



**Njoroge & another v Karisa & 26 others; NCBA Bank & another (Interested Parties);
Law Society of Kenya (Proposed Interested Party) (Commercial Case E730 of 2024)
[2025] KEHC 4946 (KLR) (Commercial and Tax) (22 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E730 OF 2024**

MN MWANGI, J

APRIL 22, 2025

BETWEEN

JOHN MWANGI NJOROGE 1ST PLAINTIFF

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED 2ND PLAINTIFF

AND

PETER SIKU KARISA & 26 OTHERS DEFENDANT

AND

NCBA BANK INTERESTED PARTY

REGISTRAR OF COMPANIES INTERESTED PARTY

AND

LAW SOCIETY OF KENYA PROPOSED INTERESTED PARTY

RULING

1. The 4th defendant filed a Notice of Motion application dated 20th January 2025 seeking orders for consolidation of HCCOMM No. E730 of 2024 - *John Mwangi Njoroge & Music Copyright Society of Kenya Ltd v Peter Siku Karisa & others* and HCCOMM No. E698 of 2024 *Republic v Registrar of Companies & Director General of Business Registration Services & 5 others* on 6th March 2025 and that the Law Society of Kenya be joined to this suit as the 3rd interested party, and that it be granted leave to file documents, and to respond to all matters before Court in both cases.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Victor Wangila, the 4th defendant herein. He averred that this



suit concerns the leadership, governance, and financial control of the 2nd plaintiff, whose over 16,000 members have a direct stake in its outcome. Further, that the suit raises significant public interest as the members' artistic works are widely used and generate revenue for redistribution. Mr. Wangila asserted that the matters herein involve critical constitutional, legal, and procedural issues, including fair hearing, access to justice, judicial accountability, proper use of the Case Tracking System (CTS) and risks of conflicting decisions and questions of party representation and legal standing.

3. Mr. Wangila stated that the issues in this case are complex and multifaceted, requiring the involvement of an institutional party capable of addressing broader legal and constitutional concerns. He deposed that the Law Society of Kenya, as a statutory body with a mandate under the *Advocates Act*, is well-positioned to assist the Court in interpreting the law, safeguarding public interest and promoting proper legal conduct and representation. He claimed that without the Law Society of Kenya's involvement as an interested party, the parties herein may inadequately address the wider public and legal implications due to personal interests. He averred that the orders being sought herein will uphold judicial integrity, protect stakeholders' rights, and ensure a constitutionally sound resolution of the dispute.
4. In opposition to the application, the plaintiffs filed Grounds of Opposition dated 5th March 2025 raising the following issues–
 - i) The application does not disclose a prima facie case and therefore the orders sought therein are unmerited;
 - ii) The Notice of Motion application does not meet the necessary threshold to warrant grant of any order. The application is bad in law, incompetent, misconceived and an abuse of the process of the Court;
 - iii) There is no co-relation between the instant suit and Milimani HCOMM No. E698 of 2024 and therefore we oppose the prayer of the two matters being consolidated (*sic*);
 - iv) The Law Society of Kenya has no stake in the leadership of the 2nd plaintiff/respondent more so it has no interest in the instant dispute hence they would not be prejudiced by the failure to be enjoined in the matter (*sic*);
 - v) To allow the application would severely and negatively impact on the 1st & 2nd plaintiffs/respondents;
 - vi) In any case, the application before the Trial Court is based on insincere grounds and mala fides;
 - vii) The applicant/petitioner has not demonstrated that it is entitled to the orders sought (*sic*); and
 - viii) The applicant's conduct is not only mala fides but also without merit.
5. The application herein was canvassed by way of oral submissions on 6th March 2025. Mr. Okiri, learned Counsel for the defendants, save for the 2nd defendant, cited Section 4 of the *Law Society of Kenya Act* and submitted that one of the Law Society of Kenya's (hereinafter referred to as the LSK) core mandate is to assist the Government and Courts in matters concerning legislation, justice administration, and legal practice. Counsel relied on the Supreme Court of Kenya case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties) Death Penalty Project* (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) 2016 KESC 12 (KLR), in submitting that a sufficient ground for the LSK's involvement in this case is its proximate interest arising from its statutory duty to aid in the administration of justice.



6. Mr. Okiri argued that ongoing litigation concerning the 2nd plaintiff has jeopardized the public interest of music producers and musicians. Further, that since the public consumes and pays for music produced by the 2nd plaintiff, they have a stake in the matter, warranting the LSK's involvement to protect the said interest. Counsel contended that this case involves constitutional issues affecting the rights of the 2nd plaintiff's members and the broader public interest, particularly, regarding the legitimacy of the 2nd plaintiff's Directors. He contended that while the defendants can still present their case independently, the public nature of the dispute justifies the LSK's participation to help the Court in the administration of justice.
7. Mr. O'Kubasu, learned Counsel for the plaintiffs submitted that the instant application is frivolous as it does not disclose the provisions of the law under which it has been brought. He cited the Supreme Court of Kenya case of *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties)* (*supra*) and contended that although a litigant has sought joinder of the LSK to this suit, the LSK ignored service. He argued that LSK's mandate under Section 4 of its *Act* does not cover all public interest cases. He emphasized that the 2nd plaintiff is a private entity, not justifying LSK's involvement.
8. Mr. Kongani, learned Counsel for the 2nd defendant supported the application arguing that the LSK should be joined to this suit to defend public interest, as the 2nd plaintiff's music is publicly consumed. He submitted that despite the 2nd plaintiff being a private entity, the issues raised involve constitutional and civil rights of the public.
9. In a rejoinder, Mr. Okiri submitted that Article 159(2)(a) of the *Constitution of Kenya* requires the Court to dispense justice without undue regard to technicalities. He contested the disingenuity of the plaintiffs' Counsel in supporting the consolidation application but at the same time argue that it has not been brought under any provisions of the law. He contended that the doctrine of *res ipsa loquitur* applies to the present application, suggesting that the issues at hand speak for themselves.

Analysis and Determination.

10. Upon consideration of the instant application, the grounds on the face of it and the affidavit filed in support thereof, as well the grounds of opposition filed by the defendants, save for the 2nd defendant, and the oral submissions made by Counsel for the plaintiffs and the defendants, the issues that arise for determination are –
 - i) Whether the instant application is fatally defective for not citing the provisions of the law under which it has been brought; and
 - ii) Whether the Law Society of Kenya should be joined to the suit between the parties herein.

Whether the instant application is fatally defective for not citing the provisions of the law under which it has been brought.

11. Courts are called upon to do substantive justice for the parties by giving effect to the overriding objective of Sections 1A and 1B of the *Civil Procedure Act* in the interpretation of its provisions and Rules which include; the just determination of the proceedings; efficient disposal of disputes; efficient use of available judicial and administrative resources, and the timely disposal of the proceedings at a cost affordable to the respective parties. To this end, I am bound by the Court of Appeal holding in



the case of *Stephen Boro Gitiba v Family Finance Building Society & 3 others* [2009] eKLR, where it was held that -

The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and whatever is in conflict with it must give way... I must warn litigants and counsel that the courts are now on the driving seat of justice and the courts in my opinion have a new call to use the overriding objective to remove all the cobwebs hitherto experienced in the civil process and to weed out as far as it is practicable the scourge of the civil process starting with unacceptable levels of delay and cost in order to achieve resolution of disputes in a just, fair and expeditious manner. If the often talked of backlog of cases is littered with similar matters, the challenge to the courts is to use the new “broom” of overriding objective to bring cases to finality, by declining to hear unnecessary interlocutory applications and instead to adjudicate on the principal issues in a full hearing if possible.

12. Bearing in mind the above decision and the provisions of Article 159(2)(d) of the *Constitution of Kenya*, it is my finding that failure by the 4th defendant herein to cite the provisions of the law under which the instant application has been brought is not a fatal error as it affects the form rather than the substance of the application. This is especially so because the information contained in the instant application would remain the same even if the 4th defendant was to cite the provisions of the law under which it has been brought. I am of the considered view that this issue is one of procedural technicality and the defect is curable under Article 159(2)(d) of the *Constitution of Kenya*.

Whether the Law Society of Kenya should be joined to the suit between the parties herein.

13. Joinder of parties to a suit is provided for under order 1 rule 10(2) of the *Civil Procedure Rules*, 2010 which states that –

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

14. The tests for determining an application for joinder of parties were stated by the Court in the case of *Kingori v Chege & 3 others* [2002] 2 KLR 243 where Nambuye, J., (as she then was) stated that the guiding principles when an intending party is to be joined to proceedings are -
- i) He must be a necessary party;
 - ii) He must be a proper party;
 - iii) In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;
 - iv) The ultimate order or decree cannot be enforced without his presence in the matter; and
 - v) His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.



15. An interested party was defined by the Supreme Court of Kenya in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others*, Supreme Court Petition No. 12 of 2013, [2014] eKLR, as hereunder -

Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause... (Emphasis added).

16. In *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties)* (*supra*), the Supreme Court of Kenya laid down the elements to be considered when dealing with an application for joinder of a litigant as an interested party to a suit. The Court held as follows –

From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court. (Emphasis added).

17. The 4th defendant contends that this case involves constitutional issues affecting the rights of the 2nd plaintiff's members and the broader public interest, particularly concerning the legitimacy of the 2nd plaintiff's Directors. He emphasized that the LSK's involvement is justified by its statutory duty to aid in the administration of justice. Further, that since the public consumes and pays for the music produced by the 2nd plaintiff, they have a stake in this matter, which warrants the LSK's participation to protect public interest and to assist the Court in administering justice.
18. I however note that other than the LSK's mandate under Section 4 of the *Law Society of Kenya Act* and the alleged general public's stake in this suit by virtue of the fact that they consume and pay for the music produced by the 2nd plaintiff's members, the 4th defendant has not demonstrated the nature of the general public's stake in the suit and the prejudice to be suffered by the general public in case of non-joinder of the LSK. Additionally, whereas the 4th defendant claims that the LSK's involvement stems from its proximate interest arising from its statutory duty to aid in the administration of justice, the 4th defendant did not clearly set out how the LSK will assist this Court in the determination of the legitimacy of the 2nd plaintiff's Directors, which is the main dispute between the parties herein.
19. Since the 2nd plaintiff is a limited liability company and a private entity, the mode and/or procedure of appointment of Directors is as per the provisions of its Articles and Memorandum of Association, and the *Companies Act*. As such, and in the absence of demonstration by the 4th defendant of the general



public's identifiable stake in this matter or in its outcome, or what prejudice the general public will suffer if the LSK is not joined as a party to the suit between the parties herein, I am not persuaded that the 4th defendant has made out a case to warrant being granted the orders sought in the instant application.

20. I am therefore not persuaded that the LSK is either a proper or necessary party to these proceedings, and its presence is not necessary to enable this Court to effectually and completely determine the legitimacy of the 2nd plaintiff's Directors. If anything, the general public's interest in this matter is too remote that the LSK did not deem it necessary to file a response to the application, thereby confirming that general public has no identifiable and proximate stake in the case. Consequently, the ultimate order or decree that will be issued by the Court can be enforced without the presence and/or participation of the LSK in the suit between the parties herein.
21. On the issue of consolidation of cases, I made an order on 6th March 2025 for consolidation of HCCOMM No. E730 of 2024 - *John Mwangi Njoroge & Music Copyright Society of Kenya Ltd v Peter Siku Karisa & others* and HCCOMM No. E698 of 2024, *Republic v Registrar of Companies & Director General of Business Registration Services & 5 others*. I directed that HCCOMM No. E698 of 2024 would be the lead file. Having granted the said prayer, I find that the application dated 20th January 2025 is partly merited. Costs of the application shall abide the outcome of the main suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF APRIL 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Okiri for all the defendants, save the 2nd defendant

Mr. O'Kubasu for the plaintiffs

Mr. Udoto h/b for Mr. Kipng'eno for the 2nd defendant

Ms. B. Wokabi – Court Assistant.

