

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW MISC. APPLICATION NO. E392 OF 2025

EDRICK GITUMA JOHN.....
APPLICANT

**(Suing on his own behalf and on behalf 190 Bachelor of Technology in Land
Surveying degree holders from the Technical University of Kenya)**

-VERSUS-

LAND SURVEYORS' BOARD.....RESPONDENT
THE TECHNICAL UNIVERSITY OF KENYA.....1ST INTERESTED PARTY
COMMISSION FOR UNIVERSITY EDUCATION.....2ND INTERESTED
PARTY
SILAS KIPKAZI TUMO.....3RD INTERESTED PARTY

**RULING ON DIRECTIONS UNDER ORDER 1 RULE 8 OF THE CIVIL
PROCEDURE RULES**

1. The notice of motion dated 9/12/2025 is filed pursuant to leave to apply granted by this Court on 21st November 2025 in Judicial Review Case No. HCJR/E367/2025.

2. I have considered the certificate of urgency in terms of directions to be given under Order 1 Rule 8 of the Civil procedure Rules.

I am satisfied that the need to issue directions is urgent so as to enable the applicants to serve the application which was filed in representative capacity, upon all interested parties who are likely to be affected by the decision of this Court in these proceedings.

3. I certify the aspect of the request for directions as being urgent.

Order 1 Rule 8 of the Civil procedure Rules provides that:

" 8. One person may sue or defend on behalf of all in same interest [Order 1, rule 8]

- (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.**
- (2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.**
- (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit."**

4. on what should the notice under **rule 8 of Order 1 of the CPR** contain or not contain, and on the appropriate test in law, **Mulla on Code of Civil Procedure** is instructive that: "**...the courts, where called upon to deal with an application under Order 1 rule 8, should bear in mind that the provisions contained therein are mandatory and not merely directory, and**

are essential preconditions for trial of the case as a representative suit. They must see that if they direct that the notice should be by public advertisement, the notice must disclose the nature of the suit as well as the reliefs claimed therein, in order to enable the persons interested to get themselves impleaded as parties to the suit, either to support the case or to defend against it. Further, the notice must mention the names of the persons who have been permitted to represent them, so that the persons interested may have an opportunity of knowing who has been selected to represent them".

5. In the Ugandan Case of **IBRAHIM BUWEMBO, EMMANUEL SSERUNJOGI, ZUBAIRI MUWANIKA FOR AND ON BEHALF OF 800 OTHERS v UTODA LTD HCCS NO. 664 OF 2003** on the provisions of the Civil Procedure Code of Uganda similar to those in **Order 1 Rule 8 of the Civil Procedure Code, 2010 for Kenya**, the learned judge stated as follows:

"It would appear to me that the wording of O1 r8 (1) with regard to notice either by personal service or by public advertisement as the court may in each case direct is mandatory. Furthermore, the requirement to give a proper notice cannot be

regarded a mere technicality or direction that can be dispensed with''.

6. **Order 1 Rule 8** above mandates that a notice of the suit must be given to all persons on whose behalf or for whose benefit a suit is instituted or defended, and such notice *shall be given either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement*, as the court in each case may direct.
7. From the pleadings in this case, I have no doubt that it is one such case suitable for Notice to be given by Public Advertisement because of the huge number of persons on whose behalf or for whose benefit the suit is instituted, being all persons who have graduated in the discipline.
8. As to the form of the Notice, the applicant is expected to draft and submit to court a notice for approval before the advertisement is done.
9. Gikonyo J had the following to say regarding the scope of the Notice in **ROSE FLORENCE WANJIRU (Suing on her own behalf and on behalf of and representing all persons interested in and being past and present accountholders with specified banks in Kenya) Versus STANDARD CHARTERED BANK OF KENYA LIMITED, J.K. WANYELA & EXECUTIVE DIRECTOR KENYA BANKERS ASSOCIATION** and I agree that:

" Scope of notice

[16] Without doubt, the phrase "notice of the suit" used in Order 1 rule 8(2) of the CPR refers to the nature of the suit as well as the reliefs claimed therein. But, that scope does not include explaining the suit through the notice as that would very nearly amount to litigating the case through the notice. It bears repeating, that any contrary view would be problematic and will attract serious constitutional objections on the basis that; 1) it will afford the Plaintiff unfair advantage; 2) it will become a source of prejudice to the Defendants; and 3) a smack on the administration of justice which may in a way border the wider concept of subjudice.

[17] The nature of the case consists in a brief summary of the cause of action and the reliefs sought without providing evidence or elaborated facts. The brief summary should be couched in words or phrases which are as nearly as possible drawn upon and used in the plaint or other primary pleading filed by the party issuing the notice. In that case, the preferred style and model of the public advertisement is a sort of a modified précis-writing of the suit, which many of us did in our elementary education: make a clear presentation of the salient cause of action and relief sought in the

suit by, as far as possible, lifting terms and phrases from the original pleadings and leaving no room for adornments. That approach will avoid prejudice to the Defendants and the administration of justice in general. It is worth of note that the advertisement merely gives notice of the suit and it is not to be seen as a subsequent pleading in the sense of the laws governing civil proceedings. Therefore, it should not contain any substantive information which is not in the pleadings, adverse or otherwise, as that leaves the Defendants with no opportunity to reply or join issue as would be with other formal pleadings. In light thereof, any innuendo in a public advertisement tinctures compliance with the prescriptions of the law and should never be allowed to be part of the notice given under Order 1 rule 8(2) of the CPR. Accordingly, a court of law has a mandatory obligation of ensuring the notice of the suit which is given to all persons on whose behalf or for whose benefit a suit is instituted or defended, is a proper notice and in accordance with Order 1 rule 8(2) of the CPR. The said obligation invariably carries the duty of the court to scrutinize and approve only notices which conform to the prescriptions of Order 1 rule 8(2) of the CPR, and the duty is more onerous on a notice by public advertisement."

10. Accordingly, I order that the applicant herein presents to Court a draft Notice **under Order 1 Rule 8 of the Civil Procedure Rules** for approval by the Court upon which the applicant shall issue a public notice to be published in two newspapers of nationwide circulation, notifying all persons affected or likely to be affected by these proceedings within 14 days of the date of approval, requiring the said persons to enter appearance in these proceedings within 30 days of the date of the advertisement.
11. Mention on 28th January, 2026 to confirm compliance and for further directions on the disposal of the substantive Notice of Motion.
12. I so ordered.

Dated, Signed and Delivered at Nairobi this 9th Day of December, 2025

**R.E. ABURILI
JUDGE**