



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 251 OF 2019**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**KENYA COPYRIGHT BOARD.....1<sup>ST</sup> RESPONDENT**

**KENYA ASSOCIATION OF MUSIC PRODUCERS.....2<sup>ND</sup> RESPONDENT**

**MUSIC COPYRIGHT SOCIETY OF KENYA.....3<sup>RD</sup> RESPONDENT**

**PERFORMERS RIGHTS SOCIETY OF KENYA.....4<sup>TH</sup> RESPONDENT**

**EX PARTE:**

**DIANA INTERNATIONAL LTD T/A ANDREW APARTMENTS**

**RULING**

**The Application**

1. Diana International Ltd T/A Andrew Apartments (hereinafter “the Applicant”) are dissatisfied with the judgment delivered herein by Hon. Mativo J. on 11<sup>th</sup> March 2020, and have filed an application by way of a Notice of Motion dated 8<sup>th</sup> April 2020 seeking various orders, including that the matter be certified urgent.

2. Additional prayers in the application are for a stay of enforcement of the decision contained in the enforcement notice dated 23<sup>rd</sup> July 2019 and demand notice dated 19<sup>th</sup> August 2019, that were the subject of the said judgment, at *ex parte* stage pending the hearing of the application, and after *inter partes* hearing pending the hearing of the intended appeal. Lastly, the Applicant seeks an order for extension of time for filing of the Notice of Appeal against the judgment dated 11<sup>th</sup> March 2020, and that the Notice of Appeal filed with the application be deemed to have been duly filed upon leave having been granted.

3. The said application is supported by an affidavit sworn on 8<sup>th</sup> April 2020 by David Gichuki, who is employed as an accountant by the Applicant. The Applicant avers that the 14- day period prescribed by statute for filing the Notice of Appeal lapsed on 25<sup>th</sup> March 2020, and it was unable to file the said Notice of Appeal during the said period due to the substantial scaling down of operations in courts all over the country, aimed at preventing the spread of COVID-19. Furthermore, that it had acted without undue delay. Additionally, that its appeal is arguable with a good chance of success, as demonstrated in the grounds contained in its draft Memorandum of Appeal, a copy of which was attached.

4. Upon carefully considering the application dated 8<sup>th</sup> April 2020 and the reasons offered in support of the urgency, I am satisfied that the Applicant has demonstrated that the matter is urgent, and that the same ought to be heard on a priority basis. This is for the reasons that it is on record that judgment was indeed delivered herein on 11<sup>th</sup> March 2020, and Rule 75(2) of the Court of Appeal Rules require that civil appeals are lodged within fourteen days of the date of the decision against which it is desired to appeal. The question of the extension of time to file the appeal, and that of the grant of the orders of stay sought shall however be heard and determined after the Respondents have been given an opportunity to state their respective cases.

5. This Court also notes that the Applicant filed a Notice of Change of Advocate dated 8<sup>th</sup> April 2020 contemporaneously with its application, informing that it had appointed the firm of AKO Advocates LLP to conduct this matter on its behalf in place of Ataka, Kimori &

Okoth Advocates. In addition, the Applicant filed a signed consent between the two firms of advocates, also dated 8<sup>th</sup> April 2020, on the said change of advocates. It is notable in this respect that under Order 9 Rule 9 of the Civil Procedure Rules, it is provided that a change of advocates after judgment has been delivered shall be effected as follows:

**“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—**

**(a) upon an application with notice to all the parties; or**

**(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”**

6. It is evident from Order 9 Rule 9 that the Court is required to make an order as to such change of advocate in either of the two stated circumstances, and its leave must therefore be sought. No such prayer is however sought in the Applicant’s Notice of Motion dated 8<sup>th</sup> April 2020, and this Court cannot in the circumstances grant an order as to change of advocates at this stage. To this extent the said change of advocates is also improper.

### **The Orders**

7. In light of the foregoing observations and findings, I accordingly order as follows:

**I. The Notice of Motion application dated 8<sup>th</sup> April 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis.**

**II. The Applicant is granted leave to amend the Notice of Motion dated 8<sup>th</sup> April 2020 to include a prayer for leave of the court to change its advocates, and shall file and serve the said Amended Notice of Motion together with skeletal submissions thereon on the Respondents, within seven (7) days of today’s date.**

**III. The Applicant is also directed to serve the present application and supporting documents; the Notice of Change of Advocates dated 8<sup>th</sup> April 2020; the signed consent on change of advocates filed herein dated on 8<sup>th</sup> April 2020; and a copy of this ruling on the Respondents within seven (7) days from today.**

**IV. Upon being served with the said pleadings and documents, the Respondents shall be required to file their reply to the amended Notice of Motion, and skeletal submissions thereon within seven (7) days from the date of service.**

**V. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the amended Notice of Motion on the basis of the electronic copies of the pleadings and submissions filed.**

**VI. The Deputy Registrar of this Court shall send a copy of this ruling and the extracted orders to the Applicant by electronic mail by close of business today.**

**VII. Service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also send a copy of documents so served to the Deputy Registrar of this Court at [milimani.judicialreview@court.go.ke](mailto:milimani.judicialreview@court.go.ke) with copies to [ceciliakithinji@yahoo.co.uk](mailto:ceciliakithinji@yahoo.co.uk) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**VIII. The Deputy Registrar of this Court shall bring the file to the attention of the duty Judge for further directions on 5<sup>th</sup> May 2020.**

8. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF APRIL 2020**

**P. NYAMWEYA**

**JUDGE**