

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E309 OF 2025

REPUBLIC.....APPLICANT

VERSUS

KENYA COPYRIGHT BOARD.....1ST

RESPONDENT

THE CABINET SECRETARY OF GENDER,

CULTURE ARTS & HERITAGE.....2ND

RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

MUSIC COPYRIGHT SOCIETY OF KENYA

LIMITED.....INTERESTED PARTY

AND

JUSTUS NGEMU.....1ST EX PARTE APPLICANT

SAUL ESIKURI.....2ND EX PARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted on 19th September, 2025, the Ex parte Applicants filed a notice of motion dated 25th September 2025 which was amended on 13th

November 2025, pursuant to leave of the Court granted on 11th November 2025. The application is supported by the affidavit jointly sworn by the applicants, Justus Ngemu and Saul Esikuri on 7th May 2025.

2. The Amended Notice of Motion seeks the following order:

THAT this Honourable Court be pleased to grant the applicants an order of mandamus for the 1st, 2nd and 3rd Respondents to be compelled to enforce section 5A, 5B, 46E, 46E[4AD], 46E, 46F[1A, 1B, 1E, 1G, 1i] of the Copyright Act CAP 130 Laws of Kenya.

3. The applicants' case is that on 2nd February 2024, the 1st Respondent Kenya Copyright Board revealed that the Interested Party herein, Music Copyright Society of Kenya Limited could not sufficiently account for Ksh.56,000,000 or thereabouts. That upon the said revelation, the 1st Respondent forwarded the letter to the office of the Ethics & Anti-Corruption Commissions for investigations.

4. That to date, no action has been taken against the members of the Interested Party who had perpetrated the alleged loss of Ksh. 56,000,000. Further, that the 1st Respondent deemed it not necessary or fit to report the said loss of funds to the Office of Director of Public Prosecutions under Section 39 of the Music Copyright Act.

5. According to the Applicants, on 18th March 2025, the Interested Party did acknowledge that it was embroiled in leadership wrangles and that has, of today, two warring camps within themselves, each purporting to represent the affairs of the Applicants and other musicians in the country.
6. The Applicants state that the said two camps of the Interested Party have now each set up bank accounts and pay bill accounts for the collection of revenue from the music users in Kenya and worldwide with no accountability mechanics from the Respondents.
7. Further assertion is that the Respondents have the statutory mandate to reign over the affairs of the Interested Party but have deliberately ignored and or neglected to undertake their statutory duties to enforce the provisions of the Music Copyright Act, against the Interested Party.
8. The applicants assert that the Interested Party's actions are self-centered to attain their own financial and economic gains to the disadvantage of the real owners of the copyrights who are the Applicants and other deserving Kenyan artists who have no other source of income a part from their artistic work and royalty collections.
9. They aver that unless this court intervenes and grants the orders sought, the Interested Party shall continue to mint millions of shillings, reaping where they never sowed, while the applicants and others suffer in abject poverty.

10. It is also the applicants' case that since the Respondents have failed to perform their statutory duty, it is only this court which can come to the applicants' aid and demand accountability from the Respondents and the Interested Party herein.

11. The Applicants aver that they have suffered loss and damage due to the actions on the part of the Respondents and the Interested party. That non-compliance with sections 5A, 5B, 5G, 46E, 46E[4A-D] 46E[5], 46F[1A,1B,1E,1G,1i] of the Copyright Act by the Respondents is a breach of the constitutional and statutory duty on the part of the Respondents and the Interested Party, their servants, employees and agents.

12. The Applicants are apprehensive that unless this court intervenes and compels the Respondents and the Interested Party to comply with the law, their intellectual property rights will continue to be infringed without good cause an act which will irredeemably occasion grievous harm to both Applicants.

13. Neither the respondents nor the interested party filed any responses to the application, despite service being effected upon them.

The applicants' written submissions dated 8th December 2025

14. In their submissions, the applicants identify two issues for determination and these are:

a. whether they have locus to seek the orders sought herein and

b. whether an order of mandamus can be issued against the 1st, 2nd and 3rd Respondents

15. On the first issue, the applicants submit that they have met the threshold of a party instituting judicial review proceedings, of having sufficient interest and being aggrieved parties. They rely on the case of **Republic vs. Machakos County Government & 2 others Ex parte Johnstone Muthama [2016] eKLR** where the court is said to have observed that the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right locus standi to any member of public acting bona fide and having sufficient interest in instituting an action for redress of public wrong or public injury by a person.
16. The applicants further submit that they are proper persons before this court, and that they have undertaken a civic duty to ensure that laws are enacted not as mere decorations but that they must be obeyed.
17. On the second issue, the applicants refer to section 5 of the Copyright Act on the functions of the 1st Respondent and argue that Section 46E[4A-D], 46E[5], 46F[1A, 1B, 1E, 1G, 1i] of the Copy Rights Act, all bestow the statutory and administrative obligation upon the Respondents.
18. The Applicants submit that substantive orders can be granted not only against the Respondents but also against the Interested Party as was held by the Court in the case **Ernst & Young vs. Capital Markets Authority & another [2019]**

eKLR where the court is said to have observed that judicial review, now entrenched as a constitutional principle, has an expanded scope and is available whenever a body or authority exercises quasi-judicial or rights-affecting functions, including as a remedy for violations of fundamental rights and freedoms under Article 23(3)(f).

19. The Applicants further rely on the cases of **Child Welfare Society of Kenya vs. Republic Ex Parte Child in Family Focus Kenya Civil Appeal No. 20 of 2015 eKLR and Super Nova Properties Limited & another vs. District Land Registrar Mombasa & 2 others; Kenya Anti-Corruption Commission & 2 others (Interested Parties) (Civil Appeal 98 of 2016) [2018] KECA 17 (KLR) (19 April 2018) (Judgment)** to support this position.

20. The applicants further submit that a new dawn has now emerged in judicial review as was stated by Mativo J, in **Ernst & Young** (supra) that:

“Parties, who were once denied judicial review on the basis of the public-private power dichotomy, should now access judicial review if the person, body or authority against whom it is claimed exercised a quasi-judicial function or a function that is likely to affect his rights.”

21. Further, that substantive orders of mandamus may be granted against interested parties even though they are private entities and That the High Court retains the discretion to issue any appropriate orders necessary to achieve the ends of justice against any party.

22. The Applicants rely on the case of **Kenya National Examination Council v. Republic Ex Parte Geoffrey Gathenji Njoroge [1997] eKLR** for the scope of an order of Mandamus. They argue that a party cannot stop the implementation of the law and that it is the duty of every citizen and entity be it private or public to obey the law and also to enforce it where that duty is bestowed by an act of Parliament upon such individual or entity.

Analysis and Determination

23. I have considered the application as presented and the affidavit in support, the annexures thereto and submissions filed by the Applicants. The issue for determination is whether the mandamus order sought by the Applicants is merited.

24. Before proceeding into the substantive part of this judgment, it is important for this court to point out that it has observed that the Applicants have cited several provisions of the Copyright Act in capitalized form, including references to Sections 5A, 5B, 5G, 46E(4A-D) and 46F(1A, 1B, 1E, 1G). This issue had been raised by the Interested Party before this court at the leave stage where the interested party in opposing the application for leave contended that the application was incompetent for citing the wrong provisions of the law.

25. The Court however, dismissed this objection on grounds that it was not its role to make definitive findings on points of law but merely to satisfy itself that the intended motion is arguable and not frivolous. The Court also observed that

reliance on an inapplicable or erroneous statutory provision was not in itself fatal at the leave stage, provided the substance of the grievance is discernible and falls within the supervisory jurisdiction of this Court.

26. Quite recently in **Faram East Africa Limited v County Secretary, Government of Nairobi County & 5 others [2025] KEHC 6351 (KLR)**, this Court addressed at length the issue of wrongful citation and held thus:

“In my view, settling this latter question first, it is important to note that citing wrong provisions of the law or failure to cite any provisions of the law in an application is not a fatal defect. The Court of Appeal in Mohamed Aden Abdi v Abdi Nuru Omar & 2 others [2007] eKLR when dealing with an application to strike out an appeal where the Applicant cited wrong provisions held that:

“We have looked at the application and in an appropriate case, this not being one, the Court may strike out an application in which appropriate provisions are not cited. In the instant application however, the prayers in the motion and the affidavit in support leave no doubt that the applicant was seeking an order pursuant to rule 80 of the Court Rules.”

20. In the matter of Libyan Arab African Investments Company Kenya Limited [2021] eKLR the court stated that:

“Striking out the Applicant’s application for the reason that it has not cited the correct anchoring provision of the law will be against the principle of substantive justice as provided for by Article 159(2)(d) of the Constitution.”

21. In one of the earliest cases, in the case of Gatu V. Muriuki [1986] KLR 211 at 212, Apaloo J.A. held as follows:

“This application could only properly be brought under Order 9 (8) of the High Court Civil Procedure Rules. However, when the applicant brought the application, he erroneously put down as the authority on which he sought his relief Order XLIV Rule 122 and Order VI Rule 3. They were quite wrong. The learned judge seems to have laid great stress on the fact that although it was a competent application, the wrong procedural warrant was cited for it”.

22. When passing his verdict on the judge’s decision to dismiss the application, Apaloo J.A. made the following pertinent conclusion;

“Although I am not now concerned with the merits, I cannot shut my eyes to the fact that the main ground on which the learned judge declined to exercise his discretion to set aside the judgment of dismissal was that in bringing the motion to relist, the applicant, in error, quoted the wrong order. That seems to me hardly a sound basis for dismissing the motion”.

23. In re Estate of the Late Francis Kimitei Samoei (Deceased) [2023] eKLR, Wananda J emphasized that minor procedural errors do not invalidate proceedings if they do not affect the substance of the case. He reiterated that justice should be administered without undue regard to procedural technicalities, as per Article 159(2)(d) of the Constitution.

24. In Sheikh v Narok County Government & another [2023] eKLR, the court observed that the power to strike out pleadings should be exercised sparingly and only in clear cases. It referenced the decision in Madison Insurance Company Ltd v Augustine Kamanda Gitau [2020] eKLR, which stated that striking out pleadings is a drastic remedy and should only be used in the clearest of cases. In the latter case, the Court stated:

“The power to strike out pleadings must be sparingly exercised and it can only be exercised in clearest of cases. If a pleading raises a triable issue even if at the end of the day, it may not succeed then the suit ought to go to trial. However, where the suit is without substance or groundless or fanciful and or is brought or instituted with some ulterior motive or for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process, the court will not allow its process to be a forum for such ventures. To do this would amount to opening a front for parties to ventilate vexatious litigation which lack bona fides with the sole intention of causing the opposite party

unnecessary anxiety, trouble and expense at the expense of deserving cases contrary to the spirit of the overriding objective which requires the court to allot appropriate share of the court's resources, while taking into account the need to allot resources to other cases.”

25.The principles from D.T. Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1, which have been echoed in many subsequent cases, emphasize that the power to strike out pleadings should be exercised after considering all facts, and the court must not embark on the merits of the case itself.

26.I therefore find that the citation of the wrong procedural rule is not by itself fatal to the applicant's application. Such wrong citation does not go to the root or substance of the case. It is a mere procedural fault which is curable under Article 159 (2) (d) of the Constitution which makes it clear that when called upon to administer justice, the courts shall not be blindly enslaved by procedural technicalities at the altar of substantive justice.”

27.From the above decisions cited, the law is now settled that the erroneous or imprecise citation of statutory provisions, including the use of incorrect lettering or formatting, does not, of itself, render proceedings incompetent, provided that the substance of the claim and the relief sought are discernible and no prejudice is occasioned to the opposing party. In keeping with Article

159(2)(d) of the Constitution, the Court is enjoined to determine disputes on their merits rather than on technical lapses in form.

28. In the present case, a reading of the pleadings as a whole demonstrates that the Applicants intended to rely on the corresponding provisions of the Copyright Act, namely Sections 5a, 5b, 5g, 46E(4)(a)-(d) and 46F(1)(a), (b), (e) and (g).

29. The Respondents and interested parties who have not challenged these substantive proceedings have not demonstrated that the manner of citation by the applicants has occasioned any confusion or substantive prejudice. While Courts emphasize the importance of precision in the invocation of statutory provisions, the wrongful citation is, in the circumstances, clerical in nature and does not go to the jurisdiction of the Court and neither does it fatally undermine the competence of the application before the Court.

30. Accordingly, I find, as a preliminary issue, that the application is competently before the Court and that wrong or erroneous citing of provisions of the law is not prejudicial or fatal to the adverse parties or these proceedings.

Onto the main issue of whether the order sought is merited

31. The Applicants seek for an order of mandamus directed at the Respondents compelling them to enforce sections 5a, 5b, 5g, 46E(4)(a)-(d) and 46F(1)(a), (b), (e) and (g) of the Copyright Act.

32. The relevant sections of the Copyright Act provide as follows:

5. Functions of the Board

The functions of the Board shall be to-

- a) direct, co-ordinate and oversee the implementation of laws and international treaties and conventions to which Kenya is a party and which relate to copyright and other rights recognised by this Act and ensure the observance thereof;***
- b) license and supervise the activities of collective management societies as provided for under this Act;***
- c)***
- d)***
- e)***
- f)***
- g) administer and enforce all matters of copyright and related rights in Kenya as provided for under this Act and to deal with ancillary matters connected with its functions under this Act.***

33. Section 46E provides as follows:

- 1) The Executive Director may authorize a person, in writing, to inspect the books of accounts and records of a collective management organization.***
- 2) When an inspection is made under subsection (1), the collective management organisation concerned and every officer and employee thereof shall produce and make available to the person***

making the inspection all the books, accounts, records and other documents of the organization as the person making the inspection may require and within seven days or such longer times as he may direct in writing.

3) A person who wilfully fails to produce any books, accounts, records document, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) commits an offence under the provisions of this Act and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding three months or to both.

4) The person authorized to inspect a collective management organization shall report to the Board on-

(a) any breach or non-observance of the requirements of this Act or regulations;

(b) any irregularity in the manner of conduct of the business of the organization;

(c) any apparent mismanagement or lack of management skills in the organization; or

(d) any other matter warranting remedial action or a forensic audit.

5) The Executive Director of the Kenya Copyright Board shall, by notice in writing, and after giving the collective management organization reasonable opportunity of being heard, require the inspected organization to comply by such date or within such period as may be specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under this section.

6) The powers conferred by subsection (1) may be exercised in the following circumstances-

a) where a petition for inspection has been made by not less than forty five percent of the membership specifying breach of instruments establishing the entity, the regulations or the Act;

b) failure by a collective management organization to account for monies to at least twenty percent of its members;

c) failure by a collective management organization to offer an account of the exploitation of the copyright works assigned or licensed to it;

d) where a collective management organization has acted beyond its powers in administering the rights to which it is assigned or licensed;(e)where a collective management organization has altered its memorandum or other internal rules to exclude

a section of its members in participating in its affairs or as to alter its core business;

e) where a collective management organization has persistently failed to adhere to its set administrative budget without a reasonable cause; or

f) where a collective management organisation has failed to comply with a request for information or records from its members or the Board.

34. Section 46F states as follows:

Directions and orders of the Board

Where the Kenya Copyright Board determines through the results of an audit or inspection report that a collective management organization conducts its business in a manner contrary to the provisions of this Act or of any regulations or any other Act or in any manner detrimental to or not in the best interests of its members, the Board may-

a) recommend the suspension or removal of any officer or employee of the organization who, in the opinion of the Board, has contributed or caused the contravention of any law.

b) issue directions regarding measures to be taken to improve the management of the organization or to secure or improve compliance

- with the requirements of this Act, any regulations or any other written law or regulations;*
- c)*
 - d)*
 - e) appoint a person as the chairperson who is suitably qualified and competent in the opinion of the Board to advice and assist the organization in developing and implementing a corrective action plan and the person appointed shall regularly report to the Board on the progress of the implementation plan;*
 - f)*
 - g) order for the revocation of the collection license;*
 - h)*
 - i) order the organization to take such other action that the Board may deem necessary to rectify the deficiency, or issue such administrative directives as it may deem necessary.*

35. Section 5 of the Copyright Act vests in the Board the function of directing, coordinating and overseeing the implementation and observance of copyright law, to license and supervise the activities of collective management societies and to administer and enforce all matters relating to copyright and related rights in Kenya.

36. Section 46E primarily empowers the Executive Director, following inspection and upon affording a reasonable opportunity to be heard, to issue compliance directions arising from inspection reports.
37. Section 46F authorises the Board, to take corrective action against the organization by recommending suspension or removal of officers responsible for legal contraventions, issuing directions to improve management and ensure compliance with the Act or other laws, requiring reconstitution of the Board, demanding a plan to address deficiencies, appointing a qualified chairperson to oversee corrective measures, placing the organization under statutory management, revoking its collection license, ordering a special general meeting and or taking any other action or issuing directives deemed necessary to rectify deficiencies.
38. An order of mandamus lies to compel the performance of a public duty which is imposed by statute and which is owed to the applicant, where the duty is clear, the applicant has a corresponding legal right to its performance and the public authority has failed or refused to act.
39. This principle was recognized in **Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR**, where it was held that mandamus is available to enforce statutory duties owed to members of the public. The court stated thus;

“The next issue we must deal with is this: What is the scope and efficacy of an order of Mandamus? Once again, we turn to Halsbury’s Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

40. The Applicants contend that the Respondents have failed to invoke the supervisory, inspection and enforcement mechanisms provided for under Sections 46E and 46F of the Copyright Act, notwithstanding allegations of financial impropriety, leadership wrangles and the operation of parallel revenue collection accounts by the Interested Party. They argue that such inaction

amounts to a dereliction of the Respondents' statutory mandate to protect the interests of members of the collective management organisation and to ensure compliance with the Act.

41. This Court notes and reiterates, as a matter of record, that the Respondents did not file a replying affidavit or submissions to explain what steps, if any, were taken pursuant to the powers conferred upon them by the Act. While the absence of a response does not, of itself, entitle an applicant to the relief sought, it leaves the Applicants' assertion of inaction on the part of the respondents, and which inaction is prejudicial to the applicants, uncontroverted on the pleadings.

42. It is, however, a well-established principle of law that mandamus cannot direct the manner in which statutory or discretionary powers are exercised, but may compel the lawful exercise of statutory powers.

43. In the present case, the statutory framework establishes a sequential process for inspection, supervision and enforcement against collective management organisations. This Court notes, however, that the inspection stage contemplated under Section 46E has already been undertaken, as evidenced by the correspondence from the 1st Respondent referring to identified instances of misappropriation of funds.

44. The remaining issue before the Court is therefore not the initiation of inspection, but the consideration of the inspection findings and the lawful exercise of the enforcement and corrective powers conferred under Section 46F

as read together with the Board's general mandate under Section 5 of the Copyright Act.

45. Thus, where a statute establishes a regulatory framework intended to protect a defined class of persons and credible allegations of non-compliance are placed before the regulator, the regulator is under a public law duty not merely to receive such allegations, but to consider and address them in accordance with the Act. A failure to engage with the post-inspection processes of supervision, determination and enforcement amounts to a failure to exercise jurisdiction.

46. In the present case, and in the absence of any material placed before this Court demonstrating that the findings arising from the 1st Respondent's inspection were subjected to regulatory consideration or enforcement action under Section 46F, this Court is satisfied that the Applicants have established a *prima facie* case of non-performance of the 1st Respondent's statutory mandate to supervise and ensure observance of the provisions of the Copyright Act.

47. From the record, it is observable that in or about February 2024, the 1st Respondent addressed a letter to the Ethics and Anti-Corruption Commission concerning alleged misappropriation of approximately Kshs. 56 million by the Music Copyright Society of Kenya Limited and requested the Commission to undertake investigations into possible fraud.

48. While the referral to the Ethics and Anti-Corruption Commission was appropriate in relation to suspected criminal or corrupt practices, it does not discharge the 1st Respondent's statutory obligations under Sections 5 and 46F of the Copyright Act. The section vests the 1st Respondent with independent post-inspection powers to consider audit and inspection findings and to take regulatory and corrective action, including issuing binding directions, placing an organisation under statutory management, or revoking collection licences. The absence of any demonstrated exercise of these powers following the inspection constitutes a failure to perform the Board's regulatory mandate.

49. The question is, what is mandamus as what is the purpose of mandamus?

50. Mandamus, according to Black's law dictionary, Ninth Edition

"A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act."

51. Mandamus according to **Wharton's Law Lexicon, 15th Edition, 2009**

"A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the King's name from the King's Bench Division of the High Court only, and addressed to any person, corporation, or inferior court of judicature requiring them to do something therein specified, which appertains to their office, and which the court holds to be consonant to right and justice. It is used principally for public purposes,

and to enforce performance of public duties. It enforces, however, some private rights when they are withheld by public officers.

52. Primary purpose of mandamus is to protect an established right and to enforce a corresponding imperative duty imposed (or created) by law. Mandamus is designed to promote justice; it does not lie to create or establish a legal right but to efficaciously enforce one that already has been established. Mandamus is invoked to remedy rights that lack assistance or wrongs that need resistance.

53. Mandamus is issued when the statutory authorities who are entrusted with the duties fail to discharge their obligatory duty. It may be applied when the public authorities vested with powers fail to perform their administrative and statutory duties.

54. The Court of Appeal decision in **Makupa Transit Shade Limited & Anor vs. Kenya Ports Authority & Another [2015] eKLR** stated as follows regarding the order of mandamus:

“What of the Order of mandamus” The general rule is that the issuance of mandamus is limited to where there is no specific legal remedy for enforcing it or the alternative legal remedy is less convenient, beneficial and effectual. Its scope against public bodies is limited to performance of a public duty where statute imposes a clear and unqualified duty to do that act. However, if the duty is discretionary as to its implementation, then mandamus cannot dictate the specific way the decision will be exercised.

Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way. The applicant in addition has to show that it has a legal right to the performance of the legal duty by the party against whom it issues.”

55. In **Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR)**, the High Court stated that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the Applicant. Ringera J (as he then was) stated as follows:

“On whether or not an order for Mandamus could issue to Compel the Electoral Commission to perform a duty imposed upon it by the constitution, I am in agreement with the submission of counsel for the applicant that it would in appropriate circumstances. The authorities cited show that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the applicant. A fortiori it is should be an appropriate remedy to compel the performance of a constitutional duty.”

56. In **Republic v Commissioner of Lands ex parte Lake Flowers Ltd [2008] eKLR**, the Court held that mandamus will issue to compel a public authority to

exercise discretion where it has unlawfully declined or failed to do so, though not to dictate the manner of that exercise.

57. Mativo, J (as he then was) in **Commission on Administrative Justice vs. Insurance Regulatory Authority & Another [2017] eKLR**, considered the regulatory functions of the IRA and the statutory obligations imposed on it. The learned Judge held as follows concerning the duty of statutory bodies:

"A statutory body is bound to adhere to mandate stipulated in the statute creating it and its actions must conform to the constitutional prescriptions as clearly provided in our transformative Constitution. In my considered view, Insurance regulatory law is the body of statutory law, administrative regulations and jurisprudence that governs and regulates the insurance industry and those engaged in the business of insurance. Insurance regulatory law is primarily enforced through regulations, rules and directives by state insurance departments as authorized and directed by statutory law enacted by the legislature."

58. G.V. Odunga J (as he then was) in **Peter Mwau Muinde and Another v Insurance Regulatory Authority; Claimants in the Accidents (Interested parties) Petition No. 20 of 2018** stated:

"In my view, where it is alleged that as a result of the failure by a state organ to carry out its statutory mandate, a person's rights are threatened

with violation or have been violated, the matter transcends the contractual arena and enters the constitutional arena."

59. Accordingly, this Court finds that the circumstances in the instant case justify the issuance of an order of mandamus to compel the 1st Respondent to consider the findings arising from its inspection and to lawfully exercise its powers under Section 46F, read together with Section 5 of the Act. This Court emphasizes that it does not direct the substantive outcome of that process, but only the lawful exercise of statutory powers.

60. In the end, judicial review order of mandamus is hereby issued compelling the 1st Respondent, the Kenya Copyright Board to exercise its statutory duty and functions under Section 5 of the Copyright Act by considering the inspection findings and addressing them, in accordance with Section 46F of the Act, demanding compliance by the Music Copyright Society of Kenya Limited, the Interested Party herein, with the statutory framework governing collective management organisations.

61. The 1st respondent shall initiate the process of complying with the provisions of the Act within seven days of service of this judgment upon it, and as stated hereinabove, this court does not direct how that statutory duty shall be exercised as that is beyond this Court's mandate.

62. As the respondents and interested parties have not participated in these proceedings, I order that there shall be no orders as to costs.

63.This file is closed.

64.I so order.

Dated, Signed & Delivered virtually at Nairobi this 4th Day of February 2026

**R.E ABURILI
JUDGE**

ORIGINAL