



Ngemu & another v Kenya Copyright Board & 2 others; Music Copyright Society of Kenya Limited (Interested Party) (Judicial Review Application E117 of 2025) [2025] KEHC 12975 (KLR) (Judicial Review) (19 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E117 OF 2025
RE ABURILI, J
SEPTEMBER 19, 2025**

BETWEEN

JUSTUS NGEMU 1ST APPLICANT

SAUL ESIKURI 2ND APPLICANT

AND

KENYA COPYRIGHT BOARD 1ST RESPONDENT

**THE CABINET SECRETARY OF GENDER, CULTURE ARTS &
HERITAGE 2ND RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED INTERESTED PARTY

RULING

Ruling On Leave To Apply And Stay

1. This ruling determines the two applicants' Chamber Summons dated 7th May 2025 and filed in court on the even date. The application is brought under Order 53 Rules 1,2,3 and 4 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* and the relevant provisions of the *Law Reform Act*.
2. The applicants seek leave of this Court to apply for an order of Mandamus to compel the respondents to enforce provisions of Sections 5A,5B,5G,46E, 46E(4A-D), 46E(5),46F(1A,1B,1E,1G,1i) of the *Copyright Act*, CAP 130 Laws of Kenya.



3. The applicants also pray that the leave is granted do operate as a stay of the Interested Party's collection of royalties from users of copyrighted works for the musicians and artists pending the hearing and final determination of these proceedings.
4. The Applicants also seek that in compliance with prayer 3 of the Chamber Summons, the 1st Respondent does set up an alternative independent payment mechanism for the collection of royalties within 30 days.
5. The application is verified by the affidavit of Justus Ngemu and Saul Eskuri jointly sworn on 7th May 2025.
6. The Applicants' case is that they are musicians, artists and copyright holders of original works titled "Siasa mbaya maisha mbaya, Kilio kwa mungu, Roda and uchie" respectively.
7. The Applicants also state that they are bona fide members of the Music Copyright Society of Kenya, member Nos. 432 and 6935 respectively. That Section 5 of the Copyrights Act provides for the Respondent's functions.
8. It is the applicants' further case that on 2nd February 2024, the 1st Respondent revealed that the Interested Party could not sufficiently account for Ksh.56,000,000 or thereabouts received as royalties for artists and musicians.
9. That upon the said revelation, the 1st Respondent forwarded the said letter to the office of the Ethics & Anti-Corruption Commissions for investigations to be undertaken.
10. The Applicants state that to date, no action has been taken against the members of the Interested Party who had perpetrated the alleged loss of Ksh. 56,000,000. Further, that the 1st Respondent deemed it not necessary or fit to report the said loss of funds to the Office of Director of Public Prosecutions under Section 39 of the [Copyright Act](#), Cap 130 Laws of Kenya.
11. According to the Applicants, on 18th March 2025, the Interested Party acknowledged that it was embroiled in leadership wrangles and has of today two warring camps within themselves each purporting to represent the affairs of the Applicants and other musicians in the country.
12. The Applicants state that the said two camps of the Interested Party have now each set up bank accounts and pay bill accounts for the collection of revenue from the music users in Kenya and worldwide with no accountability mechanics from the Respondents.
13. That the Respondents have the statutory mandate to reign over the affairs of the Interested Party but have deliberately ignored and or neglected to undertake their statutory duties to enforce the provisions of the [Copyright Act](#).
14. Further, it is asserted that the Interested Party's actions are self-centered to attain their own financial and economic gains to the disadvantage of the real owners of the copyrights who are the Applicants and other self-deserving Kenyan artists who have no other source of income apart from their artistic work and royalty collections.
15. They contend that unless this court intervenes and grants the orders sought, the Interested Party shall continue to mint millions reaping where they never sowed while the applicants and other wallop in abject poverty.
16. It is also the applicants' case that since the Respondents have failed to perform their statutory duty, it is only this Court which can come to the aid of the Applicants and demand accountability from the Respondents and the Interested Party herein.



17. The Applicants claim that they have suffered loss of economic right and damage due to the actions on the part of the Respondents and the Interested party. That non-compliance with Sections 5A, 5B, 5G, 46E, 46E[4A-D] 46E[5], 46F[1A,1B,1E,1G,1I] of the Copyright Act by the Respondents is a breach of the constitutional and statutory duty on the part of the Respondents and the interested party and their servants, employees and agents.
18. The Applicants' further averment is that they are apprehensive that unless the court intervenes and compels the Respondents and Interested Party to comply with the law, the applicants' intellectual rights will continue to be infringed without good cause, an act which will irredeemably occasion grievous harm to both the Applicants.

The Interested Party's Response

19. Only the Interested Party filed a response to the application through a preliminary objection dated 26th May 2025 and a replying affidavit sworn on 27th May 2025 by Dr. Ezekiel Mutua who introduces himself as the Chief Executive Officer of the Interested Party.
20. The preliminary objection raises three grounds which are that the Application offends the exhaustion principle available to the Applicants and the Interested Party; that it seeks for substantive Orders against an Interested Party and that it offends the principle of res judicata and res sub-judice.
21. In the replying affidavit, the Interested Party depones that most of the prayers sought are not attainable for the reason that the subject Statute under which the same prayers are sought does not have Sections 5A, 5B and, 5G and also Sections 46E (4A-D), and also that Sections 46F (1A, 1B, 1E, 1G and 1I) are not found in the Copyright Act Chapter 130 Laws of Kenya hence strange legal provisions have been relied on.
22. The Interested Party states that leave so granted to stay the Interested Party's collection of royalties for her members, which is a statutory obligation for the Interested Party is a substantive prayer.
23. According to the Interested Party, the Applicants seek the court to direct advancement of alleged investigations which are in the hands of the Ethics and Anti-Corruption Commission of Kenya, which is an independent Constitutional body that takes no directions from any quarters.
24. Further, that there are numerous suits including High Court Commercial suit Nos. E698 and E730 both of 2024, filed by members against the Interested Party on the same subject matter and issues.
25. The Interested Party reiterates that the suit herein offends the exhaustion principle and that the Applicants have not exploited the internal mechanism dispute resolution structures established by the Interested Party's Memorandum and Articles of Association, and also that the orders sought are not attainable because the Applicant seeks and/or intends to seek for substantive orders against the Interested Party in their Substantive Judicial review case, which mechanism and approach is strange in law and procedure.
26. The Interested Party also filed a further affidavit sworn on 12th July 2025 by Dr. Ezekiel Mutua.
27. In the affidavit, it is deposed that it is misleading for the Applicants to claim that Dr. Ezekiel Mutua has ceased to be the Interested Party's Chief Executive Officer. That Dr. Mutua has never been served with the alleged public notice and alleged termination letter dated 3rd April, 2025 signed by one Lazarus Muli, in the alleged capacity of him being the chairperson of the Interested Party's Board of Directors save for the termination letter having been in different courts by persons connected to the said Lazarus Muli in one way or another.



28. That Lazarus Muli is not one of the Board members of the Interested Party and was not a member at the time of signing the letter dated 3rd April, 2025 and as such, that the letter is a forgery.
29. Dr. Mutua states that the issue of his employment and the alleged termination portrayed by the Applicant herein vide the impugned alleged termination letter dated 3rd April, 2025 is live, pending determination before a different court, same cases filed by the same Lazarus Muli through his proxies. Further, that this Court has no jurisdiction to determine the validity of the alleged termination, which issue is being subtly introduced here to mislead the court. The deponent avers in deposition that the employment dispute alluded to hereinabove is a reserve of the Employment and Labour Relations Court.

Submissions

30. The Applicants filed written submissions dated 8th July 2025. While relying on Section 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013 and the case of *Muruatetu & another vs. 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) (Civ) (28 January 2016) (Ruling), the applicants submit that the Interested Party has a stake in the outcome of the matter at hand.
31. It is argued that if this court was to render a decision reasserting that the Respondents have a statutory duty to enforce the Copyrights Act, then it would require that the Interested Party does comply with the said directive.
32. The Applicants also argue that the Interested Party can only comply with the statute if it is a party to the current court proceedings and as such is a proper party and necessary party to these proceedings. It is further submitted that as the orders issued will have an impact on the Interested Party, the latter has a right to be given a fair hearing pursuant to the rules of natural justice.
33. It is also submitted that the Interested Party is a necessary party as no other entity has been tasked to account for the loss of the Ksh. 56,000,000/-. Further, that the letters dated 26th June 2025 issued by the 1st Respondent, 28th November 2024 issued by the Interested Party and 30th August 2024 issued by the 1st Respondent are a confirmation that all is not well with the Interested Party.
34. The Applicants refer to Section 46E (1) of the *Copyright Act* which according to the Applicants, is on Inspection and Control of collective management organisations and which gives the Executive Director the power to authorize the inspection of the books of accounts and records of a collective management organization. They refer to section 46E (6)(b) and (c) which according to them provides for instances when the powers under sub-section 1 may be exercised.
35. They contend that vide a letter dated 18th March 2025 the then CEO of the Interested Party Dr. Ezekiel Mutua stated that there was a leadership stalemate at the Interested Party stemming from the listing of new directors on CR12 in June, 2024. It is also submitted that Dr. Mutua also stated that the prolonged tenure of some former directors had significantly hindered the society's operations. Further, that the said situation had undermined democracy and good governance principles leaving the interested party unable to serve its members.
36. The Applicants' further submission is that this is an admission that the Interested Party is having internal problems which can only be resolved by the intervention of this court through the 1st Respondent carrying out its statutory mandate as provided under section 5 of the Act which according to the Applicants, sets out the functions of the 1st respondent Board.



37. The Applicants further submit that as per the companies search records as of 16th June 2023 and 14th August 2024, there are 2 sets of members of the Interested Party, and that the said groups also have each their own bank accounts.
38. On the legal threshold for the grant of leave to apply, the Applicants rely on the case of Multiline Services Limited v Nairobi City County Government (Judicial Review Application E025 of 2023) [2023] KEHC 23794 (KLR) (Judicial Review) (19 October 2023)(Ruling) where the court is said to have stated that in an application for leave, a court ought not to delve deeply into the parties arguments but only establish whether upon a cursory perusal of the evidence before it ,there is an arguable case.
39. The Applicants further submit that pursuant to the letter dated 3rd April 2025 which according to the Applicant is a Notice of the Termination of Dr. Mutua’s employment and the letter dated 4th April 2025 written by the Interested Party and attached to their supplementary affidavit, Dr. Mutua has no legal capacity to represent the Interested Party before this court. Based on this, the Applicants pray for the court to expunge all pleadings filed by Dr. Mutua from the record.
40. On the doctrine of exhaustion, the Applicants submit that the issues arising are beyond hem,and that they are within the mandate of the 1st Respondent to enforce the Act and take charge of the affairs of the Interested Party. Relying on the case of Abidha Nicholus vs. The Attorney General & Others Petition No. E007 of 2023, the Applicants submit that the availability of an alternative remedy does not bar the applicants from seeking judicial review before this court.
41. They also submit that the Interested Party performs a public duty of collecting royalties on behalf of copyright owners and artists vide a license issued by the 1st Respondent and as such it cannot hide under the mask of a private company. The Applicants rely on the case of Ernst Young v Capital Markets Authority & Another [2019] eKLR where the court is said to have observed that *the Constitution* of Kenya, 2010 elevates judicial review from a narrow common law remedy confined to public bodies into a constitutional principle that applies against any person, body or authority exercising judicial or quasi-judicial functions likely to affect rights and freedoms, thereby transcending the public-private dichotomy and anchoring judicial review in constitutional values rather than formalistic common law traditions.
42. On res judicata, the Applicants submit that the doctrine does not apply as the parties in Milimani High Court Commercial Suits NO. E689 of 2024 and E730 of 2024 are not them. Further, that there is no judgment in the mater, and that if there is any, then the said judgement never determined issues that have been raised before this court. More importantly, that the alleged matters are commercial matters where the Interested Party has been sued.
43. It is also the Applicants’ submission that regarding Judicial Review No. E178 of 2024, the doctrine of sub-judice or res judicata does not apply as the parties in the matter do not include them, and that the issues are totally different from the issues in the instant case.
44. The Interested Party also filed written submissions dated 13th July 2025 in which it contends that the Applicants are accusing the 1st Respondent of failing to deem it necessary to report the loss of the said money to the Directorate of Public Prosecutions. However, that the office of the ODPP does not receive complaints from any body other than policing agencies; including the National Police Service, EACC and The Independent Policing Oversight Authority.
45. It is submitted that of all the sections mentioned in the Application, only section 46E of the *Copyright Act* exists. The Interested Party submits that a valid legal claim in any court, whether based on common law or statute, must be grounded in a specific legal basis. This, it is argued, means that the Applicant



must identify a particular law, statute, or legal principle that the defendant allegedly violated, and which supports their claim for the relief sought. Without this foundation, the Interested Party contends that the claim is ripe for immediate dismissal for want of legal basis, or for being anchored on non-existing law, hence fictitious.

46. On exhaustion of remedies, it is submitted that Clause 78 of the Interested Party's Memorandum and Articles of Association provides for an alternative way of dispute resolution between the Interested Party and her members, in respect of among other things; differences on any claim on account of any such breach or alleged breach, or otherwise relating to the premises, or to the Articles or to any statutes affecting the society, or to any of the affairs of the society.
47. It is submitted that the jurisdiction of this court has therefore been invoked prematurely and that there is no provision which mandatorily places the parties herein before the jurisdiction of this court, as the court of original jurisdiction to handle this matter.
48. The Interested Party relies on the case of Republic v Were & 2 others; Makhanu & 8 others (Ex parte) (Judicial Review E001 of 2024) [2024] KEHC 8139 (KLR) (4 July 2024) (Ruling) where the court is said to have upheld the need for exhausting other dispute resolution mechanisms available to a party before seeking judicial review redress. Further reliance is also placed on the case of Republic v Kenya School of Law & another; Immaculate (Ex parte) (Judicial Review Miscellaneous Application E180 of 2021) [2022] KEHC 3349 (KLR) (Judicial Review) (26 May 2022) (Ruling) on the doctrine of exhaustion.
49. Further submission is that the issues pending before other courts include the leadership disputes/wrangles as evidenced in the documents in relation to case numbers Milimani Commercial Suits E698/2024 and Milimani Commercial Suits E730/2024, and the newly filed Employment and Labour Relations Case Number E586 of 2025 in which the alleged dismissal of Dr. Ezekiel Mutua, the deponent of the Interested Party's affidavits is pending determination.
50. It is submitted that this court has no jurisdiction to determine similar issues herein on account of the same being live issues before other courts; and that the issues the Applicant seeks determination are to be handled by the Commercial Division of the High Court after the arbitration process and not the Judicial Review Court.
51. On res sub judice the Interested Party relies on the case of Borbor & 2 others v National Environment Management Authority (Environment and Land Judicial Review Case 2 of 2022) [2022] KEELC 3947 (KLR) (28 July 2022) (Ruling) where the court is said to have laid the parameters for determining if the doctrine of sub judice exists and needs consideration by a court.
52. It is the Interested Party's submissions that the Applicants have raised issues mainly revolving around disputes with the Interested Party, including alleged loss of Kshs 56 million, the employment status of Dr. Ezekiel Mutua, leadership wrangles and bank accounts. That they have also included the 2nd and 3rd Respondents without explaining their roles or legal basis. The Interested Party submits that the case essentially centers on internal leadership, employment and accountability matters of the Interested Party, which are already before other courts. Further, that any determination by this court would affect all members of the Interested Party and overlap with issues pending elsewhere, making the inclusion of additional parties unnecessary.
53. The Interested Party also relies on the case of Ware Transport Limited v Third Engineering Bureau of China City Construction Group Co Ltd; Tiba Freight Forwarders Limited (Third party) (Environment & Land Case 252 of 2021) [2024] KEELC 1550 (KLR) (7 March 2024) (Ruling) where the court is said to have cited with approval the case of Thika Min Hydro Co. Ltd v Josphat Karu



Ndwiga [2013]eKLR where the court opined that it is the substance of the case, not the way it is framed, that determines whether a matter is sub judice, and this requires examining the pleadings in both suits.

54. The case of Republic v Registrar of Societies - Kenya & 2 Others Ex-Parte Moses Kirima & 2 Others [2017] eKLR is also relied on where the court is said to have held that although the issues in the two suits were not identical, their resolution ultimately hinged on determining the leadership of the Africa Independent Pentecostal Church of Africa. Further, that even if the court were to nullify the Registrar's actions, the leadership question would remain unresolved until the other case was decided.
55. Reliance is also placed on the case of Mistry Jadva Parbat & Co Limited v Kenyatta University & another (Civil Suit E105 of 2021) [2024] KEHC 6179 (KLR) (23 May 2024) (Ruling) cited with approval the case of Attorney General & another ET vs (2012) eKLR where the court is said to have observed that parties cannot evade the doctrine of res judicata by simply introducing new parties or other causes of action in a subsequent suit.
56. On whether this court can issue substantive orders against an Interested Party in a suit, reliance is placed in the case of Park Road Nursing Home v National Land Commission of Kenya; Nairobi North Healthcare Limited (Interested Party) (Environment & Land Case E010 of 2023) [2023] KEELC 22354 (KLR) (20 December 2023) (Ruling) where the court is said to have observed that it would have been inappropriate to issue an order of temporary injunction against the Interested Party. The Interested Party also relies on the case of Patel & another v United Engineering Supplies Limited; Patel (Interested Party) [2024] KEELC 13276 (KLR) to support this position.

Analysis and Determination

57. I have considered the chamber summons application, verifying affidavit, statutory statement and annexures thereto, the notice of preliminary objection, affidavits and the detailed rival written submissions by the parties' counsel. In my view, the following issues arise for determination:
 - i. Whether the Preliminary Objection meets the threshold in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696;
 - ii. Whether the Applicants merit the prayer for leave sought and if so if the leave so granted ought to operate as stay.
 - iii. What orders should the court make, including who is to bear costs of the application, if any.
58. Whether the Preliminary Objection meets the threshold in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696. There are sub-questions in this issue and the Court will resolve them.
59. It is now an engrained principle of law that a preliminary objection must raise a pure point of law which, if upheld, may dispose of the matter without the necessity of ascertaining contested facts. This principle was established in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, where Law JA held that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



Sir Charles Newbold P added that:

“The first matter that a court has to consider is whether what is before it is a preliminary objection as understood in law. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

60. The Interested Party’s preliminary objection is that the Applicants’ application offends the exhaustion principle, seeks substantive orders against an Interested Party and that it also offends the doctrine of res judicata, sub judice and as such, the same should be dismissed.
61. Out of the three grounds raised, only the doctrine of exhaustion principle and the doctrines of res judicata and res sub judice properly fall within the ambit of a preliminary objection. These doctrines are jurisdictional issues to be ascertained from the face of the pleadings and the record and would require no further interrogation of evidence. Questions of jurisdiction, including whether a matter is barred by prior proceedings or whether the parties ought first to have approached an alternative statutory forum, are pure points of law that may properly dispose of proceedings at the preliminary stage.
62. In contrast, the ground that the application seeks substantive orders against an Interested Party does not meet the Mukisa Biscuit (supra) case threshold. Thus, whether relief can or cannot issue against an Interested Party is not a jurisdictional bar discernible on the pleadings alone but a matter that calls for arguments on the propriety of parties, framing of issues and the scope of remedies, all of which involve mixed questions of law and fact. Such issues are best canvassed at the substantive hearing and not through a preliminary objection.
63. On the doctrine of exhaustion raised by the Interested Party in its Notice of Preliminary Objection and further explained in the written submissions, the Interested Party claims that the Applicants have failed to exhaust the internal mechanisms available to deal with disputes between the Interested Party and its members. Particularly, the Interested Party refers to clause 78 of the Memorandum and Articles of Association which states as follows:

“ Arbitration

78. Where differences arise between the Society on the one hand and any of the members, their executors, administrators or assigns on the one hand touching the true intent or construction, or the incidents or consequences of these Articles, or the statutes, or touching anything then or thereafter done, executed, omitted, or suffered in pursuance of these Articles, or of the statutes, or touching any breach, or alleged breach of these Articles, or any claim on account of any such breach or alleged breach, or otherwise relating to the premises, or to these Articles or to any statutes affecting the society, or to any of the affairs of the society, every such difference shall be referred to the decision of an arbitrator, to be appointed by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two arbitrators, of whom one shall be appointed by each of the parties in difference.”

64. The Applicants in response to the argument by the Interested Party on the alleged failure to exhaust internal mechanisms contend that the dispute is on enforcement of the law by the Respondents against the Interested Party and that it is not a dispute between the Applicants and the Interested Party. That the Interested Party has two factions operating simultaneously, has leadership wrangles and cannot



account for Ksh.56,000,000. This, according to the applicants, are not private matters or disputes between the Applicants and the Interested Party. Further, that there is an element of criminal liability on the part of the Interested Party. Similarly, that the issue raised are within the mandate of the 1st Respondent to enforce the Act and to take charge of the affairs of the Interested Party.

65. Whereas courts may intervene notwithstanding such clauses where the dispute involves public law elements or allegations of procedural impropriety in administrative actions, the primary nature of the dispute must guide the Court.
66. The Court of Appeal in the case of *Nyaoga v Chairman Kisii County Assembly & 3 others* [2023] KECA 1540 (KLR) observed that:

“ 19. The main issues that would dispose of this appeal is whether or not the appellant had exhausted all the available alternative remedies before invoking the court’s jurisdiction; whether or not trial court had jurisdiction; and the place of the doctrine of exhaustion.

20. The doctrine of exhaustion of remedies was created by courts in order to promote an efficient justice system and autonomous administrative state. It is a principle that requires parties to exhaust all available local administrative remedies before seeking redress in a court of law on a constitutional issue. An aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand. The reason for this is to allow administrative agencies to address, and to potentially resolve the issue before escalating the same to the courts.

21. Indeed, this Court in *Mutanga Tea & Coffee Company Ltd vs. Shikara Limited & Another* [2015] eKLR cited with approval the case of *Speaker of the National Assembly vs. Karume* [2008] 1 KLR 425 where the court stated: “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.

22. This Court in *Geoffrey Muthinja & Another vs. Samuel Muguna Henry & 1756 Others* (2015) eKLR gave credence to the view that it is essential to utilize non-judicial methods of dispute resolution before turning to the courts. Courts should not be the initial choice for resolving conflicts within organizations, as this may lead to unnecessary legal battles.”

67. Equally, in the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] KEHC 10266 (KLR) the court observed thus:

“ The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine 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 the Courts.”



68. In *Nyaoga v Chairman Kisii County Assembly & 3 others* supra the Court observed as follows:

“That having been said, this Court also needs to look at the flip side and discuss the exception to the doctrine of exhaustion before coming to our final conclusion. These exceptions provide circumstances where an individual may bypass the exhaustion requirement and directly seek redress from court. In *Chief Justice and President of the Supreme Court of Kenya & Another vs. Bryan Mandila Khaemba* [2021] eKLR this Court acknowledged that the doctrine of exhaustion notwithstanding, courts still retain residual jurisdiction to intervene in exceptional circumstances despite existence of alternative remedies where the action complained of is marred by illegality and procedural irregularities.

“25. As provided in section 9(4) of the *Fair Administrative Action Act*, there are exceptions to the exhaustion rule in exceptional circumstances [underlined and emboldened for emphasis]. In the case of *Republic vs. National Environmental Management Authority Ex Parte Sound Equipment Ltd*, [2011] eKLR this Court stated: “...where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is only on exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made...it is necessary for the court to look carefully at the suitability of the statutory appeal in context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.”

“26. Section 9(4) of the Fair Administrative Actions Act provides that the High Court or subordinate Court may, in exceptional circumstances and on application by the applicant exempt such person from the obligation to exhaust any remedy if the court considers such remedy to be in the interest of justice. See the *William Odhiambo Ramogi* case (supra) paragraphs 60 & 61.”

69. The Court of Appeal in the case of *Fleur Investments Limited v Commissioner of Domestic Taxes & another* [2018] eKLR further observed thus:

“Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

70. The Respondents contend that the Applicants should first have pursued arbitration pursuant to Clause 78 of the Society’s Articles, which provides that any difference touching on the construction or breach of the Articles, or otherwise relating to the affairs of the Society, shall be referred to arbitration.

71. I have already observed that the present dispute emanates from alleged mismanagement of royalties and leadership wrangles within the Interested Party. On the face of it, such matters fall within the internal affairs of the Society and would ordinarily be amenable to the arbitral mechanism envisaged by the Articles.



72. However, in the instant case, it is important to interrogate the precise reliefs sought. The Applicants ask this Court to issue an order of mandamus to compel the 1st and 2nd Respondents, being statutory bodies, to enforce the law and take regulatory action against the Interested Party. An order of mandamus is not a private law remedy. It is a public law remedy that lies to enforce the performance of a statutory duty by a public authority. By its very nature, mandamus can only be granted by a court exercising judicial review jurisdiction under Articles 23 and 165 of the Constitution and sections 8 and 9 of the Law Reform Act.
73. An arbitrator, appointed under Clause 78 has no jurisdiction to supervise statutory bodies or to compel them to perform their statutory mandate under the law. Arbitration is founded on private agreements and is designed to resolve internal disputes between parties to that agreement. It cannot extend to the grant of coercive public law remedies against persons or authorities who are not privy to the arbitration agreement, such as the Cabinet Secretary or Kenya Copyright Board. To hold otherwise would be to confer on private adjudicators powers that the Constitution has expressly reserved for this Court.
74. I therefore take the view that whereas Clause 78 is binding in respect of disputes between members and the Society on matters of internal governance, it does not and cannot oust the jurisdiction of this Court where the complaint is that public authorities have failed to discharge their statutory mandates. In such circumstances, arbitration would not constitute an effective remedy, because it cannot yield the orders of mandamus that the Applicants seek. For this reason, I am satisfied that the Applicants were entitled to approach the Court directly in so far as their prayers relate to enforcement of the law by the 1st and 2nd Respondents.
75. The next question is whether or not the instant application is res judicata or sub judice. Section 7 of the Civil Procedure Act, Cap 21 defines res judicata, by prohibiting any court from trying any suit or issue that has already been directly and substantially in issue in a previous suit between the same parties and has been decided by a competent court.
76. The Interested Party in its preliminary objection states that the application before this court is an abuse of court process as it offends the principle of res judicata and res sub-judice. It is the Interested Party's contention that the Applicants have also raised before this court issues which are pending determination before other courts, making this case offend the doctrine of sub judice. It is argued that the issues pending before other courts include the leadership disputes/ wrangles as evidenced in the documents in relation to case numbers Milimani Commercial Suits E698/2024 and Milimani Commercial Suits E730/2024, and the newly filed Employment and Labour Relations Case Number E586 of 2025 in regard to the alleged dismissal of Dr. Ezekiel Mutua, which is pending determination.
77. According to the Interested Party, this court has no jurisdiction to determine similar issues raised in this matter on account of the same are live issues before other courts. Further, that the issues the Applicants seek to be determined are to be handled by the Commercial Division of the High Court after the arbitration process, and not the Judicial Review Court.
78. In response, the Applicants argue that the doctrine does not apply as the parties in Milimani High Court Commercial Suits No. E689 of 2024 and E730 of 2024 are not the applicants. Further, that there is no judgment in the matter, and that if there is any, the said judgement never determined issues that have been raised before this court. More importantly, that the alleged matters are commercial matters where the Interested Party has been sued.
79. It is also the Applicants' contention in submission that as to Judicial Review No. E178 of 2024, the doctrine of sub-judice or res judicata does not apply as the parties in the matter do not include the



- applicants and also that the issues in that matter are totally different from the issues in the instant matter.
80. The Black's Law Dictionary (10th Edition), defines *res judicata* as an issue that has been definitively settled by judicial decision, requiring three essentials: an earlier decision on the issue, a final judgment on the merits, and the involvement of the same parties or parties in privity with the original parties.
 81. This principle prevents the reopening of litigation on the same cause of action, ensuring there is no multiplicity of actions involving the same parties. However, as observed in *Njangu v Wambugu* (Nairobi HCCC No. 2340 of 1991, unreported), if parties are allowed to endlessly litigate the same issue, it would defeat the purpose of the doctrine *res judicata*. Further, in *Siri Ram Kaura v M.J.E. Morgan* (CA 71/1960), the Court of Appeal emphasized that the discovery of fresh evidence, without new circumstances, does not justify bypassing *res judicata*. To reopen a case, the new fact must substantially alter the case and could not have been discovered with reasonable diligence at the time of the original proceedings.
 82. I note from the record that the Interested Party has attached a Complaint with no case number from the Chief Magistrates Commercial Court. The parties in the case are Performing and Audio-Visual Rights Society of Kenya vs. Music Copyright Society of Kenya & NCBA Bank Kenya PLC, Safaricom PLC and Kenya Copyright Board. The orders sought therein include an order to freeze and restrict MCSK Revenue Collection Account, an order directing furnishing of certified statements showing all transactions made in regard to that account, an order directing for certified statements to be furnished in regard to a pay bill number, an order for transfer of funds, a permanent injunction restraining issuance of invoices and/or licenses, general damages, costs and interests. While there is no case number indicated on the complaint annexed to the Interested Party's replying affidavit, the fact that the same has been provided as evidence is a clear indication that the same is in relation to one of the commercial cases that the Interested Party is relying on to support the ground of *res judicata* and *res sub-judice*.
 83. As can be clearly seen from my narration of the parties and orders sought in the matter as evidenced by the complaint, nothing in that case suggests that the parties herein and orders sought before this court are similar to the ones in the commercial case.
 84. In Employment and Labour Relations [ELRC] Case Number E586 of 2025, the parties are Music Copyright Society of Kenya vs. Dr. Ezekiel Mutua and the orders sought therein are injunctions against Dr. Mutua pending hearing and determination of the Cause. Similarly, the parties and orders sought in the case before the ELRC are very different.
 85. Similarly, I note from what has been adduced before this court by the Interested Party in regard to Judicial Review No. E178 of 2024 that the parties therein are Republic vs. Registrar of Companies & Another and Jasper Odhiambo Lubeto & 7 Others Ex parte Music Copyright Society of Kenya. The prayers sought according to the Notice of Motion dated 21st September 2024 attached to the Interested Party's Replying Affidavit include a prayer seeking the striking out and expunging from the record of an application filed before the court by the firm of Musyoki Musango & Company Advocates and all the proceedings and directions/orders issued in relation to the same Application, an order staying and seeking the court to vacate its orders.
 86. I have equally examined the what the substantive prayers the Applicants in the above judicial review case are seeking, and these include a prayer of certiorari removing and quashing a decision made by the Registrar of Companies, an order of mandamus seeking to compel the Registrar to delete an alteration made in regard to the company register of MCSK and an order of Prohibition prohibiting the Registrar from changing or interfering with the said register without a valid resolution and/or binding instrument.



87. From the other cases relied upon by the Interested Party to support the ground of res judicata and res sub-judice, the parties in the above judicial review case are different from the parties in the instant judicial review case. Also, the subject matter and prayers sought are totally different. There are also no proceedings currently underway and neither has there been any prior final determination in regard to the merits of the instant judicial review application.
88. In reviewing the present case, this court finds that the Applicants are not re-litigating the same issues nor is there any final judgment on the merits of the matters being litigated upon. From what has been adduced before this court, there is no evidence of the involvement of the same parties or parties in privity with the original parties in previous or other pending cases.
89. For the above reasons, I find that applying the doctrine of res judicata in this case and at this stage would hinder access to justice as guaranteed under Articles 48 and 50(1) of *the Constitution*. Therefore, the grounds of res judicata and sub judice are declined and overruled, and the Applicants are permitted to proceed with the merits of the application for leave to apply for judicial review orders.
90. The applicants raised the issue of the affidavits filed by the interested party, being sworn by the deponent as the Chief Executive Officer of the interested party yet from the evidence on record, his employment with the interested party had been terminated. The applicants therefore prayed that the said affidavits be expunged from the record.
91. From the material placed before this court as contained in the pleadings and affidavits, the issue of leadership wrangles and the question of whether Dr Ezekiel Mutua is the CEO of the interested party are being litigated in many cases including the Employment and Labour Relations Court as cited. As such, and with that revelation, this court will hesitate to strike out the affidavits filed by the interested party and even if the affidavits were to be incompetent for want of locus standi of Dr Ezekiel Mutua, the interested party is ably represented by an advocate who has filed a preliminary objection in response to the chamber summons.
92. For the above reasons, even if the affidavits filed by the interested party were to be expunged from the record, the preliminary objection would still remain as the main defence proffered by the interested party for consideration on merit. I therefore decline to strike out the affidavits filed by Dr Ezekiel Mutua at this leave stage. In any event, if leave is granted to the applicant to apply, the interested party, which I find to be a necessary party being the supervisee of the 1st respondent, has the opportunity to file an affidavit sworn by any other competent authorized officer and not necessarily one that is embattled as to his employment with the interested party, considering the admission by both parties that there are leadership wrangles and factions of the interested party, coupled with alleged mismanagement of funds collected by the interested party as the body mandated to collect royalties on behalf of the artists and musicians in Kenya.
93. Therefore, whether the deponent is the Chief Executive Officer of the interested party or not, since it is not the interested party suing in this matter, nothing bars the interested party from authorizing any person with personal knowledge of the issues affecting it from swearing an affidavit on its behalf. In this case, there is no other affidavit filed stipulating that the deponent had no authority of the interested party to swear the affidavits on its behalf. Each case must be determined on its own circumstances. Accordingly, I decline to strike out or expunge the affidavit sworn by Dr. Ezekiel Mutua



Whether the Applicants merit the prayer for leave sought and if so if the leave so granted ought to operate as stay.

94. On the issue of leave to apply for judicial review orders, this court has considered the Applicants' chamber summons, statutory statement, and verifying affidavit, along with the responses from the Interested Party.
95. It is important to note that under the Fair Administrative Act and Rules, 2004 no leave is required to apply for judicial review proceedings. However, in the instant case, the applicants approached this Court under the Law Reform Act and Order 53 of the Civil Procedure Rules. Section 9(1) of the Law Reform Act mandates that judicial Review orders of mandamus, certiorari and prohibition can only be sought and obtained after leave to apply has been sought and obtained. This requirement is replicated in Order 53 Rule 1 of the Civil Procedure Rules.
96. Since the enactment of the Fair Administrative Action and Rules did not repeal the Law Reform Act and Order 53 of the Civil Procedure Rules which are grounded on common law, this court has jurisdiction to determine whether the leave sought is available to the applicants.
97. Parties are however advised to utilize the new legal regime in filing applications for judicial review since the new regime appreciates the expedition expected in matters implementing the right to fair administrative action as guaranteed under Article 47 of the Constitution.
98. The requirement for leave under section 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules was explained in *Matiba vs. Attorney General Nairobi H.C. Misc. Application No. 790 of 1993* in which the Court held that it is supposed to exclude frivolous, vexatious or applications which prima facie appear to be abuse of the process of the Court or those applications which are statute barred. Similarly, in *Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka [2006] 1 EA 321*, Nyamu, J (as he then was) held that leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be unmeritorious. See also *Republic vs. The P/S Ministry of Planning and National Development Ex Parte Kaimenyi [2006] 1 EA 353*.
99. In *Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996*, Waki J (as he then was) stated thus:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for



further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially.”

100. This position was confirmed by the Court of Appeal in *Meixner & Another vs. Attorney General* [2005] 2 KLR 189 in which the Court held that the leave of the court is a prerequisite to making a substantive application for judicial review and that the purpose of the leave is to filter out frivolous applications hence the granting of leave or otherwise involves an exercise of judicial discretion.
101. Further, the circumstances which guide the grant of leave to apply for judicial review remedies were enumerated in *Mirugi Kariuki vs. Attorney General Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8* as follows:

“The law relating to judicial review has now reached the stage where it can be said with confidence that, if the subject matter in respect of which prerogative power is exercised is justiciable, that is to say if it is a matter on which the Court can adjudicate, the exercise of the power is subject to review in accordance with the principles developed in respect of the review of the exercise of statutory power...the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter... It is not the absoluteness of the discretion nor the authority of exercising it that matter but whether in its exercise, some of the person's legal rights or interests have been affected. This makes the exercise of such discretion justiciable and therefore subject to judicial review. In the instant appeal, it is of no consequence that the Attorney General has absolute discretion under section 11(1) of the Act if in its exercise the appellant's legal rights or interests were affected. The applicant's complaint in the High Court was that this was so and for that reason he sought leave of the court to have it investigated. It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers... In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a prima facie case. For that, he should have been granted leave to apply for the orders sought.”

102. In *R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199*, the Court of Appeal was of the view that leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave.
103. In *Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 (HCK)*, the Court stated:

“Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion



is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him.... Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of *John vs. Rees* [1970] Ch 345 at 402. In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration.”

104. What emerges clearly from the foregoing is that the grant of leave to commence judicial review proceeding is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to demonstrate to the court that he has a prima facie arguable case for grant of leave. Whereas he is not required at that stage to go into the depth of the application, he has to show that he has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile.
105. The Court is under a duty to filter the application at that stage of leave to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.
106. Public bodies ought to exercise their statutory powers and discharge their statutory mandates without being uncertain as to whether their actions will be overturned in the future and the public ought to be assured that the actions taken by the public bodies will not be overturned. Unless this assurance is given, public affairs are unlikely to be conducted in a manner that guarantees to the public, confidence in the administration of its affairs.
107. Therefore, where an applicant approaches the Court under the *Law Reform Act* and Order 53 of the Civil Procedure Rules, leave may only be granted if on the material available, the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant, the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review.
108. See also *David Mathenge Ndirangu v Director of Public Prosecutions & 3 others* [2014] KEHC 5544 (KLR)
109. The court must exercise discretion judiciously when granting leave under Order 53 of the Civil Procedure Rules, ensuring that the application is not frivolous, statute-barred, or an abuse of process. (See *Sylvana Mpabwanayo Ntaryamira v Allen Waiyaki Gichuhi & another* [2016] KEHC 4176 (KLR).
110. At the leave stage, the court does not examine the merits of the case but merely assesses whether the applicant has an arguable prima facie case. Judicial review remedies, being discretionary and of last resort, should only be granted if no other efficacious remedy is available, as outlined in *Republic v County Council of Kwale Exparte Kondo & 97 Others* (Mombasa HCC Miscellaneous



Application No. 384/96) and Permanent Secretary Ministry of Planning & National Development Exparte Kaimenyi (2006) 1EA 353.

111. In this case, I observe that the Applicants have raised serious and arguable issues that warrant further investigation at the substantive hearing. The material placed before this Court discloses that on 2nd February 2024, the 1st Respondent revealed that the Interested Party could not sufficiently account for approximately Kshs. 56,000,000, and that the matter was forwarded to the Ethics and Anti-Corruption Commission for investigation.
112. The Applicants contend that to date, no meaningful action has been taken against the officials of the Interested Party alleged to have perpetrated the loss, and that the 1st Respondent has further failed to report the matter to the Office of the Director of Public Prosecutions in accordance with Section 39 of the *Anti-Corruption and Economic Crimes Act* (Cap 130). These allegations raise weighty questions as to whether the 1st Respondent has discharged its statutory obligations in relation to enforcement of the law and accountability of the interested party to its members.
113. In the Court's view, such matters are not frivolous but merit full ventilation through a substantive motion. For avoidance of doubt, the Court does not at this stage make any definitive finding on the merits of the allegations, but is satisfied that the issues raised are arguable and warrant the grant of leave. I would therefore on that ground grant the applicants leave to apply.
114. On whether leave so granted should operate as a stay of the Interested Party's collection of royalties on behalf of its members, under Order 53 Rule 1(4) of the Civil Procedure Rules, the grant of a stay is discretionary and intended to preserve the subject matter without determining the merits prematurely. In the circumstances of this case, a stay would effectively suspend the collection of royalties for artists and musicians, thereby paralysing a statutory function bestowed upon the interested party and occasioning prejudice to third parties who are not before the Court.
115. The alleged leadership wrangles within the Interested Party further complicate any attempt to devise a neutral custodial arrangement for the funds while failure to collect the funds would mean losses to magnitudes that cannot be compensated in damages and by who, there being no agreed structure through which the Court could ensure transparent preservation of the royalties pending determination of the substantive application once filed.
116. Moreover, the prayer that the 1st Respondent be directed to establish an alternative and independent royalty collection mechanism within 30 days is in the nature of a mandatory order which, if granted at this stage, would amount to issuing final reliefs before hearing the substantive motion.
117. This Court is therefore persuaded that the more prudent course is to decline the prayer for stay and instead direct that the substantive motion once filed and served, be heard expeditiously, so that the issues raised may be resolved on their merits without undue disruption to the sector.
118. The Interested Party has contended that the application is incompetent for citing the wrong provisions of law. This Court is however mindful that at the leave stage, its role is not to make definitive findings on points of law but merely to satisfy itself that the intended motion is arguable and not frivolous. Furthermore, reliance on an inapplicable or erroneous statutory provision is not in itself fatal at this stage, provided the substance of the grievance is discernible and falls within the supervisory jurisdiction of this Court. Such issues are more appropriately canvassed at the hearing of the substantive motion, where parties will have the opportunity to address the Court fully on the applicable law. The Court is therefore not persuaded that the citation of nonexistent provisions of the *Copyright Act*, if any, warrants denial of leave at this preliminary stage.



119. Accordingly, I find the application dated 7th May, 2025 merited and is allowed to the extent that this Court makes the following final orders:

1. Leave is hereby granted to the Applicants to commence judicial review proceedings for an order of mandamus as prayed in prayer 2 of the Chamber Summons application.
2. The prayer that leave do operate as a stay of the Interested Party's collection of royalties and/or that the 1st Respondent sets up an alternative independent payment mechanism for the collection of royalties within 30 days is declined for the reasons stated above.
3. The substantive Notice of Motion shall be filed and served within ten (10) days from the date hereof in a fresh judicial review file.
4. Each party to bear their own costs of this application for leave to apply.
5. This file is closed

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025

R.E. ABURILI

JUDGE

