; whether it was regular or irregular.[13]There is need to emphasize that the principle of law is that the whole essence of litigation as a process of judicial administration is lost if orders issued by court through the set judicial process in the normal functioning of courts are not complied with in full by those targeted and / or called upon to give due compliance / effect. A State organ or agency or person legally and duty bound to give due compliance must do so. Court orders cannot be issued in vain.

It cannot be disputed that an order of the court has to be respected by the parties who are bound by it. Therefore every effort must be made to implement the order of the court and not to disobey the same. It is not up to that party to choose whether to comply or not to comply with such an order. The order must be complied with in totality, in all circumstances by the party concerned, subject to the party's right to challenge the order in issue, in such a lawful way as the law permits.

The purpose of this is simple. It is to protect the sanctity of the courts of judicature, which is well envisaged in *the Constitution*; sustain the confidence in the third arm of government so that all the people who feel aggrieved by government, its agencies or private persons can have a place to run to for a neutral determination. To disregard court orders therefore, among others in my view, is by implication, to set the precedent that people should not believe in the courts. This is wrong because it puts persons in our country on a collision course with no remedy thus creating a medium in which they descend into anarchy by resorting to taking the law into their hands. This is in utter disregard of the democratic and good governance principles and values enshrined in our Constitution.

It is trite that the court will not condone or enforce an illegality. I think it is important to bear in mind that Article 259 (1) of *the constitution* enjoins the court to interpret *the constitution* in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the bill of rights and in a manner that contributes to good governance. This court is obliged under Article 159 (2) (e) of *the constitution* to protect and promote the purposes and principles of *the constitution*. Also, *the constitution* should be given a purposive, liberal interpretation. I stand guided by the clear provisions of *the constitution* which is the supreme law of the land which binds all persons and all state organs.

The High Court of South Africa in the case of Kristen Carla Burchell vs Barry Grant Burchell held that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.

Writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand[17] have authoritatively stated as follows:-

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

i. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

ii. the defendant had knowledge of or proper notice of the terms of the order;

iii. the defendant has acted in breach of the terms of the order; and

iv. the defendant's conduct was deliberate."

57. Similarly, the Court in Republic v Kenya School of Law & 2 others Ex parte Juliet Wanjiru Njoroge & 5 others [2015] KEHC 6933 (KLR) underscored the purpose of contempt of Court orders as follows:

> " 23. In my considered view, Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal. In Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim, J (as he then was) stated:
>
> "It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void".

58. On this premise, a party who seeks to have the Court issue the contempt of Court Order must meet the threshold as highlighted in Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR):

> " 40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove
>
> (i) the terms of the order,
>
> (ii) Knowledge of these terms by the Respondent,
>
> (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-
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> "There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-
>
> 1. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
>
> 2. the defendant had knowledge of or proper notice of the terms of the order;

3. the defendant has acted in breach of the terms of the order; and

4. the defendant's conduct was deliberate."

59. In addition, the Court in Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR) cautioned as follows:

> " 51. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227, that:
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> A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.
>
> However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.
>
> 52. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order."

60. The Court went on to further stress as follows:

> " 58. The emphasis as shown in the above cases is that there must be "willful and deliberate disobedience of court orders." There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.

59. In Peter K Yego & others v Pauline Wekesa Kode, (Acc No. 194 of 2014, the court stated that "it must be proved that one had actually disobeyed the court order before being cited to contempt."

60. And in Katsuri Limited v Kapurchand Depor Shah [2016] eKLR, citing Kristen Carla Burchell v Barry Grant Burchell (Eastern Cape Division case No 364 of 2005), it was stated that "in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order."

61. The Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

    a. The order alleged to have been breached "must state clearly and unequivocally what should and should not be done." This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

    b. The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.

    c. The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels."

61. The Petitioner's key contention is that the 1st Respondent is in contempt of the order that was issued by this Court on 15th May 2025.To succeed in this allegation the Petitioner as discussed in the cited authorities must prove the underscored elements. The terms of the Order were that:

> "That pending hearing and determination of this application, a conservatory order is hereby issued suspending disciplinary proceedings by the Respondent against the Petitioner founded on the allegations contained in a letter to the Petitioner by the United Democratic Alliance -Ref UDA/7/DISP/25 dated 07/05/2025."

62. To commence with, the Petitioner states that the terms of this order was well known to the 1st Respondent's Disciplinary Committee. First, this Order was served upon the Disciplinary Committee on 16th May 2025 vide an affidavit of service of equal date sworn by Abel Marube Ondieki. Second, the Petitioner's Counsel during the set hearing, informed the Disciplinary Committee about the Court Order.

63. This Order categorically and in clear terms directed the 1st Respondent to refrain from undertaking the set disciplinary proceedings in view of the letter Ref. UDA/7/DISP/25 dated 7th May 2025. The proceedings are contended to have nonetheless proceeded despite this Order.

64. For context, the Disciplinary Committee in its impugned Ruling dated 16th May 2025 observed as follows:

> Preliminaries
>
> At the hearing of this complaint, the respondent attended in person and also by counsel led by Mr Mabeya. There were two complaints listed for hearing against her on the day being UDA DISC.complaint No. 1 OF 2025 contained in the letter 7th May 2025 ref UDA/7/DISP/25 and UDA DISC.Complaint NO. 2 OF 2025 FEstus Omwamba And Another -vs-Hon.gloria Orwoba. The respondent's advocate brought to the attention of the committee a court order issued by the High Court of Kenya in High Court Petition No. E284 of 2025, Gloria Orwoba -Vs-United Democratic Alliance Party and Another. The committee being a committee of law and conscious of its obligation and legal requirement to obey court orders, considered the import of the said order and its terms being that;
>
> "That pending the hearing and determination of this application, a conservatory order is hereby issued suspending disciplinary proceedings by the respondent founded on the allegations contained in a letter to the petitioner by the United Democratic Alliance Ref:UDA/7/DISP/25 dated 7th May 2025.
>
> The committee therefore satisfied itself that there was no impediment to proceeding with the hearing of this complaint as the order cited and presented was very specific to the complaint contained in the letter 7th May 2025 ref UDA/7/DISP/25 by the UDA party. In compliance therewith, the committee noted the said order and consequently stayed any further proceedings in regard to UDA DISC.complaint NO. 1 OF 2025 contained in the letter 7th May 2025 ref UDA/7/DISP/25.
>
> For the avoidance of any doubt, this decision therefore relates only to Complaint No. 2 of 2025, Festus Omwamba and Another Vs Gloria Orwoba. It is trite law that a court order is specific in its import and application and must be interpreted and applied strictly on its own terms and which must be clear and unambiguous. The order presented to the committee was very specific and clear on the subject it related to and which was UDA DISC.Complaint NO. 1 OF 2025 contained in the letter 7th May 2025 ref UDA/7/DISP/25 and not to any other complaint against the respondent.
>
> The hearing therefore proceeded as scheduled at the UDA party headquarters on 16th May 2025. The respondent having confirmed that she had indeed been served with the complaint herein by way of a petition and further on the evidence of service on record, the committee was satisfied that indeed she had notice of the same and thereby proceeded to hear it on its merits.

65. As rightly confirmed by the Petitioner, the Disciplinary Committee suspended any further proceedings in view of UDA DISC.Complaint NO. 1 OF 2025 as contained in the letter dated 7th May 2025, Ref UDA/7/DISP/25, which is the subject of this Petition. The Disciplinary Committee however proceeded to determine the second complaint against the Petitioner which is not a subject matter in the instant Petition.

66. Evidently, for a party to seek contempt of Court orders, they must ascertain that the terms of the order were clear and unambiguous to the accused party. Further the party must also prove that the accused party willingly failed to comply with the set terms. Bearing the circumstance of this case in mind, it is my considered opinion that the 1st Respondent cannot be said to have failed to uphold the terms

of the said order.This is because the said Order specifically barred the Disciplinary Committee from entertaining the UDA Disc.Complaint No. 1 of 2025 as contained in the letter dated 7th May 2025, Ref UDA/7/DISP/25 not the second complaint. Consequently, the 1st Respondent cannot be held in contempt of an Order that was never issued in the first place.

67. It is my humble conclusion that the Petitioner has not demonstrated that the 1st Respondent Disciplinary Committee is in contempt of the specific Court order. As inferred, the Petitioner failed to prove the threshold for contempt which is mandatory to grant of the orders sought.

2nd issue- Whether the Petition offends the doctrine of exhaustion.

68. The Supreme Court in Waity vs Independent Electoral & Boundaries Commission and Three Others [2019] KESC 54 (KLR) on this principle noted as follows:

> "(63) Where *the Constitution* or the law, consciously confers jurisdiction to resolve a dispute, on an organ other than a court of law, it is imperative that such dispute resolution mechanism, be exhausted before approaching the latter. Were it not so, parties would bide their time, overlooking the recognized forums, and later springing a complaint at the courts. Such a scenario would be a clear recipe for forum shopping, an undertaking that must never be allowed to fester in the administration of justice. We are fortified in this regard, by the persuasive authority by the Court of Appeal, in Geoffrey Muthinja Kabiru & 2 Others; [2015] eKLR; wherein the Appellate Court observed:
>
> "It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts be invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts."

69. Equally, the Supreme Court in Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] KESC 83 (KLR) stated as follows:

> "...We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant's petition lacked merit and was for dismissal."
>
> (118) In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.

(119) Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be expressed in the formula that judicial intervention is premature in the absence of administrative action."

70. Be that as it may, courts have also discussed instances where an exception is justified in application of this doctrine. The Court of Appeal in Fleur Investments Limited v Commissioner of Domestic Taxes & another [2018] KECA 341 (KLR) opined as follows:

> " 22. For this proposition the appellant called in aid this Court's finding in the case of Speaker of National Assembly vs Njenga Karume (1990-1994) EA 546 where the Court expressed itself in relevant part as follows:-
>
> "...where there was an alternative remedy and especially where parliament has provided a statutory procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully to the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it..."
>
> 23. ... Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly."

71. The Court also in Krystalline Salt Limited v Kenya Revenue Authority [2019] KEHC 6939 (KLR) on this issue opined as follows:

> " What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Thus, where an internal remedy would not be effective and/ or where its pursuit would be futile, a court may permit a litigant to approach the court directly. So too where an internal appellate tribunal has developed a rigid policy which renders exhaustion futile.

...this court interprets exceptional circumstances to mean circumstances that are out of the ordinary and that render it inappropriate for the court to require an applicant first to pursue the available internal remedies. The circumstances must in other words be such as to require the immediate intervention of the court rather than to resort to the applicable internal remedy."

72. The 1st Respondent in its Notice of Preliminary Objection challenged this Court's jurisdiction by virtue of Section 40 of the *Political Parties Act*. An objection on the Court's jurisdiction is a pure point of law as affects the Court's ability to entertain a matter before it.

73. The Court of Appeal in Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR) on this issue guided as follows:

> "Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court pronounced; Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. (1989):
>
> "Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."
>
> These words were echoed by this Court in Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR in the following words:-
>
> "In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign, It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the same.
>
> ...In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through transfer."

74. The 1st Respondent challenges this Court's jurisdiction on the premise of the doctrine of exhaustion. The 1st Respondent posits that the dispute herein ought to have been resolved as a first port of call before the Political Parties Dispute Tribunal as established in the *Political Parties Act* under Section 39. The jurisdiction of the Tribunal under Section 40 is provided as follows:

1. The Tribunal shall determine—

   a. disputes between the members of a political party;

   b. disputes between a member of a political party and the political party;

   c. disputes between political parties;

   d. disputes between an independent candidate and a political party;

   e. disputes between coalition partners;

   f. appeals from decisions of the Registrar under this Act; and

   (fa) disputes arising out of party nominations.

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c), (e) or (fa) unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute resolution mechanisms.

(3) A coalition agreement shall provide for internal dispute resolution mechanisms.

75. Further, Section 41(2) of the Act provides a further mechanism to an aggrieved party as follows:

> An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to the Court of Appeal and the decision of the Court of Appeal shall be final.

76. A perusal of the Petition and its Supporting affidavit reveals that the Petitioner grievances were pegged on the 1st Respondent's disciplinary process which she said was started in violation of her rights under Article 47 and 50 of *the Constitution*. She contended that these proceedings were driven by witch hunt by the 1st Respondent following her attendance of the homecoming proceedings of Fred Okeng'o Matiang'i and comments made on Spice FM. In essence, she asserts that the witch hunt is based on the allegation of her disloyalty to the 1st Respondent and her purported allegiance to another political party.

77. In my humble view, this Petition presents complaints about the 1st Respondent's handling of disciplinary procedure against the Petitioner which is a matter the Political Parties Disputes Tribunal is mandated by the Act to deal with in the first instance while the High Court is vested with the appellate jurisdiction. It further emerges that the Petitioner has in fact instituted the complaint arising from the same facts before the Political Parties Disputes Tribunal which has the primary jurisdiction yet she is also before this Court via the instant Petition seeking a remedy based on the same subject matter in dispute. The Petitioner has not satisfactorily explained why she should simultaneously pursue a remedy at both levels, that is, in the lowest forum closest to her, being the Tribunal and at the highest forum, being the High Court for a dispute that is founded on the same facts. That conduct smacks of case of forum shopping that this Court shall not condone. The Petitioner is bestriding both the High Court and the Political parties Disputes Tribunal at the same time with the same dispute which amounts to abuse of the Court process.

78. Moreover, by choosing to institute the claim before the Tribunal, that in itself, confirms that the Petitioner acknowledges that the Political Parties Disputes Tribunal not only has jurisdiction over her grievances but adequate remedies for the same. Having chosen to pursue the dispute before the Tribunal which effectively means she recognizes its jurisdiction over the subject matter in dispute,

the Petitioner should stay in that course and only when she dissatisfied with the outcome should she approach the High Court by way of an appeal.

79. For the reasons stated, I would decline to exercise jurisdiction and direct the Petitioner to exhaust the primary mechanism she has already engaged anyway.

80. This Petition thus not only offends the doctrine of exhaustion of remedies but is also an abuse of the Court process to have simultaneous proceedings both before the Tribunal and this Court over the same subject matter.

81. Having reached the finding, this Court does not see any value in dealing with the 3rd issue of whether the 1st Respondent's application has met the threshold for striking out of the Petitioners' Petition as the jurisdictional issue goes to the root of the entire Petition.

82. The instant Petition is thus struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF AUGUST, 2025.

.....

L N MUGAMBI

JUDGE