Mathayo v Guaranty Trust Bank (Kenya) Ltd (Commercial Case E027 of 2025)
[2025] KEHC 13957 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13957 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE E027 OF 2025

FG MUGAMBI, J

OCTOBER 3, 2025

BETWEEN

WILFRED ANDITA MATHAYO ..... PLAINTIFF

AND

GUARANTY TRUST BANK (KENYA) LTD ..... DEFENDANT

RULING

Introduction and Background

The plaintiff's application:

1. There are two applications for the court's determination. The first is the plaintiff's Notice of Motion application dated 20th January 2025, brought under sections 1A, 1B, 3, 3A, and 63(e) of the *Civil Procedure Act*, Order 39, Rules 5–7 and Order 40, Rules 1–2 of the Civil Procedure Rules. It primarily seeks a Mareva injunction to preserve EUR 9.5 million that the plaintiff (Mr. Mathayo) alleges was received by the defendant (the Bank) on his behalf.

2. Mr. Mathayo's case is that he holds account number 21XXXXXX843 with the Bank's Westlands Branch and that on 23rd December 2024, Canwell Corporation Limited transferred EUR 9.5 million to his account via Credit Foncier Limited. That the Bank acknowledged receipt on 24th December 2024 and requested supporting documents, which were provided by his lawyers between 24th and 27th December 2024 but despite providing all requested documentation, the Bank failed to credit his account.

3. Mr. Mathayo further contends that on 7th January 2025, the Bank denied receiving the funds, contradicting its earlier confirmation and yet a SWIFT transaction report from Kali Kimanzi Skit Softs

Limited confirms the funds are with the Bank and Credit Foncier Limited confirmed on 10th January 2025 that the funds had not been recalled.

4. He is apprehensive that the Bank may divert or misuse the funds to avoid future court orders. He complains that he has suffered and continues to suffer irreparable harm due to the delay to release the funds to him. As such, he seeks to restrain the Bank from using, transferring, or dealing with the money. He also seeks a mandatory injunction directing the Bank to credit his account within 48 hours, and an order that the Bank provides security equivalent to EUR 9.5 million.

5. The Bank responded to Mr. Mathayo's application through affidavits sworn by Janet Ndolo, its Acting Chief Operating Officer and Head of Settlements, on 18th February 2025 and 24th March 2025. The Bank acknowledges that Mr. Mathayo opened a current account in December 2022, in which he declared that he was in employment with Vionas Eggs Shop. He also declared that he earns a monthly income ranging from Kshs. 100,000.00 to 250,000.00, with a projected highest transaction of Kshs. 150,000.00 per month. The account's stated purpose was for personal transactions.

6. The Bank states that the account was predominantly inactive, with only Kshs. 550.00 transacted between January 2023 and December 2024. It asserts that it adheres to the Central Bank of Kenya's Prudential Guidelines and the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA). This involves verifying customer identities according to the bank's Know Your Customer (KYC) requirements, monitoring and reporting suspicious transactions, conducting ongoing due diligence and applying enhanced due diligence for high-risk transactions.

7. Regarding the EUR 9.5 million transaction, the Bank clarifies that it was initiated via the Society for Worldwide Interbank Financial Telecommunication (SWIFT) MT103 message, not through an Electronic Funds Transfer (EFT). Although the Bank received the SWIFT message, it states that it did not receive the actual funds in its nostro account with Standard Chartered Bank in Frankfurt, Germany. Internal checks further revealed no credit entry for the amount in the Bank's euro account.

8. The Bank emphasizes that the transaction was highly unusual because an otherwise inactive account suddenly received approximately Kshs. 1.27 billion. It questions the purpose of the funds, noting that purchasing USDT (Tether) is considered illegal in Kenya. The Bank also highlights discrepancies, including that the agreement refers to the sender as "Maxwell" instead of "Wilfred," and that Canwell Corporation Limited, the purported sender, was dissolved in 2018, as verified through the Hong Kong company registry. Additionally, it points out that Mr. Mathayo's account had previously been flagged for suspicious activity, with a "no withdrawal" restriction in place.

9. The Bank concedes that it requested further documentation from Mr. Mathayo, conducted due diligence, and filed a Suspicious Transaction Report (STR) with the Financial Reporting Centre (FRC) on 24th December 2024. It also engaged its correspondent bank, Standard Chartered Bank, to trace the funds, but found no evidence that the funds had been received. Consequently, the Bank contends that it never received the funds and, therefore, had no obligation to credit Mr. Mathayo's account.

10. It argues that the transaction was suspicious and potentially linked to money laundering, and asserts that it is protected under section 19 of POCAMLA for actions taken in good faith to prevent financial crime.

11. The Bank also dismisses Mr. Mathayo's request for security of judgment, asserting that as a regulated entity, it has no intention to evade its legal obligations.

The defendant's application:

12. The second application is the Bank's Notice of Motion dated 24th February, 2025 brought under section 1A, 1B,3A and 27 of the *Civil Procedure Act*, Order 26, Rules 1,4,5 & 6, Order 40 Rule 2 of the Civil Procedure Rules and the LSK Code of Standards of Professional Practice and Ethical Conduct (SOPPEC).

13. It seeks an order directing Mr. Mathayo to deposit Kshs. 25,734,266.67 into a joint interest-earning account to cover the Bank's potential legal costs should his suit be unsuccessful. The Bank argues that if the suit is dismissed, Mr. Mathayo will be unable to pay its legal costs, estimated at Kshs. 25,734,266.67. The Bank maintains its argument that Mr. Mathayo's suit is for a huge amount, approximately KES 1.2 billion, that his declared monthly income is between Kshs. 100,000.00–250,000.00 and that his account with the Bank has only transacted Kshs.550.00 since January 2023.

14. Additionally, the Bank seeks to have an order restraining Mr. Mathayo's advocate, that is Mr. Nelson Havi, from making public comments about the case on social media and in print, citing concerns over breach of the sub-judice rule and professional misconduct.

15. The Bank alleges that Counsel posted threatening and intimidating messages on X (formerly Twitter) directed at judicial officers. The Bank also claims that Mr. Havi published a letter written to the Deputy Registrar criticizing the court's handling of a request for default judgment. The Bank contends that these actions violate the LSK Code of Conduct, specifically SOPPEC-10 concerning the use of social media, and represent an attempt to intimidate the court and prejudice the Bank. Accordingly, it prays that its application to be allowed as prayed in the interest of justice.

16. Mr Havi, in response asserts that he is not a defendant in the suit and cannot be restrained as prayed, noting that no counterclaim has been filed by the Bank to support an injunction against him. He argues that the sub-judice rule under section 6 of the *Civil Procedure Act* applies only to courts and not to advocates or parties commenting on ongoing cases.

17. Furthermore, Mr. Havi contends that the Deputy Registrar, Ms. Noelle Kyanya, acted incompetently and misconducted herself by refusing to enter default judgment despite the Bank's failure to appear. He explains that he filed a complaint with the Judicial Service Commission (JSC) and publicly disclosed it, which he claims is lawful conduct. In his view, if Ms. Kyanya believes that her reputation has been defamed, he maintains she should pursue a libel suit directly against him, rather than alleging misconduct through the Bank as proxy.

18. Counsel highlights that historical legal precedents demonstrate that judges who restrict free speech have been removed from office. He notes that the entire *Contempt of Court Act* was declared unconstitutional in 2015, and the offence of "scandalizing the court" was abolished in England, implying it has no legal standing in Kenya. He emphasizes that the LSK Code of Conduct is not a penal statute and therefore cannot serve as a basis to limit free speech.

19. Additionally, Mr. Havi accuses Mr. Allen Gichuhi, the Bank's counsel, of engaging in a longstanding campaign to silence him concerning judicial corruption. He claims that some judges and magistrates are targeting him as retaliation for his advocacy for accountability. Mr. Havi asserts his right to leverage his influence and experience to promote judicial integrity and transparency.

20. In opposition to the prayer for security for costs, Mr. Havi affirms that Mr. Mathayo paid Kshs. 73,250.00 in filing fees and asserts that the right to a fair hearing cannot be denied through a request for security. He further argues that if the suit is indeed frivolous, the appropriate remedy is for the Bank to

apply to have it struck out. Mr. Havi also points out that the Supreme Court has previously held that conditioning access to justice on the payment of security is unconstitutional.

21. He further emphasizes that the Bank has no valid defense on record, having failed to enter an appearance before filing its defense. Moreover, he finds it absurd that the Bank, which is presently withholding Mr. Mathayo's funds, claims that he cannot afford to pay costs. Based on these arguments, Mr. Havi urges the court to dismiss the Bank's application with costs.

Analysis and Determination

22. I have considered the applications, responses, and submissions presented by counsel on behalf of the parties. The issues before the court involve whether to grant a Mareva injunction to prohibit the Bank from using, transferring, or dealing with EUR 9.5 million; whether to issue a mandatory order requiring the Bank to credit Mr. Mathayo's account within 48 hours with the same amount; whether to impose security for the said sum or its equivalent; and whether to require security for costs in the amount of Kshs. 25,734,266.67. Additionally, the court must determine whether Mr. Havi should be gagged from making comments about this case on social media.

The Mareva injunction

23. I reaffirm my previous decision in Zakhem International Construction Limited & Another V Oilfields Engineering and Supplies Limited & Another; Kenya Pipeline Company Ltd (Intended Interested Party), [2023] KEHC 21842 (KLR) where I outlined the effect of a Mareva injunction as follows:

> " The Halsbury Laws of England 3rd Edition Vol. 3 [1] page 329 to 331 defines a Mareva injunction as:
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> An order of the court restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with assets, located within that jurisdiction and in more limited circumstances from dealing with assets located outside, the jurisdiction.
>
> On the purpose and application of Mareva injunctions, Lord Denning in the locus classicus case of Mareva Campania Naviera SA V International Bulkcarriers SA [1980] 1 All E.R. 213 stated as follows at page 215:
>
> "... that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets." (emphasis mine).
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> In Fourie v Le Roux & Ors [2007] UKHL 1 at Para 2, [2007] 1All ER 1087, Lord Bingham also observed that:
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> "Mareva (or freezing) injunctions ...are granted to protect the efficacy of court proceedings, domestic or foreign."
>
> The position is further captured in the Halsbury's Laws of England (supra) to the extent that:
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> "The foundation of the court's jurisdiction is the need to prevent judgments of the court from being rendered ineffective, whether by the removal of the defendant's assets from the jurisdiction, or by dissipation."

> The preventive and anticipatory character of injunctive orders is also captured under Order 40 of the Civil Procedure Rules 2010. Rule (1)(b) particularly provides that if:
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> "The defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further."

24. The totality of the above discourse is that the grant of a Mareva injunction is contingent upon certain key prerequisites. The court must be satisfied that there is a debt owing and that there is a real risk the defendant may dissipate or remove assets to defeat the enforcement of a future judgment. Importantly, the property in question must be within the court's jurisdiction, as the order primarily seeks to restrain dealing with assets located within the jurisdiction.

25. The court's core concern is ensuring the preservation of assets to enable effective enforcement of any judgment; therefore, it must be convinced that there is a genuine threat that the defendant will dispose of or hide assets in a manner that obstructs or delays the execution of such judgment. The injunction is fundamentally preventive and anticipatory, designed to prevent asset dissipation before a final determination is made.

26. Mr. Mathayo argues that the Bank admitted receipt of the funds through an email dated 24th December 2024 and subsequent affidavits, and that the use of banking terms like "SWIFT transfer" and "EFT" does not exempt the Bank from legal responsibility. He argues that under the UNCITRAL Model on International Credit Transfers, 1994, and the Money Remittance Regulations, 2013, the Bank was required to credit the funds to his account.

27. According to him, an EFT receipt which he received, is clear evidence that the transfer was completed. It is his case that the Bank's contradictory actions of initially admitting receipt and then denying it indicate an attempt to obstruct enforcement of a future court order. He also argues that suspicion alone is not a valid reason to withhold the funds.

28. Conversely, the Bank states it only received the SWIFT message but did not receive the actual funds in its account at Standard Chartered Bank in Frankfurt. Internal checks confirmed no credit entry for that amount. The Bank contends that it acted properly by not crediting Mr. Mathayo's account based solely on an unverified MT 103 SWIFT message, which was not supported by a corresponding MT 202 COV message or actual receipt of funds.

29. It explains that an MT 103 is an instruction to pay, not proof of payment, and that standard banking practice requires an accompanying MT 202 COV message, which indicates a promise to reimburse the paying bank. As such, the Bank argues that a Mareva injunction is unwarranted because no funds were ever received. It clarifies that the transfer rules cited by Mr. Mathayo are inapplicable to SWIFT transactions, which are governed by specific messaging protocols.

30. Certainly, the core issue in this case is whether the funds were actually received by the Bank, which is essential for establishing that the funds are within the Court's jurisdiction and under the Bank's control. This is a fundamental requirement because a Mareva injunction or any order to freeze assets can only be justified if the Court is satisfied that the assets in question are indeed held by the Bank at the time of the application. Without this, any freeze risks condemning assets that are not demonstrably available or in the Bank's possession, leading to potential injustice.

31. To support his position, Mr. Mathayo annexed an email dated 24th December 2024 from the Bank's representative, asserting that the Bank is "...in receipt of incoming funds of 9,500,000 Euros from Canwell Corporation...". Furthermore, an email from a Credit Foncier representative confirms that the transferred funds have not been recalled, and this is corroborated by a SWIFT tracking report indicating the transfer's progress. These pieces of evidence suggest that there was an intention and effort to transfer the funds; however, the critical question is whether the funds ever reached Mr. Mathayo's Bank's account.

32. To answer this question, the Bank provided account statements from its nostro account held at Standard Chartered Bank in Germany, along with internal correspondence. These documents conclusively demonstrate that no credits of EUR 9.5 million are reflected in the account statements. The absence of such entries indicates that, despite the instructions issued via SWIFT, the funds were never credited into the Bank's account. The internal emails further emphasize that the Bank's personnel verified that no such funds were received, reinforcing that the Bank, at no point, held or controlled the funds.

33. The significance of this evidence is reinforced by the legal presumption established in Section 176 of the *Evidence Act*, which presumes that entries in a bank's statement of accounts are prima facie evidence of the transactions recorded. It provides as follows:

> " A copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded."

34. This presumption shifts the onus to the party claiming the funds are held by the Bank to provide corroborative evidence demonstrating actual receipt. Notably, neither the SWIFT Transaction Tracking Report nor the documents provided by Mr. Mathayo contain a confirmation that the funds were received by the Bank. At the very most the transaction is described as being "in progress and awaiting settlement".

35. On the other hand, the Bank's account statements, supported by internal verification, make it clear that the funds were never actually received or credited. In my view, mere instructions to transfer funds or the existence of SWIFT messages do not suffice; there needs to be concrete evidence of transfer and receipt. Failing this, granting a freeze order risks unjustly penalizing the Bank over assets that are not truly within its control. Top of Form

36. The question as to who actually holds the funds and why they were never credited to Mr. Mathayo's account, despite the Bank having visibility of the transfer as "incoming," is a fact-intensive issue that can only be resolved through a full trial. It cannot be determined on the basis of conflicting affidavits alone. Since the Bank claims that the funds were never received or credited, Mr. Mathayo must provide compelling evidence to counter this assertion.

37. In any case, even if the Bank were in possession of the funds, Mr. Mathayo has not sufficiently demonstrated that the funds are at risk of dissipation or that there is a reasonable chance the funds could be moved outside the court's jurisdiction to defeat the course of justice. Without clear evidence showing imminent danger of asset removal or dissipation, the justification for a Mareva injunction is weak. Given these considerations, the prayer must fail.

The Mandatory injunction:

38. Having established that the Bank is not in actual possession of the funds, it logically follows that it cannot be compelled to pay or release funds that it does not hold. A mandatory injunction, as is

being sought, can only be issued in clear and unequivocal cases where the court is satisfied that the matter is straightforward enough to be decided immediately (see Kenya Breweries Limited & Another V Washington O. Okeyo, [2002] KECA 284 (KLR)). This is not such a case. As I have previously stated, the true location of the funds and the legal rights accruing from them remain uncertain and can only be conclusively determined after a full hearing. I therefore decline this prayer as sought by Mr. Mathayo.

Security for costs on the decree:

39. Mr. Mathayo seeks an order for the Bank to provide security equal to EUR 9.5 million. Such an order, commonly known as "attachment before judgment," is provided for under Order 39 Rule 5 of the Civil Procedure Rules. This rule grants the court the power, at any stage of a suit, to order the defendant to furnish security. It provides as follows:

> "(1) Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him—
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> a. is about to dispose of the whole or any part of his property;
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> b. is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.
>
> (2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.
>
> (3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified."

40. The principles governing the consideration of such applications were clarified by the Court of Appeal in Kuria Kanyoko T/A Amigos Bar and Restaurant V Francis Kinuthia Nderu, Helen Njeru Nderu, and Andrew Kinuthia Nderu, [1988] 2 KAR 1287-1334. The Court emphasized that the power to attach property before judgment must not be exercised lightly and should only be invoked when there is clear proof that the defendant is about to dispose of or remove assets with intent to obstruct or delay enforcement of a judgment.

41. I have already determined that Mr. Mathayo has not presented any evidence to suggest, or from which the court can reasonably conclude, that the Bank intends to dispose of or remove any funds from this jurisdiction. Moreover, I have found that the funds in question are not being held or controlled by the Bank, at least from a prima facie basis. An examination of Mr. Mathayo's depositions reveals that his concern appears to be purely apprehensive, based on fear rather than factual or evidentiary grounds. Such apprehension, which is unsupported by tangible evidence, is insufficient to justify an order of security under Order 39 Rule 5. Consequently, I decline the prayer by Mr. Mathayo for an order of security before judgment.

42. The Bank, on its part, has also sought security for costs, estimated at Kshs. 25,734,266.67. The prayer is brought under Order 26 Rule 1 of the Civil Procedure Rules, which grants the court discretion to require any party to provide security for the costs of a defendant, third party, or subsequent party. This rule confers a discretion on the court, and the circumstances under which security for costs may be ordered depend on the considerations of justice and fairness in each case.

43. In this regard, the Supreme Court in Westmont Holdings SDN BHD V Central Bank of Kenya & Two Others, [2023] KESC 11 (KLR) established guiding principles to assist courts in determining applications for security for costs. These principles emphasize that such applications must be approached carefully, balancing the need to prevent abuse of process with fairness to the parties involved. The court should consider the reasons behind the application, the conduct of the parties, the genuineness of the claim, and whether the applicant has demonstrated a real risk of inability to recover costs at the conclusion of the proceedings.

44. Weighing the evidence before me against the guidance provided by the Supreme Court, I am persuaded that the Bank's concerns are well-founded. The Bank is defending a substantial claim valued at EUR 9.5 million (approximately KES 1.2 billion), yet Mr. Mathayo's declared monthly income is modest in comparison. This significant disparity between the claimed liability and his declared earnings raises serious questions about his ability to meet such an obligation.

45. Furthermore, the Bank's records reveal that Mr. Mathayo's account has only recorded negligible transactions, specifically, Kshs. 550 since January 2023, despite the large sum at stake. Such a conspicuous discrepancy fuels a legitimate suspicion that Mr. Mathayo may lack the financial capacity to cover the Bank's costs should the claim fail, underscoring the necessity for appropriate security for costs in this matter.

46. The Bank has provided documentation, including the account opening forms and bank statements, which confirm Mr. Mathayo's modest declared income and support its concerns about his financial capacity. In the absence of any contradicting evidence, the minimal transactions recorded on the account over such an extended period would suggest that Mr. Mathayo lacks the financial resources to cover substantial legal costs, which the Bank estimates to exceed Kshs. 25 million. My earlier findings reinforce this, as Mr. Mathayo has failed to demonstrate a prima facie case that would justify a full waiver of security for costs.

47. Given these circumstances, it would be prudent to order that Mr. Mathayo furnish some security for costs should his claim ultimately be unsuccessful. However, in order to balance the Bank's legitimate concerns with Mr. Mathayo's right to access justice, I do not propose a full security order. Instead, I feel that a reasonable compromise would be to require Mr. Mathayo to provide security in the amount of Kshs. 5 million, which is a quarter of the security sought, considering the value of the claim.

48. This sum is in my view sufficient to satisfy the Bank's concern about potential recovery of costs, while still allowing Mr. Mathayo to pursue his claim without unduly restrictive measures that could stifle his access to justice. This order would also, in my view, serve the interests of justice by ensuring that the Bank's costs are protected without imposing an insurmountable barrier on Mr. Mathayo's legal pursuit.

The gag order against Mr. Havi:

49. Top of FormThe Bank has sought a gag order against Mr. Havi restraining him from commenting on this case through his social media handles. The posts in question are contained in his X post of 19th February, 2025 where Mr. Havi states that "Judges and Magistrates who think they will "teach me a

lesson" as they say in their WhatsApp groups like Noelle Kyanya better have their facts and the law right when doing so failing which the retaliation from my end will be brutal, ruthless and career ending for them". There is also the letter of 18th February 2025 addressed to the Deputy Registrar which he published in the same page.

50. Having carefully considered the circumstances, I find that the prayer to gag Mr. Havi from commenting on this case is justified. While the right to freedom of expression is fundamental, it is not absolute, especially where comments threaten the integrity and independence of the judiciary or risk prejudicing ongoing proceedings. Section 1A (3) of the *Civil Procedure Act* bestows on Counsel the duty to assist the Court to further the overriding objective of the Act, namely to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes.

51. I am also guided by the Law Society of Kenya (LSK) Code of Standards of Professional Practice and Ethical Conduct (SOPPEC). This Code applies to all advocates, including Mr. Havi, and serves as an essential guiding framework for ethical conduct within the legal profession. The argument that the Code lacks legal force cannot hold, as it is enacted by dint of the parent statute, the *Advocates Act*, Cap 16, which empowers the Law Society of Kenya to establish and enforce such standards. The *Advocates Act* provides the legal foundation and authority for the promulgation of SOPPEC, and it is intended to ensure that advocates uphold high standards of integrity, professionalism, and conduct. As such, compliance with SOPPEC is not only a matter of professional obligation but also a legal duty that significantly influences the standards of advocacy and the ethical responsibilities of all practitioners under the law.

52. Section 10 thereof provides that:

> " This Code is intended to apply to all members of the Society, in this case all persons who fall within the provisions of section 7 of the *Law Society of Kenya Act*. Thus, the Code is intended to guide practising Advocates, in-house counsel and others who, while not actively engaged in the practice, are members of the Society."

53. SOPPEC 10 explicitly states that the inappropriate use of social media, especially in a manner that undermines the standing and dignity of the legal profession, constitutes professional misconduct. Additionally, SOPPEC 12 emphasizes that advocates must maintain the highest standards of honesty and integrity in their dealings with clients, the courts, colleagues, and the public. Such standards are essential to uphold the reputation, independence, and credibility of the legal profession.

54. Given that Mr. Havi's conduct appears to violate these professional standards by publicly castigating judicial officers and undermining judicial authority through social media, and considering his assertion that he has exhausted internal mechanisms of redress, I find it necessary to issue an order restraining him from making further comments on this case. Such an order is vital to safeguard the dignity of our judiciary, ensure the integrity of the proceedings, and uphold the ethical standards that underpin the legal profession. This measure aligns with the Court's Constitutional duty to preserve public confidence and ensure that judicial independence is protected from undue influence or intimidation.

55. In any event, it is important to highlight that Mr. Havi has openly acknowledged that he has pursued his concerns regarding specific judicial conduct through the appropriate channel, namely the Judicial Service Commission (JSC). In my view, this was the proper and sufficient recourse. His explicit confirmation of engaging the JSC to address his grievances significantly undermines any justification for public criticism or inflammatory social media posts. Such conduct, particularly when it amplifies threats or seeks to undermine judicial authority, poses a tangible risk to the integrity and proper administration of justice. I therefore deem it fair and just to allow the prayer.

Conclusion and Disposition

56. Accordingly,

i. The plaintiff's application dated 20th January 2025 is dismissed in its entirety;

ii. The defendant's application dated 24th February 2025 is partly successful and the following orders do hereby issue:

a. That the plaintiff shall deposit security for the defendant's costs of the suit in the sum of Kshs. 5,000,000.00 in a joint interest earning account in the names of the parties' advocates within 30 days of this Ruling in default of which the Court shall issue further directions.

b. Pending the hearing and determination of the suit, Mr. Nelson Andayi Havi, the Counsel on record for the plaintiff, and/or his proxy, be and are hereby restrained from making any comments and/or publishing in print or social media any matter regarding the subject matter.

iii. The defendants shall have the costs of both applications.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

F. MUGAMBI

JUDGE