



**Munyeri & 2 others v Attorney General & 2 others; Mutua & 21 others
(Interested Parties) (Constitutional Petition E011 & E014 of 2025
(Consolidated)) [2025] KEHC 16074 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CONSTITUTIONAL PETITION E011 & E014 OF 2025 (CONSOLIDATED)
EM MURIITHI, J
NOVEMBER 10, 2025**

BETWEEN

**LEVI MUNYERI 1ST PETITIONER
GEMA WATHO ASSOCIATION 2ND PETITIONER
EUNICE NGANGA 3RD PETITIONER**

AND

**THE ATTORNEY GENERAL 1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL
ADMINISTRATION 2ND RESPONDENT
CABINET SECRETARY, NATIONAL TREASURY 3RD RESPONDENT**

AND

**PROFESSOR MAKAU MUTUA INTERESTED PARTY
FAITH ODHIAMBO MONY INTERESTED PARTY
KENNEDY OGETO INTERESTED PARTY
IRUNGU HOUGHTON INTERESTED PARTY
DR. JOHN OLUKURU INTERESTED PARTY
DR. KENNEDY BARASA SIMIYU INTERESTED PARTY
DR. LINDA MUSUMBA INTERESTED PARTY
DR. DUNCAN OJWANG INTERESTED PARTY
NAINI LANKAS INTERESTED PARTY
DR. FRANCIS MURAYA INTERESTED PARTY**



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| JULIET CHEPKEMOI | INTERESTED PARTY |
| PIUS METO | INTERESTED PARTY |
| FATUMA KINSI ABASS | INTERESTED PARTY |
| RAPHAEL ANAMPUI | INTERESTED PARTY |
| RICHARD BARNO | INTERESTED PARTY |
| DR. DUNCAN OKELO NDEDA | INTERESTED PARTY |
| JERUSAH MWATHIME MICHAEL | INTERESTED PARTY |
| DR. RAPHAEL NG'ETICH | INTERESTED PARTY |
| KENYA NATIONAL COMMISSION ON HUMAN RIGHTS | INTERESTED PARTY |
| CHAIRPERSON AND SECRETARY, VICTIMS PROTECTION BOARD | INTERESTED PARTY |
| LAW SOCIETY OF KENYA | INTERESTED PARTY |
| DAVID MWANGI NJERI | INTERESTED PARTY |

RULING

Introduction

1. There is a consent dated 27/10/2025 between the petitioner and 2nd Interested Party in Petition No. E010 of 2025 (10th respondent in Petition E011 of 2025 and 4th respondent in Petition E014 of 2025), with no objection by the other respondents and Interested Parties in the Petitions, which was adopted as an order of the Court on. The two petitioners in the Pet. Nos. E011 of 2025 and E014 of 2025 objected to the striking out of the party in their respective petitions and, consequently, the Court directed that a formal application in that behalf be filed and responses be filed for hearing on 5/11/2025.
2. By a Notice of Motion dated 30/10/2025, filed in the Consolidated Petitions and expressed to be brought under Rules 3 (8), 5 (d) (i) and 19 of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, the party (10th respondent in Petition E011 of 2025 and 4th respondent in Petition E014 of 2025) seeks specific orders for her striking out as a party in the two petitions as follows:
 - “1. Faith Odhiambo Mony be struck out as the 10th respondent in Kerugoya HCCHRPET/E011/2025.
 2. Faith Odhiambo Mony be struck out as the 4th respondent In Kerugoya HCCHRPET/E014/2025.
 3. As a consequence of orders 1 and 2 above, Faith Odhiambo Mony be and is hereby struck out as a party to these proceedings consisting of the consolidated petitions.
 4. The costs of this application be provided for”



3. The application was opposed by the two principal respondents, the 2nd and 3rd Petitioners in the Consolidated.
4. In his opposition Counsel for the 2nd Petitioner based his argument on possible contempt alleged to arise by the averments of the Replying Affidavit sworn on 6/11/2025 by the Joint secretary of the Panel, the 17th Interested Party, as to the commencement of the work of the Panel despite conservatory order of the Court.
5. The 3rd Petitioner filed a Replying Affidavit of 31/102025 and submissions urging the Court that her Petition had a specific prayer against the applicant in Prayer NO. III submitted that the Court could not separate the applicant's personal capacity for her official capacity as the President of the Law Society of Kenya and pointing out that the applicant was the very soul of the Society and the applicant had flouted the integrity and leadership and conflict of interest provisions of Chapter six of *the Constitution*, the *Leadership and Integrity Act* and the Conflict of Interest Act, which she pointed out do not separate the person from the Office.

Determination

6. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (The Mutunga Rules) provides for the court's discretion on joinder of parties in Rule 5 as follows:

“ Addition, joinder, substitution and striking out of parties.

5. The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—
 - (a) Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
 - (b) A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute.
 - (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.
 - (d) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—
 - (i) order that the name of any party improperly joined, be struck out; and



(ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.

(e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.”

7. The Rule is modelled on Order 1 Rule 10 (2) of the Civil Procedure Rules which provides as follows:

“

“(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

See *Elisheba Muthoni Mbae v Nicholas Karani Gichohi & 2 Others* [2013] KEHC 62 (KLR) (JB Havelock, J.) cited by the 3rd Interested Party that -

“In an application to be enjoined as a plaintiff in the matter, the Applicant has to satisfy the court that he is a necessary party without whom the court cannot effectually and completely adjudicate upon and determine all matters.”

8. The 2nd Petitioner’s objection to the striking out of the applicant is based on a statement in Replying Affidavit of 16/10/2025 for the Interested Parties members of the Panel filed and sworn by 17th Interested Party/ Joint Secretary of the Panel, not by the Applicant, but by stating that the Panel had made public outreach and received communication form members of the public, which the Petitioner presents as act in contempt of the Court’s conservatory order and for which the applicant together with the other members of the Panel are liable for punishment for contempt.

9. In the two paragraphs, the Joint Secretary of the Panel, the deponent of the Replying Affidavit of 16/10/2025 states as follows:

“25. I deny that the Panel interferes with ongoing investigations or prosecutions. On the contrary, several victim statements expressly call for accountability through proper investigative and prosecutorial channels while also requesting counselling and livelihood support. The Panel’s work is compatible with those requests.

26. Where the Petitioners allege lack of transparency or public participation, I state that the Panel has conducted outreach, received submissions from victims and stakeholders, and will report publicly within its tenure, subject to privacy and dignity considerations for survivors.”



10. Apart from a question which arises whether such a statement could amount to actionable admission on behalf of the members of the Panel, there is an issue as to when the actions of the Panel occurred in relation to the application's date of resignation on 6/10/2025, while the replying Affidavit is made 10 days later with no indication as to when the alleged outreach took place. Significantly, there would also be a question whether the act of the Secretariat of the Panel binds each member of the Panel on a jointly and severally basis.
11. Moreover, even as against the members of the Panel, the alleged contempt may only be against persons who were members of the panel at the time of the alleged act of contempt. The applicant resigned from the Panel on 6/10/2025, by letter dated that date and publicized by a public statement of the same date, both which are attached to the application. From the date of her resignation, the applicant occupied the same position as a person who was nominated to the Panel but who had declined the appointment, as urged by the applicant. She would not be liable for acts of the panel taking place after her resignation. The Replying Affidavit statement of the Secretary does not say when the outreach and other work of the panel took place, and in any event, there is no pending or impending application for contempt of court against the Panelists.
12. Unless it is a matter of personal vendetta, which this court cannot countenance, the alleged contempt may be pursued against the members of the panel who remain after the resignation of the 2nd Interested Party. The liability of the alleged contemnors is jointly and severally, and the contempt may be punished on those who are members of the panel at the time of the hearing of such application for contempt if the object of such application is, as it ought to be, to uphold the authority and dignity of the Court and ensure compliance with the relevant court orders.
13. The Court agrees with the applicant that the Prayer III in Petition No. E014 of 2025 relating to the applicant (who is sued the 4th respondent in that Petition) seeks relief only as against her for accepting the appointment as a member of the panel "in her capacity as the President of Law Society of Kenya."
14. The said Prayer No. III of the Petition No. E014 of 2025 dated 5/9/2025 is in the following terms:

"III. A Declaration that the 4th Respondent's (Faith Odhiambo's) acceptance of her appointment to the Panel in her capacity as the President of the Law Society of Kenya violates the Principle of Leadership under Article 73 and the Leadership and Integrity Act and the Conflict of Interest Act."
15. Following her resignation, the applicant no longer accepts the appointment to the panel and there is no possibility the suggested conflict of interest. Never mind that there is no substantive relief, say of coercive nature, sought against the applicant in her individual capacity.
16. The 3rd Petitioner's analogical argument on the import of the Attorney General v David Ndi & others; Albert & another (Amicus Curiae) Petition No. 12 of 2021 (Consolidated with Petitions Nos. 11 & 13 of 2021), the BBI case that there would be serious conflict of interest Court if the President of the Republic could commence popular initiative for amendment of the Constitution acting in his private or personal capacity.
17. Counsel for the 3rd petitioner urged the provisions on conduct of state officers under Article 73 of the Constitution, which in relevant part provides:

"Responsibilities of leadership.

73.



- (1) Authority assigned to a State officer—
 - (a) is a public trust to be exercised in a manner that—
 - (i) is consistent with the purposes and objects of this Constitution;
 - (ii) demonstrates respect for the people;
 - (iii) brings honor to the nation and dignity to the office; and
 - (iv) promotes public confidence in the integrity of the office; and
 - (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include—
 - (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
 - (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
 - (c) selfless service based solely on the public interest, demonstrated by—
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
 - (d) accountability to the public for decisions and actions; and
 - (e) discipline and commitment in service to the people.”

18. The Conflict of Interest Act 2025 is expressed to apply at section 4 thereof as follows:

“

“4. Application of the Act

This Act shall apply to all reporting entities and public officers.”



The Law Society of Kenya is not publicly funded and it is not a reporting entity within the meaning of the definition of the term, at section 2 of the Act as follows:

“reporting entity” means—

- (a) a state organ;
- (b) the national government or any organ or department of the national government;
- (c) a county government or any organ or department of a county government;
- (d) a state corporation within the meaning of *State Corporations Act* (Cap. 446);
- (e) a public school within the meaning of the *Basic Education Act* (Cap. 211);
- (f) a public university within the meaning of the *Universities Act* (Cap. 210);
- (g) a company owned by the national government or a county government;
- (h) a body that uses public assets in any form of contractual undertakings including public private partnerships;
- (i) a company in which the national or county government has controlling shares in accordance with section 125 of the *Companies Act*;
- (j) a college or other educational institution maintained or assisted out of public funds;
- (k) an entity which renders a service involving the collection or administration of a levy, fee or funds authorized by legislation;
- (l) any entity that uses public money in the delivery of government programmes or services, whether for profit or not;”.

19. Technically, the BBI case is inapplicable in this case where the applicant is not, as pointed out by the applicant, a state officer or public officer who is by law (Article 73 and the *Leadership and Integrity Act*, among others), subjected to the exacting integrity requirements of Chapter Six of *the Constitution* and the *Leadership and Integrity Act*. More importantly, the BBI case ruled on the primary question whether the popular initiative for constitutional amendment could be commenced and whether it was commenced by the president in his personal capacity, which the Supreme Court found in the negative, as follows:

- “(a) The President cannot initiate Constitutional amendments or changes through the popular initiative under Article 257 of *the Constitution*. (Njoki Ndungu, SCJ dissenting).
- (b) The President initiated the amendment process in issue (Njoki Ndungu & Lenaola SCJJ dissenting).
- (c) Consequently, under Article 257 of *the Constitution*, *the Constitution* (Amendment) Bill, 2020 is unconstitutional (Njoki Ndungu & Lenaola SCJJ dissenting).”



20. The Court is not able to take benefit of the BBI case. In this case, the question posed by the 3rd petitioner in seeking the relief in Prayer NO. III of the Petition E014 of 2025 is whether the applicant could serve as a member of the Panel when she is also the president of the Law Society of Kenya, and having exited from the Panel, the question is not live anymore.
21. While the Court is willing to accept that persons in service of the public though not state officers or public officers, within the meaning of the definitions of *the Constitution* and the law, ought to take care that their personal interests do not conflict with their public roles, the fact that the applicant has resigned from the Panel makes any allegations of possible conflict to be moot considerations of textbook interest only. (See *National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs* [2000] (2) SA 1 CC cited by the applicant on the doctrine of mootness.)

Conclusion

22. The bottom line is that the applicant has resigned for the panel subject of this petition; she has been replaced by another members; the lawyers association (LSK) that she heads as President is already a party in the Petition; the insinuations of contempt of court by the members of the panel relate to acts allegedly done by the panel after she has resigned; and there is, therefore, no reason to maintain her as party in her private capacity. She is not necessary party, that is to say a party “whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit”. See *Elisheba Muthoni Mbae v Nicholas Karani Gichohi & 2 Others*, supra.
23. The two of three premises of the 3rd Petitioner’s argument for the declaratory relief sought in Prayer No. III of her Petition have failed in that apart from the applicant remaining the president of the Law Society of Kenya, the applicant’s acceptance of her appointment to the Panel has been withdrawn following her resignation on 6/10/2025 and her such appointment was revoked by the appointing on 4/11/2025 by Gazette Notice No. 7904.
24. The central question relating to the empanelment of the Compensation Panel and the impugned membership of the President of the Law Society of Kenya may effectually and completely adjudicated upon by the Court in the absence of the applicant as the Law Society remains a party to the Suit and the question is regard is simply whether the president of the Law Society of Kenya (LSK) may be appointed member of the Panel. The applicant in her official capacity as president of the Law Society of Kenya is a member of the 21st Interested Party (Interested Party and 5th Interested Party, respectively, in Pet. Nos. E011 and E014 of 2025.), and all questions of propriety of such appointment can be adjudicated and finally settled.
25. Cost consideration on a matter of public interest, where successful party may not recover costs, is important for the applicant if she were compelled to proceed in the trial and defend herself in private or personal capacity. It would impose undue hardship to retain the applicant in the suit at her own private costs for a matter that she is not personally interested.
26. To be sure, under the general principles relating to suits set out in Order 1 Rule 9 of the Civil Procedure Rules, and replicated in Rule 5 (b) of the Mutunga Rules “(b) A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute”, and there is, consequently, no prejudice to the petitioners’ case if the applicant is not a party to the suit.



Orders

27. Accordingly, for the reasons set out above, the Court finds merit in the application, and it is allowed as prayed in Prayers Nos. 1, 2 and 3 thereof.
28. There shall be no order as to costs at this stage of the Petition. The costs shall be in the Cause for a determination thereon at the end of the full hearing of the Petition.

Order accordingly.

DATED AND DELIVERED THIS 10TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. N. Havi for the 1st Petitioner.

Mr. K. Wathuta with Ms. Micheni Mr. Wambugu Mr. Wanjohi and Mr. James Dennis for the 2nd Petitioner.

Ms. E. Nyaga the 3rd Petitioner in person.

Mr. J. Kiongo for Respondents.

Mr. Tugee for the 2nd Interested Party.

Mr. Bosire for Mr. Omwanza for the 1st, 3rd – 18th Interested Party.

Mr. Maweu with Ms. Oganga and Ms. Okutoyi for the 19th Interested Party.

Mr. D. Ochiel, Mr. Saka & Mr. Ongoya for the 21st Interested Party.

Mr. Wachira for the 22nd Interested Party.

