



Ogwari v Hersi alias Aisha Hersi Ibrahim; Law Society of Kenya (Proposed Interested Party) (Civil Appeal E223 of 2022) [2025] KEHC 12077 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 12077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E223 OF 2022
F WANGARI, J
MARCH 27, 2025**

BETWEEN

JERUSHA AUMA OGWARI APPELLANT

AND

IBRAHIM AISHA HERSI ALIAS AISHA HERSI IBRAHIM RESPONDENT

AND

LAW SOCIETY OF KENYA PROPOSED INTERESTED PARTY

RULING

1. This application arises from the judgment by Hon. Justice Kizito Magare, delivered on 03/07/2023 not 23/07/2023 as indicated in the application), where in summary, the Proposed Interested Party seeks the following orders;
 - i. be enjoined as a party to the suit
 - ii. the Chief Justice do empanel a Three Judge Bench to hear the application
 - iii. have the court stay, review and vacates Part B and C of the said judgment.
 - iv. There be no orders as to costs.
2. The Law Society of Kenya having been aggrieved by the said decision and in its exercise of its mandate in safeguarding constitutionalism, public interest, administration and access to justice sought for the above mentioned orders as the judgment of the court was said to have been contrary to *the Constitution* of Kenya.
3. The Appellant/ Respondent filed Grounds of Opposition dated 16/10/2024 stating that this court was functus officio having written a final judgment and dealt with two applications for review on the said judgment, and that this court had n supervisory jurisdiction over the High Court.



4. It was directed that the application be canvassed by way of written submissions. Only the Appellant/ Respondent complied by filing the submissions dated 26/02/2025.
5. Without belabouring on the application, this court had earlier been called upon to review its judgment in the applications dated 30/10/2023 and 11/04/2024. The court in its ruling dated 09/05/2024 declined to review its own orders stating there was nothing to review and that the court could not sit on appeal of its own orders.
6. The Proposed Intended Party is again seeking to have this court review the judgment. I have perused through the application subject to this ruling and its supporting affidavit. Nowhere does the Intended Interested party make reference the ruling dated 09/05/2024 and the applications earlier made. The party ought to have perused the court file to update itself on the current status of the matter.
7. I do agree with the Appellant Respondent in its submissions that once this court delivered the ruling on the applications for review, it became functus officio, hence clothed with no jurisdiction to entertain the application.
8. On costs, the Intended Interested Party raises issues that cannot be ignored if only they were raised before the appropriate court. Each party should bear its own costs.
9. Following the foregone discourse, the upshot is that the following orders do hereby issue;
 - a. The application lacks merit and hereby dismissed.
 - b. The Intended Interested Party is at liberty to file a substantive suit in the Constitutional Court to have the issues raised addressed.
 - c. Each party to bear its own costs.
 - d. File is hereby closedOrders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF MARCH, 2025.

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F. WANGARI

JUDGE

In the presence of;

Kioko Advocate for the Appellant

N/A by the Respondent

N/A by the Intended Interested Party

M/S Salwa, Court Assistant

