



Arunda v Attorney General & 2 others; Law Society of Kenya (Proposed Interested Party) (Employment and Labour Relations Petition E090 of 2024) [2025] KEELRC 658 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 658 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E090 OF 2024
MN NDUMA, J
FEBRUARY 27, 2025**

BETWEEN

HARRY STEPHEN ARUNDA PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

KENYA NATIONAL HUMAN RIGHTS COMMISSION 2ND RESPONDENT

CENTRAL ORGANISATION OF TRADE UNIONS 3RD RESPONDENT

AND

LAW SOCIETY OF KENYA PROPOSED INTERESTED PARTY

RULING

1. The Law Society of Kenya (LSK) by a Notice of Motion dated 23/7/2024 prays for an order that:-
 - a. The proposed Interested Party be granted leave to join the proceedings as an Interested Party in the petition before court.
 - b. That the proposed Interested Party be thereafter granted an opportunity to file a response to the petition and make written and oral submissions on the same.
 - c. There be no order as to costs.

The application is premised on grounds set out on the face of Notice of Motion to wit that it is a statutory body established under section 3 of the LSK Act where objectives are enumerated under section 4 thereof; viz:

 - a. Assist the Government and the courts in matters relating to legislation, the administration of justice and the practice of law in Kenya.



- b. Uphold the *Constitution of Kenya* and advance the rule of law and the administration of justice.
 - c. Protect and assist the members of the public in Kenya in matters relating to or ancillary or incidental to the law.
2. That the premier Bar Association representing more than 20,000 Advocates in Kenya, the Proposed Interested Party is a necessary party as of itself and further as a representative of Advocates who are tasked with representing persons injured in the course of their employment;
 3. That the Proposed Interested Party is concerned that the question sought to be answered in the petition is one of great general importance and as such wished to canvas the same as the premier bar association in the Republic.
 4. That the Proposed Interested Party intends to assist the court in clarifying the uncertainty in the law which should settle the issues in question to provide invariable guidance to the courts, practitioners and the general public.
 5. That in so doing, the Proposed Interested Party is cognizant that the membership is sworn to defend the Rule of Law and constitutionalism in their own stead and also on behalf of the general public.
 6. That in exercising its duty under section 4(a), (b) and (d) of the *LSK Act*, the Proposed Interested Party wishes to assist the court in protecting the *Constitution*, advancing the Rule of Law, the administration of justice and clarifying important issues in relation to title to land.
 7. That the Proposed Interested Party's rejoinder will enrich the proceedings as it intends to represent the general public in advancing the rule of law, constitutionalism and the administration of justice.
 8. That it is in the interest of justice and fairness to grant the orders sought, and admit the Law Society of Kenya into the proceedings as an Interested Party.
 9. That the Proposed Interested Party has met the tests propounded by the Supreme Court in the *Francis Kariuki Muruatetu and another v Republic and 5 others* [2016] eKLR and *Trusted Society of Human Rights Alliance v Mumo Matemu and 5 others* [2015] eKLR cases.
 10. The application is buttressed by deposition set out in the supporting affidavit of Florence W. Muturi, the CEO of LSK and an Advocate of the High Court of Kenya on the matters aforesaid. The applicant prays that the application be granted.

Grounds of opposition by the Respondent.

11. The application is opposed vide grounds of opposition by the 1st Respondent dated 11/9/2024 to wit that the proposed Interested Party has failed to meet the criteria set out in the Supreme Court decision in *Francis Kariuki Muruatetu and another v Republic and 5 others* [2016] eKLR and *Trusted Society of Human Rights Alliance v Mumo Matemu and 5 others* [2015] eKLR which includes demonstrating the personal interest or stake the applicant has in the matter, the prejudice the applicant stands to suffer in case of non-joinder bearing in mind that LSK challenged the work Injury Benefit Act in the High Court all the way to the Supreme Court in the Petition No. 4 of 2019 between *LSK v Attorney General and COTU (K)* where they presented issues which are similar to this case and the same was heard and determined.
12. That LSK has not set out in the application the case and/or submissions it intends to make before the court. That the LSK intends to merely replicate its submissions in the previous matter aforesaid.



13. That the Petitioner, the 2nd and 3rd Respondents are not opposed to the joinder and have not filed any response on submission.

Submissions

14. The applicant and 1st Respondent made oral submissions before court which the court has carefully considered together with the depositions by the parties and is satisfied that the Petitioner raises the issue of the jurisdiction of Director of Occupational Safety and Health (DOSHS) to hear and determine computation and benefits applicable to employees who suffer injury in the course of their employment under the work Injury Benefits Act (WIBA).
15. That WIBA has ousted the jurisdiction of the civil courts in that regard and by so doing has violated the rights of the Petitioner under Article 25(c); 27(1); 27(2); 28; 47(1) 50(1) and that the WIBA runs contrary to the authority of the courts enshrined under Article 159(2)(9) and (b) in the Constitution of Kenya 2010.

Determination

16. The court has come to the conclusion that the issues raised here are of great public importance which fall within the mandate of LSK in that they relate to legislation, administration of justice and the practice of law in Kenya.
17. Furthermore, the petition touches on the supremacy of the Constitution vis a vis statutory law and therefore the need for the court to be assisted and guided properly in the hearing and determination of this dispute which revolves on the issue of proper, effective and just administration of justice.
18. It is a non brainer that the court stands to greatly benefit from the input to be made by LSK in this matter and finds that the members of LSK shall be prejudiced by an order preventing LSK from joining this matter. The criteria set out in the Muruatetu, case supra, by the Supreme Court has been met by the applicant.
19. Accordingly, the application is granted as prayed and the following orders made:
- i. The Applicant is joined as an Interested Party in this matter.
 - ii. The Applicant is granted leave to file a replying affidavit to the petition and make submissions as directed subsequently by the court.

DATED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Ms. Oginga for Petitioner

Ms. Aluoch for the Objector

Mr. Michuki for Interested Party

Mr. Kemboi – Court Assistant

