



Issak v Kadhis Court of Kenya & another; Abdulhafedhi (Interested Party) (Constitutional Petition E067 of 2025) [2025] KEHC 17035 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E067 OF 2025
DO CHEPKWONY, J
NOVEMBER 4, 2025**

BETWEEN

MOHAMMED NAEEM ISSAK PETITIONER

AND

KADHIS COURT OF KENYA 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

HASSAN AHMED ABDULHAFEDHI INTERESTED PARTY

RULING

1. This matter came up for inter-parties hearing of the Notice of Motion application dated 14th October, 2025 filed by the Interested Party. The Petitioners' counsel confirmed that stay they had filed a Notice of Motion application dated 7th October, 2025 for which they had served upon the other parties as confirmed by an Affidavit of Service dated 31st October, 2025. She also confirmed having filed submissions to the said application which they had equally served. She stated that they had not received any response from the Respondents and Interested Party. Counsel for the Petitioner went on to confirm that they have been served with another application dated 14th October, 2025 which is filed by the Interested Party through the Firm of Mr. Havi. She confirmed that she had filed a Replying Affidavit dated 31st October, 2025 in response to this application.
2. M/S Kathurima went on to inform court that they had received submissions filed by the Interested Party this morning at about 7.30am and pointed out that although it is the application that was scheduled for inter-parties hearing this morning, she sought for an adjournment on the ground that she had not had sufficient time to go through the same. She then sought for leave to file their written submissions as directed by the court on 14th October, 2025.



3. This was opposed by Mr. Ashinya who was on record on behalf of Mr. Havi, counsel for the Interested Party and confirmed that they had filed an application for which he confirmed that the Applicant has filed a Replying Affidavit. He indicated that they were ready to proceed with the hearing of the said application and sought for time allocation for hearing to proceed today. Since the directions and orders of the court were clear on this. Counsel went on to point out that the Applicant's counsel had not complied with the court's directions and had not communicated to inform them that they would seeking an adjournment.
4. In rejoinder, M/S Kathurima stated that counsel was not telling court that they had served them with their submissions in the morning at 7.30am and they were yet to go through that so she can be able to argue the application. And because of this, she submitted that it would only be fair for them to be given an opportunity to go through the submissions so she can be able to file and serve the Respondent with their submissions. She went on to state that the Interested Party had raised issues in their pleadings which requires their response.
5. Having listened to both counsel for the Applicant/Respondent and Interested Party/Applicant, I have also gone through the Court Tracking System (CTS) and confirm that indeed the Applicant and Interested Party filed applications dated 7th October, 2025 and 14th October, 2025 respectively. It is also confirmed that directions in respect of the application dated 7th October, 2025 were issued on 8th October, 2025 while the directions in respect of the application dated 14th October 2025.
6. It will be noted that the directions issued by this court in reSpect of both application were about service and disposal of the same. The application dated 7th October, 2025 was to be disposed of by way of written submissions and parties were to attend court on 13th November, 2025 for mention to confirm the same and take a ruling date.
7. When the application dated 14th October, 2025 was filed the Interested Party was directed to serve the same upon the Applicant and both parties were to file and serve their respective written submissions on disposal of the same within fourteen (14) days. The said application was then fixed for inter-parties hearing on 13th November, 2025.
8. A further check of the Court Tracking System (CTS) reveals that indeed, pursuant to the court's directions, the Applicant filed and served their Replying Affidavit dated 31st October, 2025 and they were served with the Interested Party's submissions on 13th November, 2025 the same day they were filed at 0743 am.
9. Order 5 Rule (4) of the Civil Procedure Rules, 2010 states that :-
 4.
 - (1) One or more concurrent summonses may, at the request of the plaintiff, be issued at the time when the original summons is issued or at any time thereafter before the original summons ceases to be valid.
 - (2) A concurrent summons shall be valid only from the date of its own issue and shall remain valid so long as the original summons remains in force.
10. In view of this provision, this court finds that in all fairness, the Petitioner's counsel is justified in seeking more time to file his written submissions after going through the submissions filed and served upon his counsel by the Interested Party's counsel this morning.



11. With regard to the Notice of Motion application dated 7th October, 2025, the court notes that service thereof was effected upon the other parties on 21st October, 2025 and this is confirmed by Litty Kathurima on 31st October, 2025. However, there is no response from either of the Respondents and or the Interested Party.
12. Be that as it may, the Court proceeds to direct that:-
 - a. The Notice of Motion applications dated 7th October, 2025 and 14th October, 2025 shall be determined contemporaneously, if need be.
 - b. The Petitioner is granted seven (7) days leave to serve his written submissions in respect of the Notice of Motion application dated 14th October, 2025.
 - c. The other parties be at liberty to file and serve their respective responses and written submission to the Notice of Motion application dated 7th October, 2025 within seven (7) days from the date hereof.
 - d. Mention on 26th November, 2025 for parties to highlight their respective submissions and take directions on ruling date.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 4TH DAY OF NOVEMBER, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kathurima counsel

Court Assistant – Martin/Sakina

