



Music Copyright Society of Kenya Limited v General & another (Judicial Review Miscellaneous Application E134 of 2025) [2025] KEHC 6804 (KLR) (Judicial Review) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E134 OF 2025
RE ABURILI, J
MAY 26, 2025**

BETWEEN

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED APPLICANT

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

KENYA REVENUE AUTHORITY 2ND RESPONDENT

RULING

1. This matter was filed on 20/5/2025 under certificate of urgency by Mr. Felix Okiri Advocate for the applicant Music Copyright Society of Kenya. Counsel has now confirmed to this court that there are governance issues and wrangles over directorship of the applicant company hence, he was instructed by the CEO of the company, Dr. Ezekiel Mutua and not the Board of Directors hence there is no resolution by the Board of Directors for the filing of these proceedings.
2. On the other hand, Dr. Okubasu filed a notice of change of Advocates accompanied by notice of withdrawal of suit dated 22/5/2025 and has filed an affidavit in support of the notice of withdrawal of suit, annexing a letter of termination of employment dated 3/4/2025 of the CEO of the applicant company, Dr. Ezekiel Mutua signed by Dr. Lazarus Muli on behalf of the Board of Directors and members of the applicant company.
3. What that means is that as at 20/5/2025 when the proceedings herein were instituted and Dr. Ezekiel Mutua was swearing the verifying affidavit in support of or verifying the facts contained in the statutory statement, he was not the CEO of the company and therefore he had no authority to instruct an Advocate to institute suit on behalf of the company.



4. As to whether that termination of employment was regular, is not for this court to determine. There is no order of the Employment and Labour Relations Court staying the termination of employment or reinstating the said CEO into office.
5. It follows that the suit could only have been instituted with authority of the Board of Directors and directed by a CEO who was in office at that time as an employee of the company and not by the CEO whose employment had been terminated.
6. Again, from the submission by both Counsel on record now, it is clear that there are governance wrangles at the applicant company and therefore it is important that the parties resolve those wrangles before approaching the court appropriately.
7. This court has been shown an order dated 8/12/2024 in HCCOME730/2024 wherein conservatory orders were issued suspending implementation of the resolutions of a caretaker interim Board emanating from the extraordinary meeting held as 6/8/2024, restraining the Respondents from assuming directorship, leadership or in any manner whatsoever transacting the business of and on behalf of the applicant herein. The order grants prayer No. 2 of the application dated 4th December, 2024.
8. This court appreciates that court orders once issued must be obeyed until set aside or vacated and therefore, the parties who allegedly instructed Mr. Okiri, not being directors of the applicant company, by dint of the stay order, and the CEO whose term of employment ended on 3/4/2025 upon termination, I am satisfied that in the absence of any evidence to the contrary, Dr. Okubasu's notice of change of Advocates dated 22/5/2025 is validly on record, as the engagement of Felix Okiri advocate was rejected as per the Board of Directors minutes of the Board of Directors emanating from the meeting held on 5th May 2025 and consequently, the notice of withdrawal of suit dated 22nd May 2025 is equally validly on record.
9. Before I conclude, I note that Mr. Okiri Felix has filed another notice of change of Advocates dated this 26/5/2025 and in view of my findings above, the said notice of change of Advocates is hereby struck out and expunged from the court record for want of legitimate authority to represent the applicant company.
10. In the end, I adopt the Notice of withdrawal of suit dated May 22, 2025 and signed by Okubasu & Munene Advocates for the applicants as Counsel who are duly instructed to represent the applicant company.
11. I make no orders as to costs. This file is accordingly closed. I so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

