



Music Copyright Society of Kenya (MCSK) v Muli & 2 others (Petition E004 of 2025) [2025] KEELRC 1621 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1621 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E004 OF 2025**

B ONGAYA, J

MAY 29, 2025

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 22, 23, 24, 27,
28, 36, 41, 47, 50 AND 258 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF ALLEGED CONTRAVENTION AND VIOLATION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION**

-AND-

IN THE MATTER OF THE MUSIC COPYRIGHT SOCIETY OF KENYA (MCSK)

BETWEEN

MUSIC COPYRIGHT SOCIETY OF KENYA (MCSK) PETITIONER

AND

LAZARUS MUOKI MULI 1ST RESPONDENT

SIMON KARIUKI NDERITU 2ND RESPONDENT

JOHN MWANGI NJOROGE 3RD RESPONDENT

RULING

1. The petitioner filed a petition dated 07.05.2024 through Felix Okiri Advocate. The petition challenged the respondent’s continued stay in office as directors of the petitioner, a company limited by guarantee. The petition alleged that the on 16.02.2025 the lawful term of office of the respondents lapsed by operation of the law under the petitioner’s constitution and the *Companies Act*, 2015. Further the expiry of their tenure was formally communicated through letters dated January 2024 and 19.02.2025. It was alleged that despite the lapsing of the tenure of the respondent’s directorships, the had continued to make arbitrary appointments and irregular changes to the signatories of the petitioner’s bank accounts resulting in their orchestrated irregular withdrawal of Kshs. 4,000,000.00 and they had irregularly changed the bank account signatories at NCBA bank. It was alleged that the petitioners had



violated the right to fair practices in Article 41, the freedom to associate in Article 36, the right to social security in Article 43(1) (c), the right to fair administrative action in Article 47, the right to dignity in Article 28, and the national values and principles of governance in Article 10 of *the Constitution* of Kenya. The petition prayed for declarations that the respondent's continued stay in office of the petitioner was illegal, null and void; all decisions taken by respondents after lapsing of tenure of their directorships were void ab initio; the respondent's to immediately vacate office as directors of the petitioner; and, costs to the petitioner.

2. Alongside the petition, an application by the notice of motion dated 07.05.2025 was filed for interlocutory orders by way of injunction restraining the respondents by themselves or by their agents or servants from accessing and operating the petitioner's bank accounts and interfering with the petitioner's assets or intellectual property rights or corporate records. The application and petition was supported by the affidavit of Dr. Ezekiel Mutua, EBS stating that he was the Chief Executive Officer of the petitioner duly authorised to swear the affidavit.
3. On 08.05.2025 the Court considered the application and directed it be forthwith served upon the respondents for inter partes hearing and further orders on 21.05.2025. As scheduled parties attended and it transpired as follows:
 - a. Mr. Okubasu of Okubasu & Munene Advocates introduced himself as representing the petitioner because he had filed a notice of change of advocates dated 20.05.2025 and the petition had been filed without the authority and instructions of the petitioner by resolution of its Board of Directors. That Mr. Felix Okiri Advocate had no authority to file the petition upon instruction of Dr. Ezekiel Mutua and whose tenure as Chief Executive Officer had lapsed by a termination which was being challenged by Dr. Ezekiel Mutua in ELRC Petition E041 of 2025. Mr. Okubasu prayed that the petition be withdrawn. A notice to withdraw petition dated 21.05.2025 was filed.
 - b. Mr. Felix Okiri Advocate responded that he had instructions to act and file the petition as instructed by Dr. Ezekiel Mutua and in any event in an application in the lower Court at Magistrate's Court, an order had been made to freeze the petitioner's accounts.
 - c. Mr. Nthei Advocate attended and submitted that he represented the respondents Advocates who had decided to withdraw the petition.
 - d. The Court directed respective rival counsel for the petitioner to file affidavits to demonstrate their instructions to act and fixed the case for 22.05.2025.
4. On 22.05.2025, the Advocates attended as scheduled. There were two affidavits of Richard Sereti on record sworn on 20.05.2025. He stated that he was the petitioner's legal officer and acting Chief Executive Officer and that Mr. Felix Okiri Advocate had no instructions to file and act in the petition per exhibited resolution of the Board at minute 5/5/5/2025. Further Dr. Ezekiel Mutua is the former Chief Executive Officer of the petitioner effective 03.04.2025 and the petitioner had issued a public announcement in the print media to that effect per the exhibit. Further, Dr. Ezekiel Mutua had challenged his termination in petition ELRC E041 of 2025 at Nairobi in which he acknowledged his termination on 03.04.2025.
5. Dr. Ezekiel Mutua's further affidavit sworn on 21.05.2025 stated that the interim orders be granted in the best interest of the Company.
6. The Court has considered the material on record and returns as follows:



- a. The evidence is that as at filing of the petition Dr. Ezekiel Mutua had long before been terminated as the Chief Executive Officer of the petitioner. He could not therefore have had due authority to instruct Mr. Okiri Advocate to file and prosecute the petition. The Court finds that indeed the suit was filed without due instructions and while the directorship of the respondents is in dispute, what is pertinent is that indeed the petition was filed without due authority of the company as a separate legal entity.
- b. The instant petition appears to be about validity of the respondents to be in office as petitioner's directors, the petitioner being a company limited by guarantee under the companies Act. The Court finds that the disputed directorship is strictly not employment relationship and the proper Court is the High Court per the Companies Act per holding of the Court of Appeal in Rift Valley Water Services Board & 3 others v Asanyo & 2 others (Civil Appeal 60 & 61 of 2015 (Consolidated)) [2022] KECA 778 (KLR) (10 June 2022) (Judgment) as referred to by the Court in Gikenye & 2 others v Mwaura & 9 others (Petition E001 of 2025) [2025] KEELRC 592 (KLR) (27 February 2025) (Ruling). It appears that disputants have already moved the High Court on the disputed directorship. In that consideration it is that the Court lacks jurisdiction to hear and determine the instant petition which, is liable to dismissal.
- c. As the Company seeks to withdraw, there would be no orders on the costs of the petition.

In conclusion, the petition is hereby withdrawn or struck out with no orders on costs, and, case file closed.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

