



**Mugane v Music Copyright Society of Kenya & another (Constitutional Petition E120 of 2025)  
[2025] KEHC 18583 (KLR) (Constitutional and Human Rights) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18583 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E120 OF 2025**

**B MWAMUYE, J**

**DECEMBER 3, 2025**

**IN THE MATTER OF: ARTICLES 2,3,10, 19,20,21,22,23,35,165(3),  
201,232,258 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES  
10(2). 27(1), 35 AND 232(1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF  
NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE  
UNDER ARTICLE 10 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: THE COPYRIGHT ACT, 2001 AND THE  
COPYRIGHT (COLLECTIVE MANAGEMENT) REGULATIONS 2020,**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

**CHARLES MUGANE ..... PETITIONER**

**AND**

**MUSIC COPYRIGHT SOCIETY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE KENYA COPYRIGHT BOARD ..... 2<sup>ND</sup> RESPONDENT**



## RULING

(On 1<sup>st</sup> Respondent's/Applicant Notice of Motion Application dated 10<sup>th</sup> June 2025)

### Introduction and background

1. The Applicant filed the application dated 10<sup>th</sup> June 2025 seeking the following orders:
  - a. That the matter be certified urgent and service thereof be dispensed with the first instance.
  - b. That this Honorable court be pleased to arrest its ruling scheduled on 12/06/2025
  - c. That this Honorable court be pleased to transfer the present suit to the Civil Appeal Division before Hon. Lady Justice T. Cherere for it to be heard together with Kenya Copyright Board Vs Music Copyright Society of Kenya and Performing and Audio-Visual Rights Society of Kenya (Pavrisk) and Anor -HCCA/E1035/2024.
  - d. That this Honorable Court does make such other and further orders as it may deem fit, necessary and expedient in the interest of justice; and
  - e. That cost be borne by the Petitioner.
2. The 1<sup>st</sup> Respondent/Applicant contends that the Petition's subject matter is already before the Civil Appeal Division in an ongoing appeal (HCCA/E1035/2024) between essentially the same parties and arising from the same tribunal judgment. The Supporting Affidavit noted the Petition was due for Ruling on 12<sup>th</sup> June 2025, and argued that, in the interests of justice and judicial economy, this Petition should be transferred to the Civil Appeals Division to be heard together with the pending appeal.
3. This, the 1<sup>st</sup> Respondent/Applicant asserted, would ensure consistent outcomes and avoid conflicting rulings.
4. The Petitioner vehemently opposes the transfer application. In his Replying Affidavit, the Petitioner acknowledges the pending Civil Appeals case but contends that its substratum is fundamentally different from that which applies in the Petition before this Court. He argues that the pending appeal involves commercial and regulatory issues, whereas his Petition raises grave constitutional issues of public law questions of transparency, accountability, and the enforcement of the Bill of Rights that cannot be dealt with in an ordinary civil appeal.
5. The Petitioner/Respondent emphasizes that the Constitutional and Human Rights Division is a specially created forum for adjudicating such rights based disputes. The Petitioner asserts it would be "an absolute absurdity" to "trivialize" the constitutional claims by merging them with an unrelated appeal. Thus, he says the Petition "falls within the exclusive jurisdiction" of the Constitutional Division and urges that the 1<sup>st</sup> Respondent/Applicant's Transfer Application be dismissed to protect *the Constitution's* supremacy as well as the public interest. The Petitioner seeks costs on this application.
6. The parties agreed to canvas the Application by way of written submissions.

### 1<sup>st</sup> Respondent/Applicant's Written Submissions

7. In its written submissions dated 29<sup>th</sup> September 2025, the 1<sup>st</sup> Respondent/Applicant reiterated the grounds of its Application, emphasizing statutory and procedural provisions that it relies on. The 1<sup>st</sup> Respondent/Applicant pointed to Section 3A of the *Civil Procedure Act*, Order 51 of the Civil



Procedure Rules, and on the High Court’s general power to transfer cases between Divisions or Stations as the enabling provisions of law applicable to its Application.

8. The 1<sup>st</sup> Respondent argued that the present Petition is one that challenges a tribunal decision and thus it should properly be consolidated with the corresponding appeal in the Civil Appeals Division.

### **Petitioner/Respondent’s Written Submissions**

9. In the Petitioner/Respondent’s Written Submissions dated 2<sup>nd</sup> October 2025, the Petitioner opposes the Application by arguing that the Petition’s issues are purely constitutional and public in nature and not appellate. The Petitioner pointed to Article 165(3)(b) and (d) of *the Constitution* which grants the High Court jurisdiction to determine whether rights and fundamental freedoms have been violated as being the substratum of the Petition, and not a grievance with a particular decision of a subordinate court.
10. The Petitioner emphasized that the reliefs sought in the Petition, such as restraining the 2<sup>nd</sup> Respondent from licensing the Music Copyright Society of Kenya and also requiring the publication of audited reports are classic public law remedies, not private civil claims that are canvassed in civil appeals. In support of this argument, the Petitioner cited the dictas *Mumo Matemu v Trusted Society Human Rights Alliance & 5 others* [2013] eKLR where the Court of Appeal held that “constitutional petitions are not ordinary suits”, and in *Kenya Ports Authority v Ramogi & 8 others* [2019] eKLR where the Court reaffirmed that constitutional cases “cannot be treated as if they were mere private civil claims”.
11. The Petitioner also challenged the applicability of *Civil Procedure Act* provisions cited by the 1<sup>st</sup> Respondent/Applicant. The Petitioner noted that Section 18 of the Act presumes the original suit was in a court of proper jurisdiction and thereafter cited *Kagenyi v Musiramo & Another* (1968) EA 43 and *Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR in support of the proposition that a constitutional petition cannot be converted into a civil appeal and consequently transferred or consolidated as such. Hence, the Petitioner maintained that this Petition, raising accountability and governance issues under *the Constitution*, must remain in the Constitutional & Human Rights Division. He therefore opposed the transfer and seeks an order dismissing the application with costs.
12. Having carefully considered the pleadings, responses, submissions and relevant cases relied upon by the parties, I find the issue for determination to be whether this Constitutional Petition should be transferred to the Milimani High Court Civil Appeals Division for consolidation with *Kenya Copyright Board Vs Music Copyright Society of Kenya and Performing and Audio-Visual Rights Society of Kenya (Pavrisk) and Anor -HCCA/E1035/2024*.

### **Analysis**

#### **Transfer of Constitutional Petition**

13. There is no express statutory provision in the *Civil Procedure Act* governing the transfer of a pending High Court case from one division of the same court to another. Sections 1A and 1B of the *Civil Procedure Act* impose an overriding objective to deal with cases justly and expeditiously and a duty on the court to manage resources efficiently.
14. Section 3A preserves the inherent power of the court to do all things necessary to meet the ends of justice or prevent abuse of process. In *Rapid Kate Services v Freight Forwarders Kenya Ltd & 2 Others* [2005] eKLR the High Court observed that, in the absence of an express provision for High Court transfer between divisions or stations, the court may invoke Section 3A and Order 46(5)(2) to



move cases to the most appropriate registry for trial. That Court also held that in deciding whether to transfer, a court can consider various factors including the nature of the proceedings, the reliefs sought, the convenience of parties and witnesses, and the interests of justice.

15. Having compared the pleadings in the two cases, this Court is satisfied that the transfer and consolidation sought would not be in the interest of justice for various reasons.
16. Firstly, the Petition herein canvasses issues that are starkly different to and wider than those being canvassed in the Civil Appeal. For a transfer that then has the two matters either consolidated or at the very least heard and determined together, the two cases must have similarity of facts, subject matter, grievances, reliefs sought, and/or relative parties. While there is some measure of overlap and relationship between the two cases, there is sufficient difference as to require a finding that the required standard of similarities has not been met.
17. Secondly, the 1<sup>st</sup> Respondent/Applicant has not successfully demonstrated a real danger of conflicting final decisions that requires a cure of a transfer and consequent consolidation or hearing and determination together. It was incumbent on the 1<sup>st</sup> Respondent, as the Applicant, to demonstrate this danger with specificity and to the required standard, but it did not. It is not sufficient for the 1<sup>st</sup> Respondent/Applicant to make a general statement, it was incumbent on it to particularize the negative effects it foresaw and to illustrate the same by cross-referencing between the two sets of pleadings. The 1<sup>st</sup> Respondent/Applicant did not do so.

### **Conclusion**

18. For the foregoing reasons, the 1<sup>st</sup> Respondent/Applicant's Notice of Motion Application dated 10<sup>th</sup> June 2025 is dismissed, with each party to bear its own costs in the Application.
19. The Petition herein shall remain in the Milimani Constitutional and Human Rights Division, and this Court shall separately proceed to issue directions geared towards the expedited hearing and determination of the Petition and/or any pending interlocutory applications.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF DECEMBER 2025**

.....

**BAHATI MWAMUYE MBS**

**JUDGE**

In the presence of:

Petitioner in person – Mr. Charles Mugane

Counsel for the 1<sup>st</sup> Respondent – Ms. Naliaka hb Dr. Okubusu

Court Assistant – Ms. Amondi

