

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
HCCOMM. CASE NO. E437 OF 2024

HON. JUSTICE ALEEM VISRAM
20TH NOVEMBER, 2025

BETWEEN

LAW AFRICA PUBLISHING LIMITED.....PLAINTIFF

AND

PROQUEST LLC.....1ST

DEFENDANT

STRATHMORE UNIVERSITY.....2ND

DEFENDANT

RULING

Introduction and Background

1. In its Application dated 29th October, 2024, the 2nd Defendant, seeks to be struck out as a party to the present suit based on grounds set out on the face of the Application and the supporting affidavit of its authorized Librarian, Bernard Shiundu, sworn on 29th October, 2024. The Application is opposed by the Plaintiff (Law Africa) through the replying affidavit of its Publishing Assistant, Ronald Ndambuki, sworn on 16th April, 2025, and by the 1st Defendant (ProQuest) through the replying affidavit of its internal

legal representative, Ashley Garry, sworn on 25th April, 2025. The parties have also supplemented their arguments by filing written submissions, to which I will refer as may be necessary as part of my analysis and determination below.

Analysis and determination

2. From the parties' submissions, the main issue for the Court's determination is whether Strathmore is properly joined as a party in this suit. The Application is anchored in alia Order 1, rule 10(2) and Order 2, rule 15(1)(b) and (d) of the Civil Procedure Rules which provide as follows:-

Order 1, rule 10(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. (Emphasis mine)

Order 2, rule 15 (1)(b) and (d)

At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(b) it is scandalous, frivolous or vexatious; or

.....

(d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

3. The importance of parties in proceedings before a court of law cannot be gainsaid. In *Apex Finance International Limited & another V Kenya Anti-Corruption Commission [2012] KEHC 2042 (KLR)*, the court (Emukule J.,) quoted the words of Mukhtar J. of the Supreme Court of Nigeria in *Goodwill and Trust Investment Ltd v Will and Bush Ltd [2011] LCN/B820 (SC)* as follows:-

“It is trite law that to be competent and have jurisdiction over a matter proper parties must be identified before the action can succeed, the parties must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the Court, the Court lacks jurisdiction to hear the suit and where the Court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.”

4. The Applicant submitted that it is not the owner or operator of ProQuest’s e-repository digital platform, where the alleged copyright infringement occurred, and that it merely accesses content through a legitimate subscription. It stated that it accesses the content in

question, including ProQuest's book, through a valid subscription with the Kenya Libraries and Information Services Consortium (KLISC), which includes ProQuest.

5. Strathmore University averred that the suit against it is frivolous, vexatious, and an abuse of the court process because the plaint fails to make any specific allegations of wrongdoing against Strathmore University itself. That as a reputable educational institution, Strathmore University is being subjected to a baseless suit that causes significant and unwarranted harm to its reputation. Strathmore University asserted that any grievance regarding copyright should be directed solely at ProQuest, which controls the platform and is responsible for the content and its licensing.
6. In opposition to the Application, Law Africa states that by subscribing to ProQuest's service and then making the copyrighted book available and downloadable to its students through its own e-library, Strathmore University is not a passive user but an active participant in the redistribution and infringement of the copyright. That Strathmore, as the end-user, had a legal duty to conduct its own due diligence to verify that ProQuest had obtained the necessary licenses to distribute Law Africa's work and that it was not enough for Strathmore University to simply assume ProQuest had the rights.
7. Law Africa reveals that it discovered the infringement through a link from Strathmore's own e-library as a student from Strathmore, who was interning with Law Africa,

brought it to their attention and that this directly connects Strathmore University to the infringement claim. Law Africa contends that determining whether Strathmore University had a reasonable belief that the content was licensed requires a full trial where evidence can be presented and witnesses cross-examined and dismissing the case at this preliminary stage would be premature and deny Law Africa the chance to prove its case. Law Africa asserted that the Applicant's presence is necessary to fully assess the extent of the infringement and the gains made, which cannot be done if it is removed from the case.

8. Law Africa stated it will suffer great prejudice if Strathmore University is dismissed, as it would be locked out from claiming remedies against Strathmore University and the infringement would be allowed to continue, denying Law Africa rightful revenue.
9. On its part, ProQuest contends that Strathmore's presence in this suit is integral for clarifying the facts regarding how the copyrighted book was accessed and distributed and that keeping Strathmore University in the suit is necessary for the court to fully adjudicate on and determine the questions of liability. It asserts that the factual and legal issues raised by Strathmore University are best suited for the full hearing of the main suit and ProQuest accuses Strathmore University of trying to get the court to prematurely determine issues of fact at an interlocutory stage, which is inappropriate before evidence

is fully presented and tested at trial. ProQuest states that Strathmore University has failed to meet the threshold for the grant of the orders sought.

10. Considering the rival submissions of the parties and guided by the applicable law, I am persuaded that Strathmore University is not a necessary party to the present proceedings. It is evident that the University is a subscriber of content pursuant to a license that it purchased and pays for. The impugned content is provided by and made available by the 1st Defendant. It is the 1st Defendant, who ought to explain the circumstances upon which it is providing the content to 3rd parties.
11. If this Court were to accept the logic that because Strathmore University is a user of the product and provides its students with a link to the same, it would be akin to accepting the logic that each and every user of the impugned product is also a necessary party to the proceedings. I do not think such a scenario is plausible or even desirable. Beyond explaining how it provides the product to its students, which it pays for, and acquired by way of license, I do not think that there is any value in dragging the university into the proceedings. Moreover, how the product is provided, whether by way of a link identifiable as belonging to Strathmore's own e-library, or other mechanism, is in my view, irrelevant. That is an internal issue, and each and every purchaser of the product is likely to have their own mechanism for provision. The real question is whether or not the 1st Defendant has the right to distribute the impugned product and charge for its

distribution. That question can be answered without joining each and every party that has bought the product from the 1st Defendant in good faith, which good faith is evident from the fact that the University is paying for the license rather than distributing the content for free.

12. Finally, I am not persuaded by the argument that the University had a duty to ensure that the supplier of the service held a valid license to provide all the content and material it was providing. On the contrary, I am of the view that the Applicant had a legitimate and reasonable expectation to believe that the supply of the content had been procured by the supplier lawfully, and that its distribution to it, as a customer, was in accordance with the law.
13. This reasoning follows the general rule that a party is entitled to assume that the other contracting party is capable of lawfully performing the obligations it undertakes, unless there is something obvious to the contrary. Put another way, there was an implied warrant of authority on the part of the 1st Defendant to its users. By way of simple analogy in respect of a familiar subscription service, when we watch Netflix, we do not sit down and wonder if Netflix holds the rights to distribute the particular movie or series before us. Our assumption, rightfully so, is that once we pay for the subscription, we may lawfully and properly view the content. As a viewer, we do not, and should not, be expected to carry out any further due diligence relating to the distribution of that content

before we watch the movie or TV show in question. Nor should we expect (if Netflix were to be sued for distributing a movie without proper license) to be hauled into court to explain how, and why, we in turn redistributed that content to others. The analogy, I think, is sufficient to show how tenuous the argument is.

Conclusion and Disposition

14. Based on the reasons set out above, I find that the Application is with merit. The Applicant is hereby struck out as a party to the proceedings. Costs are payable by the Respondents to the Applicant.

Dated and delivered virtually via Microsoft Teams this 20th day of November, 2025

**ALEEM VISRAM, FCIArb
JUDGE**

**In the presence of;
Court Assistant: Lispa**

.....**for Plaintiff**
.....**for 1st Defendant**
.....**for 2nd Defendant**