



**Kenya Copyright Board v Kenya Association of Music Producers (KAMP) & another; Music Copyright Society of Kenya (MCSK) (Interested Party) (Civil Appeal E1035 of 2024) [2025] KEHC 711 (KLR) (Civ) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1035 OF 2024**

**JM OMIDO, J**

**JANUARY 31, 2025**

**BETWEEN**

**KENYA COPYRIGHT BOARD ..... APPELLANT**

**AND**

**KENYA ASSOCIATION OF MUSIC PRODUCERS (KAMP) ... 1<sup>ST</sup> RESPONDENT  
PERFORMING AND AUDIO-VISUAL RIGHTS SOCIETY OF KENYA  
(PAVRISK) ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MUSIC COPYRIGHT SOCIETY OF KENYA (MCSK) ..... INTERESTED PARTY**

*(Being an Appeal from the Judgement of the Copyright Tribunal (Hon. Elizabeth Lenjo) delivered on 3rd September, 2024 in COPTA/E002/2024 Kenya Association of Music Producers v Kenya Copyright Board & Others)*

**RULING**

1. Before me is the Appellant’s amended application by way of Notice of Motion dated 29<sup>th</sup> October, 2024, which seeks the following orders:
  - a. [Spent].
  - b. [Spent].
  - c. That pending the hearing and determination of the appeal, the Honourable Court be pleased to review the ruling dated 15<sup>th</sup> October, 2024 and issue a stay of execution of the judgement



that was rendered by the Copyright Tribunal in COPTA/E002/2024 Kenya Association of Music Producers (KAMP) v Kenya Copyright Board and others.

- d. That in the alternative to (c) above, this Honourable Court be pleased to extend the interim stay of execution orders issued on 10<sup>th</sup> September, 2024 pending the hearing and determination on merit of the Appellant's application dated 6<sup>th</sup> September, 2024.
  - e. That costs of the application be provided for.
2. The application is premised on nine (9) grounds that are listed on its face, which are as follows:
1. Vide a letter dated 29<sup>th</sup> October, 2024, the 1<sup>st</sup> Respondent has issued the Appellant with a three-day notice with the intention of commencing contempt proceedings if the Appellant does not issue them with an operating CMO license, despite the 1<sup>st</sup> Respondent not meeting the constitutional and statutory requirements.
  2. The stay of execution orders that were sought by the Appellant in the application dated 6<sup>th</sup> September, 2024 were meant to preserve the essence and substratum of the instant appeal for it not to be rendered a mere academic exercise.
  3. The stay of execution orders were only limited to the judgement that was delivered by the Copyright Tribunal in COPTA/E002/2024 Kenya Association of Music Producers (KAMP) v Kenya Copyright Board and others on 3<sup>rd</sup> September, 2024 in order to allow this Honourable Court to evaluate the propriety or otherwise of the impugned judgement.
  4. The Appellant having been granted leave to appeal the impugned judgement by the Copyright Tribunal to the High Court, it was necessary and in the public interest that stay orders be sought pending the determination of the appeal. The appeal was lodged timeously within 3 days of the delivery of judgement.
  5. The Honourable Court has been deliberately misled to believe that granting the stay orders will lead to existence of conflicting court orders that were issued by Honourable Lady Justice Mong'are in High Court (Commercial, Tax & Admiralty Division) HCCOMPET No. E014 of 2024 Music Copyright Society of Kenya v Kenya Copyright Board & others, this is apparently erroneous for reasons that:
    - i. HCCOMPET No. E014 of 2024 was lodged on 18<sup>th</sup> June, 2024 by the Interested Party and interim orders were issued on the same day whereas the 1<sup>st</sup> Respondent filed COPTA/E002/2024 Kenya Association of Music Producers (KAMP) v Kenya Copyright Board and others at the Copyright Tribunal on 5<sup>th</sup> August, 2024.
    - ii. Interim orders no. 4 and 5 did not revoke the CMO operating license that was issued by the Appellant to the 2<sup>nd</sup> Respondent herein – the interim conservatory orders only prevented the 2<sup>nd</sup> Respondent from collecting any monies and royalties on behalf of the Interested Party herein, MCSK.
    - iii. The Honourable Lady Justice Mong'are's orders did not extend to the 1<sup>st</sup> Respondent as they were not parties to the Petition that was filed by the Interested Party.
    - iv. There exists no confusion or any likelihood of any confusion as the interim conservatory orders, which are still in force today, only affect the members of the Interested Party and not the 1<sup>st</sup> Respondent.



- v. The 1<sup>st</sup> Respondent herein only filed COPTA/E002/2024 which the Appellant has already challenged by filing the instant appeal.
6. The Appellant did not conceal any material information from this Honourable Court as the impugned judgement stems from the judgement of the Copyright Tribunal in COPTA/E002/2024.
7. In the 3<sup>rd</sup> September, 2024 judgement of the Copyright Tribunal that the Appellant has challenged before this Honourable Court, the Tribunal did not frame any issues for determination in relation to HCCOMPET No. E014 of 2024 nor did it make any findings on the same thus making HCCOMPET No. E014 of 2024 not susceptible to the instant appeal.
8. It is in public interest that this Honourable Court urgently intervenes by reviewing the ruling dated 15<sup>th</sup> October, 2024 in order not to render the instant appeal nugatory and a mere academic exercise.
9. This Honourable Court is clothed with sufficient jurisdiction under Order 45 Rule 1 to grant the orders sought as the Appellant has not preferred any appeal against the ruling dated 15<sup>th</sup> October, 2024.
3. The application is supported by the affidavit of Paul Kaindo, the Appellant's Acting Assistant Executive Director, Legal Department, sworn on 29<sup>th</sup> October, 2024. The motion is further supported by the said deponent's supplementary affidavit that he swore on 12<sup>th</sup> November, 2024.
4. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 4<sup>th</sup> November, 2024 by its Chief Executive Officer, Maurice Okoth. The 1<sup>st</sup> Respondent also filed a further affidavit sworn by its said officer on 29<sup>th</sup> November, 2024.
5. On its part, in response to the Appellant's motion, the 2<sup>nd</sup> Respondent filed a replying affidavit sworn on 8<sup>th</sup> November, 2024 by Joseph Njagih, the 2<sup>nd</sup> Respondent's Chief Executive Officer.
6. The Interested Party, though properly notified of the proceedings, did not participate in the application.
7. This court sanctioned that the application be canvassed by way of written submissions and the parties, save for the Interested Party, filed their respective submissions.
8. I have considered the pleadings, the application, the affidavits in support thereof, the replying affidavits, the rival submissions filed by the three sides and the record in its entirety. I note that the substantive orders sought by the Applicant, as is instructive from its application are in the nature of an order for review of this court's order issued vide the ruling of 15<sup>th</sup> October, 2024.
9. The brief history preceding the motion filed by the Appellant is that on 10<sup>th</sup> September, 2024, two applications, both dated 6<sup>th</sup> September, 2024 were placed before me under certificate of urgency, for directions and/or orders. Upon perusing and considering the two applications, I made the following orders:
  1. That the applications are certified as urgent.
  2. That there shall be a temporary stay of the judgement rendered by the Copyright Tribunal in COPTA E002/2024 until 14<sup>th</sup> October, 2024.
  3. That service to be effected upon the Respondents and the matter to be mentioned on the 14<sup>th</sup> October, 2024 for directions."



10. When the matter was placed before me for directions on 14<sup>th</sup> October, 2024 in line with the order of 10<sup>th</sup> September, 2024, this court was notified of the existence of a court order issued on 19<sup>th</sup> June, 2024 by the High Court (Mong'are J) in High Court (Commercial Tax & Admiralty Division) HCCOMPET No. E014 of 2024 Music Copyright Society of Kenya Limited v Kenya Copyright Board & others. The said order was to the effect that:

1. That the Notice of Motion dated 18<sup>th</sup> June, 2024 be and is hereby certified urgent.
2. That the said application be served and be responded to within 14 days.
3. That the said application be mentioned for directions on 2<sup>nd</sup> July, 2024.
4. That in the interim, a Conservatory Order be and is hereby issued restraining the Interested Party from collecting and/or distributing any monies and royalties for and/or on behalf of the Petitioner/Applicant and its affiliate members on the strength of the Operating Licence issued to it by the 1<sup>st</sup> Respondent pending the hearing and determination of this application.
5. That in the interim, an order be and is hereby issued allowing and/or permitting the Petitioner/Applicant to continue collecting monies and distributing royalties to its affiliate members pending the hearing and determination of this Application.

11. As this court embarked on issuing directions on the disposal of the application for stay of the judgement of the Tribunal (from which this appeal emanates) pending the determination of the instant appeal, the Appellant sought that the order that I had issued on 10<sup>th</sup> September, 2024, (which I had ordered would remain in force until 14<sup>th</sup> October, 2024) be extended, which application was opposed by the 1<sup>st</sup> Respondent. The parties made their respective submissions and in my ruling that I rendered on 15<sup>th</sup> October, 2024, I observed and ordered as follows:

- “ 3. It is instructive from the copy of the order in the above matter that other than the 1<sup>st</sup> Respondent herein, all the other parties are parties in the matter before my sister.
4. The order referred to above was issued on 18<sup>th</sup> June, 2024, before the instant appeal was lodged and it remains unclear why the Appellant did not disclose the existence of the said order at the time that it presented the Notice of Motion from which the interim orders that I issued emanated.
5. Be that as it may, I have carefully perused and considered the order that Mong'are J. issued and I am persuaded that there is every likelihood that the one that I issued on 10<sup>th</sup> September, 2024 may conflict in its application with the one my sister issued, that parties inform me still subsists.
6. It is to be noted that the interim orders that were issued in this matter had the effect of staying the judgement of the Copyright Tribunal rendered on 3<sup>rd</sup> September, 2024.
7. The stay, would inter alia mean that the decision of the Appellant of 2<sup>nd</sup> August, 2024 (that was subject of the matter before the Copyright Tribunal) appointing the 2<sup>nd</sup> Respondent as the sole Collective Management Organisation for all relevant copyright owners would stand reinstated, yet the conservatory orders from my sister's court restrain the 2<sup>nd</sup> Respondent from collecting and/or distributing any monies and royalties for and/or on behalf



of the Petitioner/Applicant and its affiliate members on the strength of the Operating Licence issued to it by the 1<sup>st</sup> Respondent pending the hearing and determination of that application.

8. That would further mean that my order, if extended, would reinstate the Certificate of Registration of a Collective Management Organization issued to the 2<sup>nd</sup> Respondent, that was annulled by the Copyright Tribunal, which in effect will result in the orders of this court allowing the 2<sup>nd</sup> Respondent to collect and distribute monies and royalties, contrary to the orders issued by the other court.
  9. The scenarios given in the foregoing two paragraphs would in my view clearly present a conflict between the two orders if the orders issued herein are extended.
  10. It is my conviction that had the Appellant brought to my attention the existence of the orders issued by Mongare J., I would not have issued the interim orders that I made on 10<sup>th</sup> September, 2024.
  11. To that then, as there was non-disclosure of the existence of the earlier orders, which is in my view material, I opine that the right position for me to take is to decline to extend the interim orders any further, which I hereby do, to avoid possible conflict and/or confusion.
  12. Having so said, I will direct that the appeal be fast tracked.”
12. The Appellant’s application pursuant to which this ruling is made emanates from the above observations and orders issued vide the ruling of 15<sup>th</sup> October, 2024. The application seeks that I review my orders issued in the ruling declining to extend the interim orders of stay of execution of the judgement of the Tribunal and that I reinstate and/or extend the same.
  13. In the affidavits in support of the application, the deponent states that it is necessary for this court to order the stay of execution of the Tribunal’s judgement lest the present appeal be rendered nugatory. The deponent further stated that this court was deliberately misled into believing that extension of the stay order would lead to a conflict with the orders issued by Mong’are J, as a result of which this court declined to extend the interim orders.
  14. The said deponent further states in his affidavits that the orders issued by my sister did not revoke the Collective Management Organization operating licence that was issued by the Appellant, contrary to the findings in my ruling. That rather, the effect the orders of my sister had was to prevent the second Respondent from collecting any monies or royalties on behalf of the Interested Party, and therefore did not extend to the 1<sup>st</sup> Respondent, who were in any event not parties to the matter before Mong’are J.
  15. In the Appellant’s view, no confusion would result if this court reinstated the interim orders by allowing the application as the orders subsisting in the matter before Mong’are J do not affect the 1<sup>st</sup> Respondent. That as such, there was no material non-disclosure by the Appellant.
  16. The Appellant further proffered the position that the Respondent, despite being aware of the instant appeal, commenced contempt of court proceedings against the 1<sup>st</sup> Respondent, which were lodged vide HCOMMMISC/E885/2024 before Visram J.
  17. In his further depositions, the said deponent states that it is in the public interest that the order of stay of execution of the Tribunal’s judgement pending the determination of this appeal be reinstated.



18. The deponent adds that the interim orders that I had issued did not have the effect of revoking the CMO operating license that was issued by the Appellant to the 2<sup>nd</sup> Respondent as the orders only prevented the 2<sup>nd</sup> Respondent from collecting monies and royalties on behalf of the Interested Party and that the same did not, in any event, extend to the 1<sup>st</sup> Respondent as they were not part of the petition.
19. The 1<sup>st</sup> Respondent, while opposing the application through the affidavit of Maurice Okoth, stated that there are no grounds presented in the application that would warrant the court to review the order of 15<sup>th</sup> October, 2024.
20. The said deponent further stated that the Appellant has not met the requirements for that grant of an application for stay of execution of the judgement of the Tribunal pending the determination of the appeal.
21. The deponent stated further that the allegations by the Appellant that the 1<sup>st</sup> Respondent misled the court to decline to extend the interim stay orders are untrue as indeed this court properly determined that the interim orders that it had issued were in conflict with the earlier orders that Mong'are J issued.
22. The deponent deposed that contrary to the Appellant's claims, what the 1<sup>st</sup> Respondent was seeking is a provisional license and not an operating license and that indeed, what the judgement of the Tribunal ordered is for the 1<sup>st</sup> Respondent to be issued with a provisional license.
23. The deponent stated that the Appellant did not expressly state the provisions of the Constitution or statute that the 1<sup>st</sup> Respondent did not meet or satisfy.
24. In his further depositions, the said deponent stated that the Appellant's application does not disclose any error apparent on the face of the record that is capable of being reviewed.
25. The 2<sup>nd</sup> Respondent filed a replying affidavit sworn on 8<sup>th</sup> November, 2024 by Joseph Njagih which supported the Applicant's motion, whose view was that the present appeal stands to be rendered nugatory if the application is not allowed.
26. The said deponent stated that by the parties simultaneously moving the High Court and the Tribunal, they violated the doctrine of exhaustion.
27. Having gone through the documents providing the respective parties' positions, I will now proceed to look at the merits of the application.
28. The grounds upon which an application for review of an order or a decree may be premised are provided for under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. Let us read the said provisions of the law:

Section 80 of the Civil Procedure Act.

80. Review Any person who considers himself aggrieved —
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

Order 44 of the Civil Procedure Rules.

45(1) Any person considering himself aggrieved—



- (a). by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b). by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
29. Although none of the grounds listed under Order 45 of the Civil Procedure Rules was proffered by the Appellant (i.e. (a). discovery of new and important matters of evidence, which, after the exercise of due diligence, was not within the knowledge of the Appellant or could not be produced at the time when the order sought to be reviewed was made; (b). a mistake or error apparent on the face of the record; and (c). other sufficient reason), I will nevertheless proceed to determine if the any of the said grounds have been proved through the material presented before me by the Appellant.
30. The issues then that I am tasked to determine as discernible from the positions taken by the parties on the application before me are;
- i. Whether the Appellant, has shown the discovery of new and important matters of evidence, which, after the exercise of due diligence, was not within the knowledge of the Appellant or could not be produced at the time when the order sought to be reviewed was made.
  - ii. Whether the Appellant has demonstrated that there is an error apparent on the face of the record.
  - iii. Whether there is any other sufficient reason for the court to review its order.
31. As to whether the Appellant, has shown the discovery of new and important matters of evidence, which, after the exercise of due diligence, was not within the knowledge of the Appellant or could not be produced at the time when the order sought to be reviewed was made, the simple answer is that the Appellant has not in its application stated that there is discovery of such evidence. So then, that ground is not available in this matter.
32. As to whether the Appellant has demonstrated that there is an error apparent on the face of the record, it is important for this court to state what amounts to an error on the face of the record. To that end, I take guidance from the Court of Appeal in the case of *Muyodi v Industrial and Commercial Development Corporation & Anor* [2006] 1 EA 243 where it was observed as follows:

“In *Nyamogo & Nyamogo v Kogo* [2001] EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent



on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

(Underlined emphasis mine).

33. In the case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR, the Court of Appeal distinguished between an error apparent on the face of the record that can be subject of review and errors of law which can only be corrected on appeal. The court stated as follows:

“A review may be granted wherever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

(Underlined emphasis mine).

34. From the application and the submissions filed herein by the Appellant, I hear the Appellant to be saying that this court was misled into reaching a wrong conclusion (which fact is contested by the 1<sup>st</sup> Respondent), on the import of the orders made by Mong’are J. That ultimately, the wrong conclusion resulted in the order of refusal to extend the interim orders.
35. The question that then calls for an answer is, if indeed the court arrived at a wrong conclusion, would that amount to an error apparent on the face of the record? I do not think so. That is because, as we have seen in the authorities above, the grounds that the court may have proceeded on an incorrect exposition of the law and may have reached an erroneous conclusion of law does not amount to an error on the face of the record and cannot be a ground for review. Rather, a party aggrieved from such an outcome ought to challenge the same through an appeal. On that ground, my persuasion is that the avenue that is available to the Appellant is that of appeal, not review, as there is no error apparent on the face of the record. Proceeding to allow the application on that ground would amount to this court sitting on appeal over its own decision.
36. With regard to the question as to whether there is any other sufficient reason for this court to review its orders of 15<sup>th</sup> October, 2024, it is urged by the Appellant that it is the public interest that the order be reviewed and the court reinstates and/or extends the interim stay of execution orders and that the Appellant stands to suffer immense prejudice if the instant application is not allowed as the appeal will be rendered nugatory.
37. Where the ground upon which review is sought is that of other sufficient reason, it is for the court entertaining the application for review to exercise its discretion. That then means that a party that moves the court seeking review of an order must demonstrate that there exist special circumstances that would impel the court to judiciously exercise its discretion in favour of the Applicant in the application for review.
38. It is instructive from the record that there is pending another application by way of motion on notice filed by the Appellant dated 6<sup>th</sup> September, 2024 in which one of prayers sought is as follows:



- c. That pending the hearing and determination of the appeal herein, there do issue a stay of execution of the judgement that was rendered by the Copyright Tribunal in COPTA/E002/2024 Kenya Association of Music Producers (KAMP) v Kenya Copyright Board & others.
39. What remains unclear is why the Appellant opted to file an application for review which in essence seeks reinstatement of orders of interim stay of the judgement of the Tribunal, when there was already filed by the same party an application dated 6<sup>th</sup> September, 2024 seeking for issuance of orders of stay of execution of the judgement of the Tribunal pending the hearing and determination of the appeal herein. It remains unexplained why the Appellant did not simply prosecute its substantive application, which I had certified as urgent.
40. As we have seen above, this court has wide-reaching discretion in determining an application for review on “any other sufficient ground”. Discretion must however be exercised judiciously. It is my inclination that this is not a matter in which this court can exercise discretion in view of the fact that the substantive motion has not been heard. The Appellant, as I have said, has not given any reasons as to why it has not pursued that application. The Appellant is at liberty to move the court to hear the substantive motion apace.
41. Being of the foregoing findings, I reach the result that the Appellant’s amended Notice of Motion dated 29<sup>th</sup> October, 2024 is devoid of merit. I proceed to dismiss it.
42. Section 27 of the *Civil Procedure Act* dictates that costs ought to follow the event. Accordingly, the Appellant shall bear the 1<sup>st</sup> Respondent’s costs of the application. In respect of the 2<sup>nd</sup> Respondent, I make no order as to costs as the 2<sup>nd</sup> Respondent supported the application.
43. Orders accordingly.

**DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JANUARY, 2025.**

**JOE M. OMIDO**

**JUDGE**

For Appellant: Mr. Nyabwengi.

For 1<sup>st</sup> Respondent: Mr. Atieno.

For 2<sup>nd</sup> Respondent: Mr. Mburu.

Court Assistants: Mr. Ngoge & Mr. Juma.

Court: As I am now serving at Kisumu High Court, this matter will be mentioned before the Deputy Registrar, Milimani High Court Civil Division on 10<sup>th</sup> February, 2025 for further orders.

**JOE M. OMIDO**

**JUDGE**

