



**Ndirangu v Standard Group PLC (Civil Suit E143 of 2020)  
[2025] KEHC 291 (KLR) (Civ) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 291 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL SUIT E143 OF 2020**

**AA VISRAM, J  
JANUARY 23, 2025**

**BETWEEN**

**CAROLINE WAMBUI NDIRANGU ..... PLAINTIFF**

**AND**

**STANDARD GROUP PLC ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted this suit against the Defendant for breach of her image and data rights. The backdrop to the suit is that in 2018, the Plaintiff discovered that the Defendant was using a picture depicting herself over its telecommunication-based commercial articles. From 2018 to 2020, she had been engaging the Defendant under protest to address the breach. On conducting further online search on Domain Names under the Standard Newspaper, owned or managed by the Defendant, she learnt that there was extensive breach of her image and data rights as a result of commercial posts made by the Defendant using photographs depicting her.
2. The subject photograph was taken in 2012 under instructions that they were to be sent to the Plaintiff through a flash drive and deleted from storage. The photo was first published by the Nation Media Group which the Plaintiff successfully sued for breach of image rights in HCCC E149/2020 – Caroline Wambui Ndirangu –vs- Nation Media Group v Joseph Kanyi.
3. In the present matter, the Plaintiff claims that in breach of her data and image rights, the Defendant also used the subject photograph in an article in its public online repository. She also claims that despite issuing the Demand dated 10<sup>th</sup> December, 2019, the Defendant continues having the subject photograph publicly posted.
4. Against this backdrop, the Plaintiff seeks entry of judgment against the Defendant for:-



- a. A declaration that the Defendant's offensive Publication to commercialise the image by the Defendant violates the Plaintiff's image rights.
- b. A declaration that the continued offensive publication of the Plaintiff's image by the Defendant violates the Plaintiff's image rights.
- c. A declaration that the continued publication of the photograph depicting the Plaintiff by the Defendant despite being informed of the same by the Plaintiff and further served with a Demand letter raises a new claim of violation of Image Rights each day the Demand Notice is ignored.
- d. A declaration that the Defendant's offensive Publication to advertise or commercial its activities as from 2018 violated the Plaintiff's data rights.
- e. A declaration that the continued storage of the Plaintiff's image by the Defendant violates her Data Rights.
- f. A declaration that the continued publication of the photograph depicting the Plaintiff by the Defendant despite being informed of the same by the Plaintiff and further served with a Demand letter raises a new claim of violation of Privacy Rights each day the Demand Notice is ignored.
- g. General damages in favour of the Plaintiff, for the violation of the Image Rights and/ or Data Rights as from 2018-2020 when the Defendant was served with the Demand Letter.
- h. General Damages in favour of the Plaintiff, for the continued violation of the Image and Data Rights of the Plaintiff.
- i. Costs of this suit.
- j. Any other relief that this Honourable Court may deem fit to grant.

#### Defence

5. In response, the Defendant filed a statement of defence dated 22<sup>nd</sup> June, 2021, denying the claims of breach image and data rights and seeking dismissal of the suit with costs. The Defendant averred that it was a stranger to all the assertions, allegations. It denied that it used the Plaintiff's image for commercial purposes or promotional articles.
6. The Defendant claimed that the article with the Plaintiff's image was for a news article on network coverage for journalistic and illustrative purposes only in its undistorted form. It also claimed that the article addressed a subject of great public importance. Therefore, processing of the Plaintiff's data, if any, and using her image, was lawful and necessary to enable the Defendant to perform a task in the public interest.
7. The Defendant contended that the publication was neither offensive to the Plaintiff, nor misappropriated the Plaintiff's entitlements from her image in any manner whatsoever and that the Plaintiff suffered no loss from the publication of her image covering a matter of public interest. It neither ignored the Plaintiff's demand nor continues to store any of the Plaintiff's images. It therefore urged that the Plaintiff has not established a basis for the reliefs sought.



## Reply to Defence

8. Through a Reply to Defence dated 29<sup>th</sup> June, 2021, the Plaintiff further pointed out that being a media house does not permit the Defendant to infringe her rights, and stated that public interest was not applicable to the use of her images.

## Submissions

9. The Plaintiff and the Defendant filed written submissions dated 15<sup>th</sup> March, 2023, and 17<sup>th</sup> April, 2023 respectively.

## Analysis and Determination

10. I have considered the pleadings, the evidence and the parties' respective submissions and authorities cited. I find that the first issue for consideration is whether the doctrine of exhaustion applies to the present matter.
11. The law relating to the doctrine of exhaustion was set out in the seminal case of *Speaker of National Assembly v Karume* [1992] KLR 21, where the court stated as follows:-

“Where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

12. In the Court of Appeal decision in *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* (Civil Appeal No. 10 of 2015) [2015] eKLR, it was observed 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.”

13. A five-judge Bench of the High Court in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others* (Interested Parties) [2020] eKLR, set out the two exceptions to the doctrine of exhaustion as follows:-

“60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the *Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum



which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court’s jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.”

14. Based on the facts of the case and considering the applicable statutory framework, I do not think that the above exemptions apply. I say so because in my view, the statutory framework provides adequate mechanisms for the protection of data rights.
15. The applicable law is the Data Protection [Act, No. 24 of 2019](#), which was enacted to give effect to Article 31(c) and (d) of the [Constitution](#); namely, to establish the Office of the Data Protection Commissioner; to make provision for the regulation of the processing of personal data; to provide for the rights of data subjects and obligations of data controllers and processors; and for connected purposes.
16. Article 31 (c) and (d) of the [Constitution](#) provides that:-  
“Privacy.  
31. Every person has the right to privacy, which includes the right not to have—
  - (a) ...;
  - (b) ...;
  - (c) information relating to their family or private affairs unnecessarily required or revealed; or
  - (d) the privacy of their communications infringed.”
17. The Office of the Data Protection Commissioner is established under Section 5 of the Data Act while Section 6 provides for the appointment of the Data Commissioner. Among its functions, stipulated under Section 8 (1) (f), is to receive and investigate any complaint by any person on infringements of the rights under the Act.
18. Section 9 provides that the Data Commissioner shall have power to:-
  - “a) conduct investigations on own initiative, or on the basis of a complaint made by a data subject or a third party;
  - (b) obtain professional assistance, consultancy or advice from such persons or organisations whether within or outside public service as considered appropriate;
  - (c) facilitate conciliation, mediation and negotiation on disputes arising from this Act;
  - (d) issue summons to a witness for the purposes of investigation;
  - (e) require any person that is subject to this Act to provide explanations, information and assistance in person and in writing;
  - (f) impose administrative fines for failures to comply with this Act;
  - (g) undertake any activity necessary for the fulfilment of any of the functions of the Office; and



(h) exercise any powers prescribed by any other legislation.”

19. Under Section 58, the Data Commissioner may, if satisfied that a person has failed, or is failing, to comply with any provision of this Act, serve an enforcement notice on that person requiring that person to take such steps and within such period as may be specified in the notice.
20. Section 62 provides that the Data Commissioner may issue a penalty notice requiring the person to pay to it an amount specified in the notice, if satisfied that a person has failed or is failing to comply. Under Section 63, the maximum amount of the penalty that may be imposed by the Data Commissioner in a penalty notice is capped at five million shillings, or in the case of an undertaking, up to one per centum of its annual turnover of the preceding financial year, whichever is lower.
21. Section 64 provides for the right of appeal from an administrative action of the Data Commissioner, including in enforcement and penalty notices, to the High Court.
22. Based on the foregoing, it is clear that the statutory framework requires the consideration of claims relating to infringement of image and data rights in the first instance pursuant to the provisions of the Act, and consideration by the High Court only on appeal. The Plaintiff may not leap frog straight to the appellate stage and bypass the process in place.
23. In the High Court decision in *Kweri v Beehive Media Limited; Capwel Industries Limited (Interested Party)* (Constitutional Petition E321 of 2021) [2023] KEHC 2684 (KLR) (Constitutional and Human Rights) (31 March 2023) (Judgment), Hon. Mrima J. similarly observed that:-

“ 111. A close scrutiny of the Data Act reveals a deliberate design to ensure that all claims arising from allegations of infringement of article 31(c) and (d) of the Constitution are wholly dealt with by the Commissioner as the first port of call. Such position can only be overruled by a party demonstrating any of the exceptions to the doctrine of exhaustion in a matter.

112. Reverting to the instant matter, one of the petitioner’s complaint is the alleged publication of his images and/or photographs by the respondent in its social media accounts without his consent. The petitioner alleged breach of his article 31 rights under the Constitution. He then sought for a declaration as well as compensatory damages.

113. This court ascribes to the position that in a case where Parliament donated powers to an entity like the Data Commissioner to determine if one’s privacy rights under article 31(c) and (d) of the Commissioner are infringed, then it means as much; that the Commissioner has such power determine whether privacy rights as provided for in the Bill of Rights has been denied, violated, infringed or threatened. However, the Commissioner lacks the jurisdiction to interpret the Constitution...

119. The Data Act, therefore, wholly provides for the dispute at hand based on article 31 of the Constitution as well as the remedies sought in the event the dispute is successful.

120. In such a case, it was incumbent upon the petitioner to demonstrate to the court any of the exceptions to the doctrine of exhaustion. The petitioner did not do so.



121. The upshot is that the doctrine of exhaustion applies in this matter and bears a complete bar to the further exercise of jurisdiction by this court on the claim based on article 31 of the Constitution.

24. In the present matter, it is evident that the Plaintiff did not report her claims to the statutory body mandated with carrying out the investigation and considering appropriate action in the first instance. Nor has the Plaintiff provided compelling reasons to show that all the statutory mechanisms available to her are inadequate. I am persuaded that this court ought to postpone judicial making considerations and allow for the statutory dispute resolution mechanism to take their course in the first instance. I find that there is no prejudice in referring the matter to the appropriate body created under the Act to hear the dispute, and find that sufficient recourse is available to the Plaintiff under the statutory framework.

25. Having found the above, the upshot is that the suit is struck out with costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 23<sup>RD</sup> DAY OF JANUARY, 2025.**

**ALEEM VISRAM, FCIArb**

**JUDGE**

**In the presence of;**

.....Court Assistant

..... For the Plaintiff

.....For the Defendant

