



**Republic v Regulatory Committee for Non-Governmental Organizations;
Visions for Life (Exparte Applicant) (Judicial Review Miscellaneous Application
E046 of 2022) [2024] KEHC 3268 (KLR) (Judicial Review) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E046 OF 2022**

JM CHIGITI, J

APRIL 3, 2024

**N THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORM ACT CAP 26 LAWS OF KENYA**

AND

IN THE MATTER OF ARTICLES 47 AND 48 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF NON-GOVERNMENTAL ORGANIZATIONS COORDINATION

BETWEEN

REPUBLIC APPLICANT

AND

**THE REGULATORY COMMITTEE FOR NON-GOVERNMENTAL
ORGANIZATIONS RESPONDENT**

AND

VISIONS FOR LIFE EXPARTE APPLICANT

RULING

1. The application that is before this court for determination is the Notice of Motion dated 17th July 2023 wherein the applicant is seeking the following orders that:
 1. That the Honourable Court be and hereby please to strike out the Judicial Review Application commenced through Chamber Summons dated 22nd March, 2022 and any other pleadings filed herein by the Law Firm of Kenani E & Associates Advocates.



2. That the Honourable Court be and is hereby pleased to issue such orders as it may deem fit and just to grant.
3. That the costs be borne by the party who instructed the law firm of Kenani E & Associates Advocates and the proprietor of the said law firm.

The Applicant's case:

2. Through the affidavit of Cecilia Asati Omweri The applicant argues that it has no dispute whatsoever against the Respondent herein.
3. The *Ex-Parte* Applicant argues that it is a stranger to the suit and it has never itself authorized anyone or any agent or official or nor instructed the Law firm of Kenani E & Associates Advocates to file the pleadings herein.
4. The person who has sworn the supporting affidavit one Peter Kyalo Kioko has no authority to swear any Affidavit or institute any application on its behalf.
5. The firm of Ongegu & Associates filed a notice of change dated the 29th March, 2023 from the firm Kenani. E & Associates Advocates for the Exparte Applicant (Vision for Life) pursuant to a special resolution to have the said firm act for them in place of Kenani E & Associates Advocates pursuant to Order 9, Rule 5 of the Civil Procedure Rules.
6. The notice of change as per Order 9 Rule 6 of the Civil Procedure Code on the 30th of March 2023. Reliance is placed in the case of of *Romane Agencies LTD v. Tanatbi Water Services Board* Civil Appeal No. 159 of 2013.
7. The firm of Kenani E & Associates Advocates is no longer acting for the Ex- parte Applicant in this suit and therefore cannot hold other parties at ransom or demand for any Orders in this suit as there is no legal basis.
8. The applicant also relies in the case he case *Mengich & Company Advocates & another v Sot Tea Growers Savings & Credit Co-operative Society Limited & 6 others; County Government of Bomet (Interested Party)* [2021] eKLR.
9. The applicant wants the suit to be struck out.

Respondents case:

10. The application is vehemently opposed.
11. According to John Githae a founding member of Vision for Life Non-Governmental Organization there are two factions of Vision for Life; one led by Ms. Cecilia Asati Omweri, who is guilty of misappropriation of the Organization's funds, and another faction comprised of legitimate founding members of the Organization.
12. The Application does not raise any concrete reasons as to why this Judicial Review should be struck out or why the Honourable Court would strike out the firm of Kenani E. & Associates Advocates from these proceedings.
13. The Judicial Review filed herein raises weighty issues which need to be resolved by this 'Honourable Court. Ms. Cecilia Asati Omweri is indicated as the secretary of the Organization, does not mean she has authority to solely conduct the business of the Organization without involving the actual members of the Organization.



14. Weighty issues are raised against Ms. Cecilia Asati Omweri, namely, misappropriation of funds paid out to the Organization by the Standard Gauge Railway Project Phase II, to the tune of Kshs.7,284,700.
15. In light of the theft of the said funds, the other founding members of the Organization, instructed the firm of Kenani E & Associates Advocates, to pursue the issue and lodge an official complaint to the Respondent herein as set out in a resolution legally appointing the firm of Kenani E & Associates to pursue the issue the Complaint that was duly lodged with the Respondent, dated 20th August 2021 awaits the decision by the Respondent.
16. This has led myself and other founding members to have the perception that the Respondent is acting in cahoots with Ms. Cecilia Asati Omweri.
17. He believes that the Application seeks to turn away genuine founding members of the Organization from the seat of justice unheard, which this Honourable Court should not condone.
18. According to him, she is the Organization's secretary, Ms. Cecilia Asati Omweri, should demonstrate to this Honourable Court, how the disputed funds were utilized and the minutes of the AGM authorizing the said utilization duly signed by other members of the Organization.
19. He urges this Honourable Court to determine the filed Judicial Review Proceedings.

Analysis and determination:

20. What is before this court for determination revolves around the issue of representation and the striking out of the suit which is a process that is independent of the mandate of the Respondent which in any event is not within the remit of this court.
21. This court has no jurisdiction to deal with the allegation that Ms. Cecilia Asati Omweri misappropriated funds paid out to the Organization by the Standard Gauge Railway Project Phase II, to the tune of Kshs.7,284,700.
22. John Githae argues that in light of the theft of the said funds, the other founding members of the organization, instructed the firm of Kenani E & Associates Advocates, to pursue the issue and lodge an official complaint to the Respondent herein as set out in a resolution legally appointing the firm of Kenani E & Associates to pursue the issue.
23. The Complaint that was lodged with the Respondent, dated 20th August 2021 awaits the decision by the Respondent and this court has not been invited to interfere with what is before the Respondent. This court focuses on the issue of whether or not the suit should be struck out or not.
24. Order 9 Rule 5 and 6 of the *Civil Procedure Rules*, 2010 provides as follows;

A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose.

Order 9 Rule 6 provides that the party giving the notice shall serve the former advocate a copy of the notice endorsed with a memorandum stating that the notice has been duly filed in the appropriate court.
25. In the case of *Kenya Pharmaceutical & 2 others v Chitechi Amboka & 3 others; Asman Chitechi & 7 others (Interested parties)* [2021] eKLR P. Nyamweya J (as she then was) the court while citing the



Uhuru Highway Development Ltd & Others v Central Bank of Kenya Ltd & Others (2) [2002] 2 EA 654, stated that; -

“Order 9 Rule 5 provides for change of advocate, and a party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal.”

26. In the case of Uhuru Highway Development Ltd & Others v Central Bank of Kenya Ltd & Others (2) [2002] 2 EA 654 it was further held that it is not the business of the Courts to tell litigants which advocate should or should not act in a particular matter as each party to a litigation has the right to choose his or her own advocate, unless it is shown to a Court of law that the interests of justice would not be served if a particular advocate were allowed to act in the matter.

27. In the case of Kenya Commercial Bank Ltd. v. John Benjamin Wanyama, Civil Appeal No. 97 of 1999; [2007] eKLR it was follows:

“There is no provision in the Rules for two firms of Advocates to be on record contemporaneously or concurrently. And this is for good reason. It would be chaotic if there was on record more than one firm. From which firm would pleadings be expected; who would be served; who would take responsibility, or be held responsible for actions or omissions of the party represented by such firms? ... The rationale for requiring an Advocate, or one firm of Advocates to act for a party and sign pleadings and receive service on behalf of such party is designed to ensure that such Advocate or firm, does take responsibility for the matter and is accountable to Court and the client he or it represents. The law does not bar a party utilizing the services of more than one Advocate or more than one firm of Advocates in a matter but where this is done, it is the Advocate or firm of Advocates on record who engage a senior counsel to lead. The rules of practice recognize that in complex matters a senior counsel may be hired to lead, and it is for this reason that costs are sometimes enhanced, and a certificate for two counsel given by Court.”

28. It is this court’s finding and I so hold that upon filing a Notice of Change of Advocates the firm that comes on record, takes charge of all the processes that are pending before this court.

29. The firm of Ongegu & Associates filed a Notice of Change of advocates dated the 29th March, 2023 effectively taking over the conduct of this suit from the firm Kenani. E & Associates Advocates for the *Exparte* Applicant (Vision for Life) pursuant to a special resolution to have the said firm act for them in place of Kenani E & Associates Advocates. As such it is my finding that the firm The firm of Ongegu & Associates are properly on record.

30. In advancing the case to strike out the suit, the applicant argues that The firm of Kenani E & Associates Advocates is no longer acting for the Ex- parte Applicant in this suit and therefore cannot hold other parties at ransom or demand for any Orders in this suit as there is no legal basis.

31. In Coalition for Reform and Democracy (CORD) & 2 Others -v- Republic of Kenya & Another HCCP 628 of 2014 [2015]eKLR, the court cited the case of Patrick Ouma Onyango & 12 Others -v- AG &



2 Others Misc. Appl No. 677 of 2005 the court had endorsed the doctrine of justiciability as stated by Lawrence H. Tribe in his treatise American Constitutional Law, 2nd Ed. as follows:

“In order for a claim to be justiciable as an article III matter, it must “present a real and substantial controversy which unequivocally calls for adjudication of the rights asserted”. In part, the extent to which there is a ‘real and substantial controversy’ is determined under the doctrine of ‘standing’ by an examination of the sufficiency of the stake of the person making the claim, to ensure the litigant has suffered an actual injury which is fairly traceable to challenged action and likely to be redressed by the judicial relief requested. The substantiality of the controversy is also in part a feature of the controversy itself-an aspect of ‘the appropriateness of the issues for judicial decision...and the actual hardship of denying litigants the relief sought. Examination of the contours of the controversy is regarded as necessary to ensure that courts do not overstep their constitutional authority by issuing advisory opinions. The ban on advisory opinion is further articulated and reinforced by judicial consideration of two supplementary doctrines: that of ‘ripeness’ which requires that the factual claims underlying the litigation be concretely presented and not based on speculative future contingencies and of ‘mootness’ which reflects the complementary concern of ensuring that the passage of time or succession of events has not destroyed the previously live nature of the controversy. Finally, related to the nature of the controversy is the ‘political question’ doctrine, barring decision of certain disputes best suited to resolution by other governmental actor.”

32. The applicant has through counsel who is on record has informed the court that it has no dispute whatsoever against the Respondent herein. This court has no reason to doubt that.

Disposition;

33. There is no dispute for determination and the suit is spent by the admission of the applicant. It is moot.

Order:

34. The application is allowed as prayed, and the suit is hereby struck out with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL, 2024

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J. CHIGITI (SC)

JUDGE

