



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 196 OF 2015**

**THE LAW SOCIETY OF KENYA.....PLAINTIFF**

**VERSUS**

**FAITH WAIGWA.....1<sup>ST</sup> DEFENDANT**

**WAMBUGU GITONGA.....2<sup>ND</sup> DEFENDANT**

**ALEX GATUNDU.....3<sup>RD</sup> DEFENDANT**

**KIMANI WAWERU.....4<sup>TH</sup> DEFENDANT**

**JACQUELINE MANANI.....5<sup>TH</sup> DEFENDANT**

**EDWIN SIFUNA.....6<sup>TH</sup> DEFENDANT**

**ALUSO INGATI.....7<sup>TH</sup> DEFENDANT**

**KINYANJUI THEURI.....8<sup>TH</sup> DEFENDANT**

**CHARLES KANJAMA .....INTERESTED PARTY**

**RULING**

1. Faith Waigwa, Wambugu Gitonga and Jacqueline Manani being the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants herein took out the motion dated 5<sup>th</sup> August 2015 in which they sought for inter-alia leave to amend their statement of defence to introduce a counter-claim. The motion is supported by the affidavit of Faith Waguthi Waigwa. When served, the Law Society of Kenya, the Plaintiff herein, filed grounds of opposition to resist the motion. Learned counsels appearing in this matter filed written submissions and also presented oral arguments.
2. Mr. Muriithi, learned advocate for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants beseeched this court to grant the orders sought in the motion. He stated that the motion seeks to introduce through the proposed counter-claim 13 members of the council of the Law Society of Kenya as Defendants in the counter claim. He argued that Section 29 of the Law Society of Kenya Act provides for the

liability council members and the employees of Law Society of Kenya. Mr. Muriithi pointed out that his clients will be in a position to show that the individual council members have conducted themselves in derogation of duty. It was further argued that the amendment will enable this court determine the real issues in controversy and that the council members sought to be enjoined to this suit will suffer no prejudice because they will each get a chance to be heard in court. Mr. Anzala who appeared for the 4<sup>th</sup> and 8<sup>th</sup> Defendants, supported the motion by adopting the submissions of Mr. Muriithi. He argued that it is only the proposed Defendants in the counter-claim who can answer the issues put forward in the proposed amendment.

3. Mr. Kimuli, learned advocate for the Plaintiff urged this court to dismiss the motion on the basis that the individual council members cannot be held personally liable for the corporate actions undertaken by the Law Society of Kenya. The learned advocate argued that the court cannot look beyond the corporate veil since all decisions are undertaken by the Law Society of Kenya in its corporate capacity. Mr. Kimuli argued that the motion was intended to embarrass the individual council members. It is further argued that the issues raised by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants can be resolved without enjoining the council members. Mr. Kimuli also stated that the Plaintiff is not opposed to the other proposed amendments save for the prayer seeking to enjoin the council members of Law Society of Kenya as parties to this suit.
4. Mr. Kanjama, the Interested Party herein, argued against the motion. He pointed out that the Law Society of Kenya is a separate and independent corporate entity distinct from its individual council members, therefore it will be going against the doctrine of the rule of separate legal personality if the order to enjoin the council members is made. Mr. Kanjama further argued that it will also go against the principle that the agents of a disclosed principal shall not be held liable. Mr. Kanjama also argued that where fraud is alleged to have been committed, the corporate veil will have to be lifted first so that individual council members can be made liable. It is the learned advocate's submission that since there is no allegation of fraud made against the individual council members, the motion cannot stand. It is suggested that the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants are actuated by the other ulterior motives. Mr. Kanjama is not opposed to the motion if it restricted its counter-claim as against the Plaintiff. Mr. Muriithi responded by stating that the Defendants do not intend to introduce the 13 council members in their individual capacities but in the capacities as council members.
5. I have carefully considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have also considered both the rival written and oral submissions. It is not in dispute that the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants have applied for leave to amend their defence to introduce a counter-claim in they pray for judgement in the following terms.
  1. ***A declaration that the resolutions passed at the March 2015 AGM were the expression of the supreme authority of the plaintiff's general meeting and are valid and binding upon the plaintiff.***
  2. ***Any acts by the defendants to the counterclaim and the plaintiff contrary to said resolutions except in accordance with Section 36 of the Law Society of Kenya Act (No. 21 of 2014) be restrained.***
  3. ***The costs of the counterclaim.***
6. The Plaintiff and the interested party are not opposed to the proposed amendment so long as the individual council members are not enjoined to the suit in their individual capacities.
7. It is now appropriate at this juncture to determine the question as to whether or not it is necessary to enjoin the council members of the Law Society of Kenya to this suit? There is no dispute that the 13 persons proposed as Defendants in the counter-claim are council members. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants have alleged in the proposed amended defence, that the council members have consistently strategised to undermine and subvert the supreme authority of the Law Society of Kenya and all the mechanisms and process provided by statute for the expression of the will of the

supreme authority whereof they have abused the process of the court. This is a very serious allegation directed at the council members as an organ. With respect I agree with the submissions of Mr. Muriithi, that the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants do not intend to target the council members individually but as the organ which transacts business on behalf of the Plaintiff. The council members are the only parties who can answer to those serious allegations. Though the council members enjoy the protection of 29 of the Law Society of Kenya Act while serving as council members, I doubt whether such immunity can go to shield them from the allegation now directed at them. In the circumstances I am convinced that the motion dated 5<sup>th</sup> August 2015 is well founded. It is allowed as prayed save that costs shall abide the outcome of the suit.

**Dated and delivered in open court this 17<sup>th</sup> day of November, 2015.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendants