



Republic v Registrar Pharmacy and Poison Board & another; Kenya National Union of Pharmaceutical Technologists & another (Interested Parties); Kinyua (Exparte) (Miscellaneous Civil Application E022 of 2024) [2025] KEHC 5734 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E022 OF 2024**

**J NGAAH, J
MAY 2, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR PHARMACY AND POISON BOARD 1ST RESPONDENT

THE PHARMACY AND POISONS BOARD 2ND RESPONDENT

AND

KENYA NATIONAL UNION OF PHARMACEUTICAL TECHNOLOGISTS INTERESTED PARTY

AND

KENNEDY MURIMI KINYUA EXPARTE

AND

KENYA PHARMACEUTICAL ASSOCIATION INTERESTED PARTY

RULING

1. The application before court is by the 1st interested party and is dated 12 November 2024. It is expressed to be brought under the inherent powers of the Honourable Court and seeks the following orders:
 - “ 1. That this matter be certified as extremely urgent and prayer 2 and 3 be allowed ex-parte, service of the application be dispensed with in the first instance.
 2. That pending the hearing of this application inter partes the Honourable Court be pleased to clarify, in light of withdrawal of Misc. Appl. E022 of 2024,



whether it issued adverse orders in this matter on 2nd October, 2024 capable of enforcement.

3. That in the alternative to (2) above the Court be pleased to grant an urgent date for directions to the Applicant and all parties to seek clarification on the orders and directions made on the 2nd October, 2024 and implications thereof.
4. That in any event the orders in Misc Application E022 of 2024 lapsed by operation of the law upon its withdrawal and also by virtue the ex parte Applicant having opted to file Notice of Motion dated 5th August, 2024 seeking different orders from those sought at leave stage.
5. That the Honourable Court be pleased to strike out Notice of Motion dated 5th August, 2024.”

2. The applicant has also sought for an order on costs. The application is supported by the affidavit of Eric Gichane who has sworn and introduced himself as the Secretary General of Kenya Pharmaceutical Association.
3. According to Gichane, on 2 October 2024, all parties to the instant suit agreed to withdraw an application filed and registered in this Honourable Court as Miscellaneous Application No. E022 of 2024 as a result of which the file was closed. It is Gichane’s understanding that after the withdrawal of the application and closure of the file, no orders or directions issued in that application are capable of enforcement in the instant suit. That notwithstanding, the respondents are alleged to be insisting that there were orders issued in Miscellaneous Application No. E022 of 2024 capable of enforcement.
4. In any event, the substantive motion is said to have sought prayers distinct from those for which leave was granted and because of this variation, the motion ought to be struck out. The motion is also to have been overtaken by events.
5. The application is, of course, opposed but even before considering the response to the application, I note from the record in Miscellaneous Civil Application No. E022 of 2024, that the application was for leave to file a substantive motion for judicial review and that on 2 October 2025, the court made the following order:

“Having perused the two files and confirmed that the substantive application was filed as a separate suit in file no. E024 of 2024, it follows that this matter is spent. Further proceeding to be held in file no. E024 of 2024 including pending applications for joinder. The documents filed in E022 of 2024 after the grant of leave be transferred to E024 of 2024. File marked as closed”.

6. This order is self-explanatory and it does not appear to have been issued against any particular party except for the obligation on the part of the parties to file any pleadings that may have been filed in that application in the instant suit.
7. Of course, under Order 53 rule 4(1) of the Civil Procedure Rules, copies of statement accompanying the application for leave are to be served together with the substantive motion and any affidavits filed in support of the application for leave will be supplied on demand. The rule reads as follows:
 4. Statements and affidavits
 - (1) Copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for



leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.

8. That notwithstanding, there is an earlier order that was granted on 24 July 2024, when the court considered and granted the application for leave to file the substantive motion. In that order Sewe, J. ordered as follows:

“ 3. That the leave thus granted do operate as stay of the impugned decision.”

9. No doubt this order is consistent with Order 53 rule 1(4) of the Civil Procedure Rules according to which the court may order that leave operates as stay of the impugned decision or proceedings in issue. The rule provides as follows:

The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days. (Emphasis added).

10. If leave is to operate as stay pending the hearing and determination of the substantive motion, or until the court orders otherwise, it means that the order outlives the application for leave and can be enforced in the proceedings within the substantive motion. Any suggestion to the contrary, as the 1st interested party appears to suggest, that such an order dies the moment the application for leave is spent, is obviously inconsistent with the express provisions of Order 53 rule 1(4) of the Civil Procedure Rules.
11. As to the question whether the prayers sought in the substantive motion are at variance with those for which leave was granted or whether the motion has been overtaken by events, all I can say is that those are issues that will be appropriately argued and considered at the hearing of the motion. It would be premature to determine them at this stage of the proceedings.
12. In the final analysis, I do not find any merit in the 1st interested party's application dated 12 November 2024. It is hereby dismissed. Costs will abide the outcome of the substantive motion. It is so ordered.

SIGNED, DATED AND DELIVERED ON 2 MAY 2025

NGAAH JAIRUS

JUDGE

