



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 24 OF 2019

IN THE MATTER OF ARTICLE 1, 2, 3, 10, 160 AND 258 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF ALLEGED VIOLATION AND/OR THREATENED VIOLATION OF ARTICLE 10 AND 118 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE COPYRIGHT ACT, CHAPTER 130 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE STATUTE LAW (*Miscellaneous Amendments*) ACT 2018

AND

IN THE MATTER OF THE PUBLIC PARTICIPATION BILL 2018

AND

IN THE MATTER OF THE NATIONAL PRINCIPLE OF PUBLIC PARTICIPATION

AND

INTELLECTUAL PROPERTY OWNERS ASSOCIATION..... PETITIONER

VERSUS

THE KENYA COPYRIGHT BOARD (KECOBO)..... 1ST RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

This Ruling is on the Preliminary Objection dated 23rd January 2020. The said objection was lodged by the 1st Respondent, who raised the following grounds;

“1. This Court has no jurisdiction over this matter as the issues raised are still pending under judicial consideration before court.

2. The cause of action arose in Nairobi and all the Parties in this matter are domiciled in Nairobi.

3. The owner of public participation is the Parliament who has not been enjoined in this Petition thus the Petitioner/Applicant has no cause of action against the 1st Respondent.

4. The orders sought if granted will cause irreparable harm to copyright owners as users of copyright works will exploit copyright works without payment of royalties to copyright holders.

5. The application is an abuse of court process.”

1. When the case came up in court on 5th February 2020, the 1st Respondent sought leave of the Court to file affidavits so that it could exhibit the judgments in the 3 cases which had been determined in Nairobi. The purpose of providing the said judgments was to enable this Court verify the issues which had already been determined in those other cases.

2. The Petitioner had no objection to the 1st Respondent’s request, and therefore the court allowed the 1st Respondent to file and serve the said judgments.

3. On 19th February 2020, when the case was next in court, the Petitioner’s advocate acknowledged that he had been served with the judgments. He then requested the Court to give him an opportunity to consult with his client.

4. The parties then consented to an adjournment. They also agreed that the Petitioner may file a further affidavit, and that the Respondents would have an opportunity to respond to such further affidavits.

5. However, the Petitioner never filed any further affidavits.

6. The record of the proceedings shows that on 6th October 2020, the parties consented to the adjournment of the case for one month.

7. When The case was next in court on 4th November 2020, the Petitioner was represented by Mr. Stephen Gitonga. As the said learned counsel had just come into the matter, he asked for time to enable him familiarize himself with the Petition.

8. As the Respondents had no objection to the Petitioner’s request, the case was adjourned to 15th December 2020.

9. Mr. Gitonga advocate informed the court, on 15th December 2020, that he had given due consideration to the Petition. He said that some of the prayers in the Petition were already moot. In the circumstances, the Petitioner’s advocate proposed to file an application for leave to amend the Petition.

10. Although the Respondents agreed to the adjournment, and the court allowed the Petitioner some 14 days to file the intended application for amendment of the Petition, no such application was filed.

11. The 1st Respondent then decided to canvass its Preliminary Objection, and the court directed the parties to file written submissions.

12. However, even though the Petitioner was allowed time to file its submissions, none was filed. In effect, the Preliminary Objection was unchallenged. On that ground alone, the court would have no reason for dismissing the said Preliminary Objection.

13. However, I have also given due consideration to the fact that **The Statue Law (Miscellaneous Amendment Act) No. 4 of 2018** has already been the subject of judicial pronouncement.

14. In the case of **THE SENATE OF THE REPUBLIC OF KENYA & 4 OTHERS Vs THE ATTORNEY GENERAL & OTHERS PETITION NO. 284 OF 2019**, the Court declared as unconstitutional a total of twenty-three (23) statutes,

including **The Statute Law (Miscellaneous Amendment Act) No. 4 of 2018** and also **The Statute Law (Miscellaneous Amendments Act) No. 18 of 2018**.

15. The Court held that the said statutes were passed in contravention of **Articles 96, 109, 110, 111, 112 and 113** of the **Constitution of the Republic of Kenya**.

16. That judgment was delivered on 29th October 2020.

17. I believe that that informed the statement by the Petitioner’s advocates on 15th December 2020, when he said that some parts of the Petition were already moot.

18. In my considered view, the Petition is wholly moot, as the reliefs it seeks, have been subsumed by the judgment in **Petition No. 284 of 2019**.

19. In the event, there would be nothing left for determination in this Petition.

20. Accordingly, I declare that the **Petitions No. 24 of 2019** and **25 of 2019** have been overtaken by events. The same are hereby struck out,

with no order as to costs.

DATED, SIGNED and DELIVERED at KISUMU this 15th day of July 2021

FRED A. OCHIENG

JUDGE