



Kenya Copyright Board v Kenya Association of Music Producers (KAMP) & another; Music Copyright Society of Kenya (Interested Party) (Civil Appeal E1035 of 2024) [2024] KEHC 12350 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E1035 OF 2024
JM OMIDO, J
OCTOBER 15, 2024**

BETWEEN

KENYA COPYRIGHT BOARD APPELLANT

AND

**KENYA ASSOCIATION OF MUSIC PRODUCERS (KAMP) ... 1ST RESPONDENT
PERFORMING & AUDIO VISUAL RIGHTS SOCIETY OF KENYA
(PAVRISK) 2ND RESPONDENT**

AND

MUSIC COPYRIGHT SOCIETY OF KENYA INTERESTED PARTY

(Being an Appeal from the Judgement of the Copyright Tribunal (Hon. Elizabeth Lenjo) delivered on 3rd September, 2024 in COPTA/E002/2024 Kenya Association of Music Producers v Kenya Copyright Board & Others.)

RULING

1. Following the submissions made by the parties herein on 14th October, 2024, I am to determine whether the interim orders that were issued on 10th September, 2024 and extended to today on 14th October, 2024 are to be further extended pending further proceedings in this appeal.
2. From the record and the submissions by the parties, it is not in dispute on 18th June, 2024, my sister Mong'are J. issued orders as follows, in High Court (Commercial, Tax & Admiralty Division) HCCOMPET No. E014 of 2024 Music Copyright Society of Kenya Limited v Kenya Copyright Board & others:
 1. That the Notice of Motion dated 18th June, 2024 be and is hereby certified urgent.



2. That the said application be served and be responded to within 14 days.
3. That the said application be mentioned for directions on 2nd July, 2024.
4. That in the interim, a Conservatory Order be and is hereby issued restraining the Interested Party from collecting and/or distributing any monies and royalties for and/or on behalf of the Petitioner/Applicant and its affiliate members on the strength of the Operating Licence issued to it by the 1st Respondent pending the hearing and determination of this application.
5. That in the interim, an order be and is hereby issued allowing and/or permitting the Petitioner/Applicant to continue collecting monies and distributing royalties to its affiliate members pending the hearing and determination of this Application.
3. It is instructive from the copy of the order in the above matter that other than the 1st Respondent herein, all the other parties are parties in the matter before my sister.
4. The order referred to above was issued on 18th June, 2024, before the instant appeal was lodged and it remains unclear why the Appellant did not disclose the existence of the said order at the time that it presented the Notice of Motion from which the interim orders that I issued emanated.
5. Be that as it may, I have carefully perused and considered the order that Mong'are J. issued and I am persuaded that there is every likelihood that the one that I issued on 10th September, 2024 may conflict in its application with the one my sister issued, that parties inform me still subsists.
6. It is to be noted that the interim orders that were issued in this matter had the effect of staying the judgement of the Copyright Tribunal rendered on 3rd September, 2024.
7. The stay, would inter alia mean that the decision of the Appellant of 2nd August, 2024 (that was subject of the matter before the Copyright Tribunal) appointing the 2nd Respondent as the sole Collective Management Organisation for all relevant copyright owners would stand reinstated, yet the conservatory orders from my sister's court restrain the 2nd Respondent from collecting and/or distributing any monies and royalties for and/or on behalf of the Petitioner/Applicant and its affiliate members on the strength of the Operating Licence issued to it by the 1st Respondent pending the hearing and determination of that application.
8. That would further mean that my order, if extended, would reinstate the Certificate of Registration of a Collective Management Organisation issued to the 2nd Respondent, that was annulled by the Copyright Tribunal, which in effect will result in the orders of this court allowing the 2nd Respondent to collect and distribute monies and royalties, contrary to the orders issued by the other court.
9. The scenarios given in the foregoing two paragraphs would in my view clearly present a conflict between the two orders if the orders issued herein are extended.
10. It is my conviction that had the Appellant brought to my attention the existence of the orders issued by Mongare J., I would not have issued the interim orders that I made on September 10, 2024.
11. To that then, as there was non-disclosure of the existence of the earlier orders, which is in my view material, I opine that the right position for me to take is to decline to extend the interim orders any further, which I hereby do, to avoid possible conflict and/or confusion.
12. Having so said, I will direct that the appeal be fast tracked.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 15TH DAY OF OCTOBER, 2024



JOE M. OMIDO

JUDGE

For The Appellant: Mr. Nyabwengi,

For The 1st Respondent: Mr. Atieno & Mr. Omanga.

For The 2nd Respondent: Ms. Wambui & Mr. Mburu.

For The Interested Party: No appearance.

Court Assistant: Ms. Njoroge.

Mr. Nyabwengi: We are dissatisfied with the ruling. I pray for a copy of the ruling as we will be preferring an appeal.

Mr. Atieno: We have no objection. I pray for a copy of the ruling.

Mr. Mburu: We are guided by the ruling of the court.

Court: A copy of the ruling to be supplied upon the parties.

The Appellant to file a formal application for leave to appeal.

The Appellant to file the Record of Appeal within 30 days. The matter to be mentioned before the Deputy Registrar on 20th November, 2024 for confirmation.

JOE M. OMIDO

JUDGE.

