



**Onyango v Attorney General & 6 others (Civil Case E100 of 2025)  
[2025] KEHC 14989 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14989 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E100 OF 2025  
F GIKONYO, J  
OCTOBER 23, 2025**

**BETWEEN**

**MOSES VICTOR ORWA ONYANGO ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**KENYA NATIONAL BUREAU OF STATISTICS ..... 2<sup>ND</sup> DEFENDANT**

**MINISTRY OF INTERIOR & COORDINATION OF NATIONAL  
GOVERNMENT ..... 3<sup>RD</sup> DEFENDANT**

**SOCIAL HEALTH AUTHORITY ..... 4<sup>TH</sup> DEFENDANT**

**MINISTRY OF ICT & DIGITAL ECONOMY ..... 5<sup>TH</sup> DEFENDANT**

**MINISTRY OF EDUCATION ..... 6<sup>TH</sup> DEFENDANT**

**DIRECTOR GENERAL OF KENYA CITIZENS AND FOREIGN NATIONALS  
MANAGEMENT SERVICES ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff's notice of motion dated 12.3.2025 seeks: -
  1. temporary injunctive relief restraining the respondents from using, passing off, selling, offering for sale, broadcasting, advertising, or making available to the public, or in any way from further infringing upon its copyright and or intellectual property over the computer program and or software for preparation and or printing of digital IDs, Maisha Cards, Birth Certificates based on the UPI, NEMIS and SHIF registration or in any manner whatsoever pending the hearing and determination of this suit.



2. that the Inspector of Kenya Copyright Board be authorized to enter the respondents' premises, accompanied by its representatives, to inspect machines, and gadgets and take such data, access servers and server credentials, and any item which constitutes or could constitute evidence necessary to prove its claim for purposes of preserving evidence.
  3. Anton Pillar Orders to enter the premises of the respondents and third parties to seize, collect, and keep machines, data, documents or storage materials relating to its copyright.
  4. the Officer Commanding Central Police Station do provide 2. security to affect the Anton Pillar Orders.
2. The application is made primarily under Order 40 of the Civil Procedure Rules, Section 35 (1), (3), (4), (6) & (8) of the *Copyright Act*, 2001, Regulations (7) & (8) of the Copyright Regulations. It is based on the grounds set out in the body and the supporting and further affidavit sworn by the plaintiff on 12.3.2025 and 26.5.2025 respectively. The plaintiff also filed written submissions dated 26.5.2025.
  3. The applicant filed this suit through a plaint dated 11.2.2025 claiming that the respondents have infringed his copyright and his right to property.
  4. The grounds cited are: -
    1. The applicant owns a copyright in the Kenya Cyberspace Portal since 2021
    2. It disclosed details of his innovation to the respondents on diverse dates.
    3. It subsequently learnt about the respondents' implementation of a system that is similar to his through newspapers.
    4. It claims that the respondents are using his creation to implement a Unique Personal Identifier dubbed 'Maisha Namba' for use as -
      - i. Maisha Namba (for National identification cards, registration of births, registration of deaths, enrolment of pupils and students at all levels, and registration for the Social Health Insurance Fund),
      - ii. Maisha Card,
      - iii. Digital ID, and
      - iv. National Master Population Register
    5. It claims that the respondents have without license, assignment or compensation infringed the said copyright.
    6. Such infringement amounts to violation of his right to property.
    7. Unless the orders sought herein are granted he shall continue to injustice.

## **Response**

5. The respondents opposed the application through grounds of opposition dated 19.5.2025, a replying affidavit sworn by Secretary, National Registration Bureau, Dr. Christopher Kinyua Wanjau on 19.5.2025 and written submissions dated 30.6.2025.
6. The main contentions are: -



1. An injunction under order 40 of the Civil Procedure Rules cannot be issued against the government as per Order 29 Rule 2 (d).
2. The applicant has not met the thresholds for the grant of the injunctive orders and the Anton pillar orders.
3. The application is frivolous, vexatious and is an abuse of the process of the court.
4. The Maisha Namba eco-system is the Government of Kenya own independent creation and not in any way mirrored upon the plaintiff's alleged innovation.
5. For a case of prima facie infringement of a computer program to be maintained, the alleged infringer must have had full access to the said computer program.
7. The respondents relied on the following cases: -
  1. Nguruman Limited v Jan Bonde Nielsen & Others [2014] eKLR
  2. Anthony Kibe Kibathi v Oxygen Lotto Limited and 2 Others 2020 eKLR
  3. Patstifico Lugi Garofalo S.P.A. v Debenham & Fear Limited [2011] eKLR
  4. Solut Technology Limited v Safaricom Limited (Civil Case E352 of 2019) [2024] KEHC 11002 (KLR)
  5. Simon Otieno Omondi v Safaricom (K) Limited [2020] KEHC 10062 (KLR)
  6. Mrao Ltd v First American Bank of Kenya and 2 others [2003] KLR 125
  7. Gakundu Farmers Co-operative Society v Board of Trustees Commodities Fund & 3 others [2025] KEHC 3791 (KLR)

### **Analysis and Determination**

8. Arising from the respondent's grounds of opposition is the preliminary issue of whether an injunction can be issued against the Government.
9. Order 29 Rule 2 of the Civil Procedure Rules provides that: -
 

“(2) No order against the Government may be made under—

(d) Order 40 (Injunctions);”
10. Section 16 of the [Government Proceedings Act](#) provides that: -
 

“ 16. Nature of relief

(1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise give such appropriate relief as the case may require:

Provided that—

(i) where in any proceedings against the Government any such relief is sought as might in proceedings



between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(ii) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property, or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.”

11. In *Elijah Kinyua Nganga 3 others v Gitu Wa Kahengeri 3 others* 2014 KEHC 8585 (KLR), the court upheld a preliminary objection against an application for injunctive reliefs against the registrar of societies. The court also opined that a claimant wishing to invoke article 23(3) of the *Constitution* (injunction against Government) should approach court vide a petition under Rule 10 of Legal Notice No. 117 of 2013: Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013.
12. In *Gakundu Farmers Co-operative Society v Board of Trustees Commodities Fund & 3 others* [supra], the court dismissed an application for injunction against the government as it could not be issued under the above provisions.
13. Each case must however be determined upon its own facts.
14. In this case, the applicant claims infringement of its property rights under Article 40 of the *Constitution*. It has filed a plaint and an application under Order 40 of the Civil Procedure Rules and Section 35 of the *Copyright Act*.
15. The wisdom of anchoring relief in article 23(3) of the *Constitution* (including injunction against Government for infringement of right or fundamental freedoms) is so as to bring the controversy within the purview of redress for violation of the Bill of Rights under article 22 and 165 of the *Constitution*. Thus, reframing order 40 of the Civil Procedure Rules especially in relation to cases of infringement of rights and fundamental freedoms; and the need to interpret it in a restricted manner and in line with section 7 of the Transitional Provisions under the Sixth Schedule of the *Constitution*, displacing linear thinking and application of existing law and ushering in substantive approach to enforcement of the Bill of Rights.
16. The applicant claims that he owns a copyright in the Kenya Cyberspace Portal since 2021.
17. He further claimed that, he disclosed details of his innovation to the respondents on diverse dates.
18. Subsequently, he learnt about the respondents’ implementation of a system that is similar to his through newspapers.



19. On the other hand, the respondents claimed that, the Maisha Namba eco-system is the Government of Kenya own independent creation and not in any way mirrored upon the plaintiff's alleged innovation.
20. This tension arising from rival claims of ownership and right to the intellectual property in question would require full evaluation in plenary trial rather than in an interlocutory application with such limited scope and reach.
21. Accordingly, I decline to grant an injunction on that basis and not on the basis of the objection under Order 40 of the Civil Procedure Rules and the *Government Proceedings Act*.
22. Therefore, I dismiss the application with no orders as to costs. I however order that this matter be fast-tracked because it involves claims of infringement of intellectual property by government.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

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**F. GIKONYO M**

**JUDGE**

In the presence of:

Ms. Wekesa for Dr. Wekesa for Plaintiff

Bett for Kamau for Respondents

CA Kinyua

