



**Stanbic Bank Kenya Limited v Santowels Limited; Kenya Bankers Association (Intended Amicus Curiae) (Petition (Application) E005 of 2023) [2025] KESC 14 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KESC 14 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
PETITION (APPLICATION) E005 OF 2023  
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, I LENAOLA & W OUKO, SCJJ  
MARCH 14, 2025**

**BETWEEN**

**STANBIC BANK KENYA LIMITED ..... APPELLANT**

**AND**

**SANTOWELS LIMITED ..... RESPONDENT**

**AND**

**KENYA BANKERS ASSOCIATION ..... INTENDED AMICUS CURIAE**

*(Being an application by Kenya Bankers Association to be joined in the appeal as amicus curiae)*

**A party that has been denied joinder to a suit as an interested party could not apply to be joined as amicus curiae**

*The Supreme Court dismissed Kenya Bankers Association's application to join as amicus curiae (friend of the court) in proceedings seeking review of its judgment requiring the relevant Cabinet Secretary's approval before banks increased interest rates. The Supreme Court held that the applicant had previously sought to join as an interested party, revealing a vested interest incompatible with neutrality. It found the application untimely, as amicus participation was intended to assist the court before judgment, not after. The court further noted that admitting the applicant post-judgment would prejudice parties entitled to finality and contravene procedural rules. Each party was directed to bear its own costs of the application.*

Reported by John Ribia

**Civil Practice and Procedure** – parties to a suit – interested party – where an interested party application was denied joinder and the same party applied to be an amicus curiae (friend of the court) - whether a party that had been denied to join court proceedings as an interested party had the capacity to be joined in proceedings as amicus curiae (friend of the court) - whether an application to be joined as amicus curiae (friend of the court) application filed post judgment, at the review stage, was prejudicial to the other parties in the proceedings considering how late it was filed and that it could not grant them a chance to respond - Supreme Court Act (Cap 9B) section 21A.



## **Brief facts**

Upon delivering its judgment dated June 28, 2024 in Supreme Court Petition No. E005 of 2023, the court dismissed the substantive appeal and held that interest rates on loans and facilities advanced by banks and financial institutions were subject to regulation under section 44 of the Banking Act, requiring prior approval from the Cabinet Secretary before any increase. Following the pronouncement, the appellant filed a Notice of Motion dated September 4, 2024 seeking review or clarification of that portion of the judgment. Subsequently the Kenya Bankers Association applied to be admitted as *amicus curiae* (friends of the court) in the review application, contending that it possessed specialist expertise on banking regulation and could assist the court in developing the law on prospective overruling.

The respondent opposed the application, arguing that the applicant had previously unsuccessfully sought to join the proceedings as an interested party, thereby demonstrating a vested interest inconsistent with the role of *amicus curiae*. The respondent further contended that post-judgment joinder would undermine finality in litigation and violate procedural rules.

## **Issues**

- i. Whether a party that had been denied joinder to court proceedings as an interested party had the capacity to be joined in proceedings as *amicus curiae* (friend of the court).
- ii. Whether an application to be joined as *amicus curiae* (friend of the court) filed post judgment, at the review stage, was prejudicial to the other parties in the proceedings considering how late it was filed and that it did not grant them a chance to respond.

## **Held**

1. The applicant had initially sought to be joined in the proceedings as an interested party at an interlocutory stage, but the application was denied. Unlike an interested party with a direct stake in the case, an *amicus curiae* was primarily concerned with ensuring fidelity to the law. Consequently, the applicant could not, within the same proceedings, transmute from asserting a vested interest to claiming neutrality as an *amicus curiae*.
2. The part of the judgment for which review was sought by the appellant differed from the arguments the applicant wished to advance as *amicus curiae*. To allow the applicant to make the arguments at a late stage would not only be prejudicial to the other parties but also go against the principle of finality of litigation.
3. Subject to the strictures of review of judgment under section 21A of the Supreme Court Act, the scope of *amicus curiae* intervention post judgement would equally be limited.

*Application dismissed.*

## **Orders**

*Each party bore its own costs.*

## **Citations**

### **Cases**

#### **Kenya**

1. *Outa v Okello & 3 others* Petition 6 of 2014; [2017] KESC 25 (KLR) - (Mentioned)
2. *Rai & 3 others v Rai & 4 others* Petition 4 of 2012; [2014] KESC 31 (KLR) - (Applied)
3. *Trusted Society of Human Rights Alliance v Matemo & 3 others* Petition 12 of 2013; [2015] KESC 26 (KLR) - (Explained)

## **Statutes**

#### **Kenya**

1. Supreme Court Act (cap 9B) section 21A - (Interpreted)
2. Supreme Court Rules, 2020 (cap 9B) rule 3, 19, 31 - (Interpreted)



## Advocates

None mentioned

## RULING

### Representation:

Mr Allen Gichuhi, SC for the appellant (Wamae & Allen Advocates)

Mr Kevin Mogeni for the respondent (Mogeni & Co Advocates)

Mr Kenneth Fraser, SC for the intended amicus curiae/applicant (Hamilton, Harrison & Mathews Advocates)

1. Whereas this court by a Judgment dated June 28, 2024 in SC Petition No E005 of 2023 dismissed the substantive issue in the appeal in the following terms:  

“[70] In conclusion on this issue, we find that interest rates on loans and facilities advanced by banks/ financial institutions are subject to the regulatory process under Section 44 of the Banking Act. In addition, that such banks/financial institutions are required to seek the Cabinet Secretary’s approval under section 44 of the Banking Act prior to increasing interest rates on loans and/ or facilities advanced to its customers.”; and
2. Noting that, upon this pronouncement, the appellant by its notice of motion dated September 4, 2024 (review application) moved the court for orders:
  - i. That this court be pleased to review and amend that portion of its Judgment and the order therein dated June 28, 2024, to wit, - “In addition, that such banks/financial institutions are required to seek the Cabinet Secretary’s approval under section 44 of the Banking Act prior to increasing interest rates on loans and/or facilities advanced....”;
  - In the alternative,
  - ii. That court in exercise of its inherent jurisdiction be pleased to clarify that portion of its Judgment and the order therein dated June 28, 2024, to wit, “In addition, that such banks/ financial institutions are required to seek the Cabinet Secretary’s approval under section 44 of the Banking Act prior to increasing interest rates on loans and/or facilities advanced....; ...”; and
3. Upon considering this second notice of motion dated September 30, 2024 but brought by Kenya Bankers Association (the applicant) under rules 3, 19 and 31 of the Supreme Court Rules, 2020 for leave to be joined:
  - a. as *amicus curiae* in the application dated September 4, 2024 (review application); that
  - b. The *amicus* brief of the applicant annexed to the application be deemed to be duly filed and considered by the court when determining the application dated September 4, 2024;
  - c. There be no orders as to costs against the applicant.”; and
4. Taking into Account the affidavit in support of the Motion sworn by the applicant’s Ag Chief Executive Officer, Raimond Molenje, on September 30, 2024 and the applicant’s submissions of October 16, 2024 to the effect that: the applicant’s joinder is limited to assisting the court to determine the review application; over the years the applicant has acquired specialist expertise on the regulation



of banks in Kenya and frequently engages Central Bank of Kenya (CBK) on key issues affecting the banking industry; the applicant has unique knowledge of the historical development of the legislation governing banks in Kenya including legislation on the control of the rate of interest to be applied to loans or credit facilities; the applicant is a neutral party in the proceedings; if the applicant is allowed to join the proceedings, it will put forward submissions to assist the court in developing the law on prospective overruling; both the appellant and respondent in their pleadings have not addressed the issue of prospective overruling; and the intended amicus brief introduces a novel aspect of the legal issue in question and is intended to assist the court to reach a just conclusion; and

5. Upon considering also the respondent's grounds of objection to the motion dated October 15, 2024 premised on the reasons that: the applicant has previously made an application for joinder as an interested party but was unsuccessful; that by attempting to join the proceedings again as an amicus curiae, the applicant has demonstrated a vested interest in the outcome which disqualifies it from serving as amicus curiae; the applicant's joinder post-judgment would not serve the purpose of an amicus which is to enlighten the court during its consideration of a matter, not after judgment has been delivered; that if permitted at this stage, such a move would violate the principles of finality in litigation and undermine the integrity of the court's decision; that the applicant has not demonstrated any exceptional circumstances or overriding public interest that would justify its joinder at this stage as amicus; that allowing the application would prejudice the parties to the proceedings, particularly those who are entitled to finality in litigation and that introducing new submissions or perspectives at this stage would re-open settled issues leading to delays and uncertainty in the enforcement of the judgment; that the application violates the procedural rules governing amicus participation as provided for under rule 54 of the Supreme Court Rules; that such applications ought to be made at an appropriate stage; and that filing such an application after judgment is outside the scope of permissible court procedure; and
6. Bearing in mind the guiding principles in considering an application for admission as amicus curiae as delineated under rule 19 of the *Supreme Court Rules*, 2020 and in terms of this court's pronouncement in *Trusted Society of Human Rights Alliance v Matemo & 3 others* [2015] KESC 26 (KLR) as follows;

“An *amicus* brief should be limited to legal arguments. The relationship between *amicus curiae*, the principal parties and the principal arguments in an appeal, and the direction of *amicus* intervention, ought to be governed by the principle of neutrality, and fidelity to the law. An *amicus* brief ought to be made timeously, and presented within reasonable time. Dilatory filing of such briefs tends to compromise their essence as well as the terms of the Constitution's call for resolution of disputes without undue delay. The court may therefore, and on a case-by-case basis, reject *amicus* briefs that do not comply with this principle. An *amicus* brief should address points of law not already addressed by the parties to the suit or by other *amici*, so as to introduce only novel aspects of the legal issue in question that aid the development of the law....

42. The applicant ought to raise any perception of bias or partisanship, by documents filed, or by his submissions. The applicant ought to be neutral in the dispute, where the dispute is adversarial in nature. The applicant ought to show that the submissions intended to be advanced will give such assistance to the court as would otherwise not have been available. The applicant ought to draw the attention of the court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the applicant ought to show that there is no intention of repeating arguments already made by the parties. And such new matter as the applicant seeks to advance, must be based



on the data already laid before the court, and not fresh evidence. The applicant ought to show expertise in the field relevant to the matter in dispute, and in this regard, general expertise in law does not suffice.”

7. Upon evaluation of the motion and rival arguments by the parties on both sides, we opine as follows:
- i. We reiterate that the applicant had initially sought to be joined in the proceedings as an interested party at an interlocutory stage, but the application was denied. Unlike an interested party with a direct stake in the case, an *amicus curiae* is primarily concerned with ensuring fidelity to the law. Consequently, the applicant cannot, within the same proceedings, transmute from asserting a vested interest to claiming neutrality as an *amicus curiae*.
  - ii. Secondly, the applicant contends that its role will be limited to assisting the court to determine the review application based on its acquired specialist expertise on the regulation of banks in Kenya and, that it will put forward submissions to assist the court in developing the law on prospective overruling. It should readily be apparent from these submissions that the part of the judgment for which review is sought by the appellant differs from the arguments the applicant wishes to advance as *amicus curiae*.
  - iii. To allow the applicant to make these arguments at this late stage would not only be prejudicial to the other parties but also go against the principle of finality of litigation.
  - iv. In view of the strictures for the review of judgment under section 21A of the *Supreme Court Act* and the principles enunciated in *Outa v Okello & 3 others* [2017] KESC 25 (KLR), it follows that the scope for //amicus intervention post-judgment would equally be limited. In the circumstances, we find that the present application lacks merit.
  - v. On costs, we underscore the fact that an award of costs is an exercise of discretion and follows the principle set out by this court in *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR), that costs follow the event. In exercise of our discretion, we direct each party to bear its own costs.
8. Consequently, and for the reasons afore-stated we make the following orders:
- i. The notice of motion dated September 30, 2024 and filed on October 1, 2024 be and is hereby dismissed.
  - ii. Each party shall bear its own costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH, 2025.**

.....  
**P.M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

.....  
**M.K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

.....  
**S. C. WANJALA**



**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**

**JUSTICE OF THE SUPREME COURT**

.....

**W. OUKO**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR SUPREME COURT**

