



**Direct Line Assurance Company & 4 others v Mutyambai Inspector General  
of Police & 3 others; Kiarie & 14 others (Intended Accused) (Criminal  
Revision 47 of 2024) [2025] KEHC 3645 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 47 OF 2024  
DR KAVEDZA, J  
MARCH 25, 2025**

**BETWEEN**

**DIRECT LINE ASSURANCE COMPANY ..... 1<sup>ST</sup> APPLICANT  
ROYAL MEDIA SERVICES LIMITED ..... 2<sup>ND</sup> APPLICANT  
ROYAL CREDIT LIMITED ..... 3<sup>RD</sup> APPLICANT  
SAMUEL KAMAU MACHARIA ..... 4<sup>TH</sup> APPLICANT  
PURITY GATHONI MACHARIA ..... 5<sup>TH</sup> APPLICANT**

**AND**

**MR HILLARY MUTYAMBAI INSPECTOR GENERAL OF  
POLICE ..... 1<sup>ST</sup> RESPONDENT  
GM KINOTI DIRECTOR OF CRIMINAL INVESTIGATIONS .... 2<sup>ND</sup>  
RESPONDENT  
NM HAJI DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT  
HON JUSTICE KIHARA THE ATTORNEY-GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JANICE TERESA WANJIKU KIARIE ..... INTENDED ACCUSED  
VICTOR BLASCO WIJENGE ..... INTENDED ACCUSED  
JANUS LIMITED ..... INTENDED ACCUSED  
HARBOR CAPITAL LIMITED ..... INTENDED ACCUSED  
KEVIN MCCOURT ..... INTENDED ACCUSED  
SUREINVEST LIMITED ..... INTENDED ACCUSED**



JAMES GACOKA .....	INTENDED ACCUSED
TRIAD NETWORKS .....	INTENDED ACCUSED
GORDON RADIER WERE .....	INTENDED ACCUSED
AKM INVESTMENTS LTD .....	INTENDED ACCUSED
STENNY INVESTMENTS LTD .....	INTENDED ACCUSED
JOHN MAONGA .....	INTENDED ACCUSED
ENID MURIUKI .....	INTENDED ACCUSED
WINNIE JUMBA .....	INTENDED ACCUSED
PHILLIP BLISS ALKER .....	INTENDED ACCUSED

## RULING

### A. Introduction

1. These Ruling disposes of an unusual matter. This Ruling is not about the actual dispute that is before the court. Far from it, this Ruling disposes a tangential legal issue on legal representation, it is about advocates fighting over who has the authority to represent a party. Since this is the sole issue for determination, I will make this Ruling brief.

### B. Synopsis

2. The dispute, subject of this ruling is between Mr. Mbogori and Dr. Kamau Kuria. When the matter came up for directions on 5<sup>th</sup> November 2024, an issue arose as to who between the two counsel had instructions to represent the Applicants. Both Counsel insisted that they had instructions to represent the very same applicants with Mr Mbogori indicating that the issue had been determined by previous courts. I took the matter of the cause list to allow the parties to sort out the issue of representation.
3. Again, on 8<sup>th</sup> November 2024, when the matter came up for directions things had not improved. I directed each counsel to file evidence showing who between the two had proper instructions to represent the Applicants. On 2<sup>nd</sup> December 2024, Dr Kamau Kuria indicated that he had filed a resolution on Saturday through the CTS. I however indicated to him that there was no such document on the CTS. I adjourned the matter to grant time for Dr Kamau Kuria to file the said resolution.
4. When the court resumed proceedings, Dr Kuria confirmed to have filed the resolution. Mr Mbogori on his part, indicated that he had filed an affidavit with evidence. Dr Kamau Kuria sought time to file a response. Mr Kimani Kiragu representing the 5<sup>th</sup> – 9<sup>th</sup> and 12<sup>th</sup> – 14<sup>th</sup> Intended Accused persons took issue with the filed resolution indicating that the signatories are not directors and the document should not be placed before the Court. I directed parties to file their responses and submissions. On 12<sup>th</sup> February 2025, parties confirmed to have filed their submissions.

### C. Arguments

5. Dr Kamau Kuria filed written submissions and a replying Affidavit sworn by Samuel Kamau Macharia. The gist of the arguments are as follows:
  - i. The sole shareholders in the 1<sup>st</sup> Applicant company are Mr. Samuel Kamau Macharia, Mrs Purity Gathoni Macharia and Royal Credit.



- ii. The alleged shareholding is based on an audit carried out by the Insurance Regulatory Authority.
  - iii. The letter dated 5th March exhibited by the 4<sup>th</sup> Applicant is determinative of the dispute.
  - iv. The CR12 of July and Previous ones supplied by the Registrar of Companies showing AKM Investments limited and Janus Limited as majority shareholders should be ignored in favour of the Insurance Regulatory Authority's share audit.
  - v. This court should ignore the previous decisions of the High Court (differently constituted) because they were allegedly issued in per incuriam.
6. Mr Mbogori filed his written submissions as well as an affidavit sworn by Terry Wanjiku Kiarie Wijenje. The gist of the arguments is as follows:
- i. 1<sup>st</sup> Applicant's CR12 from produced as TWKW1 showing AKM investments, Stenny Investments, Triad Networks, Sureinvest Company Limited and Janus Limited as the majority shareholders.
  - ii. Company's majority shareholder's resolution dated 1<sup>st</sup> September 2023 reserving the right to appoint advocates to AKM investments and Janus ltd and ratifying the appointment of the firm of Andrew Mbogori advocates
  - iii. Due to the constat disputes on representation raised by the firm of Dr Kamau Kuria, AKM and Janus Ltd wrote a letter instructing the firm of Mbogori advocate to act for the 1st Applicant on 29<sup>th</sup> November 2024 and exhibited as TWKW 1.
  - iv. The appointment was later sanctioned by a board of directors appointed pursuant to a court order in HCC No E328 of 2024 by Justice Mabeya.
  - v. Subsequent courts have affirmed that the firm of Dr Kamau Kuria has no instructions to act on behalf of the 1st Applicant in:
    - a. ELRC NO E004 of 2023 Evans Nyagah vs Directline Assurance company and others by Justice Monica Mbaru
    - b. HCCC 247 of 2022 by Justice Majanja
    - c. HC Petition No E006 or 2023 Directline Assurance Company Limited vs Business Registration Assurance Service and Others by Justice Njoki

#### **D. Issues for determination**

7. Only one issue commends itself for determination; Who between the firm of Dr Kamau Kuria and the firm of Mr Mbogori has instructions to represent mainly the 1<sup>st</sup> Applicant. I would however want to emphasise that the legality of the CR12 form is not under challenge in this ruling and the issue of shareholding is currently in other fora in HC MISC E509 of 2022 and HC MSC E250 of 2021. I will not therefore in this ruling be drawn to that dispute. The parties already have an audience before another court where the dispute can be ventilated.

#### **E. Analysis**

8. Several decisions have been pointed to me that in my view are necessary to determine this issue. In particular, the decision by Justice Mabeya that led to the formation of a board of directors to manage the 1st Applicant pending the determination of the suit before him is of much importance. Dr Kamau



Kuria has however asked me to ignore those decisions as they were issued per incuriam. I find it necessary to deal with this small matter before proceeding to the main issue in dispute.

9. A judge of the High Court (notwithstanding the division) cannot review a decision of the Court or of concurrent jurisdiction or court of equal status. Once dissatisfied by such a decision, a party can only move to the Court of Appeal. If Dr Kamau Kuria is of the view that the decisions were wrongly reached, he has an opportunity to ventilate such an issue on appeal at the appellate court. I emphasise that this court cannot act as a shepherd of other High court, ELRC and ELC Courts. It cannot review or set aside the decisions of courts of equal status. If a finding, order is in place, under what circumstances can this court ignore such an order? It cannot even by sheer imagination be argued that this Court can ignore an injunction or direction issued by the other courts simply because they are not binding on this court. What then would be the value of the rule of law that requires predictability and orderliness? I would therefore disabuse the notion that courts of similar status can ignore or overturn findings of courts of equal status. It cannot happen.
10. I am fortified in this position by what my brothers and sisters have previously held. Justice Lenaola (as he then was) in *Greenfield Investments Limited & Another V State of The Republic of Kenya & 3 Others* [2013] Eklr expressed this view as follows:
  26. In that regard, it is trite that this Court cannot purport to sit as a supervisor or superintendent of a concurrent Court or purport to determine by way of an appeal (by whatever other name called) a decision of such a Court. It baffles this Court why litigants who are ably represented by Counsel, such as the Petitioners in this case, cannot see that under Section 60 of the Repealed Constitution and Article 165 of *the Constitution*, 2010 there is only one High Court. (See also *Philip Moi vs Pluda Moi Petition No.65 of 2012*)
11. Before concluding on this point, I must observe here, at the risk of repeating myself, that I cannot review or ignore findings of concurrent courts.

### **Legal Representation**

12. The issue of legal representation is rather a simple and straightforward one. An advocate either has or does not have instructions. It cannot be in between. I have looked at the affidavits and annexures filed and I am convinced that the answer in this dispute lies in the annexures. According to Dr Kamau Kuria, the basis of the instructions arises from the letter dated 30<sup>th</sup> November 2024. I have looked at the said letter which is an extract of the resolution of ‘the sole directors and shareholders’ as per the ‘audit of the Insurance Regulatory Authority’. On page 1 of the extract, it is indicated that Samuel Kamau Macharia and Mrs P.G Macharia were present. The said shareholders appointed the firm of Dr Kamau Kuria. In response, Mr Mbogori avers that the said letter could not issue since there was an injunction by Justice Mabeya. It is at this point that I want to consider the decision of Justice Mabeya.
13. In *Directline Assurance Co Ltd v Macharia & 11 others* (Civil Case E328 of 2024) [2024] KEHC 14374 (KLR) (Commercial and Tax) Justice Mabeya delivered a Ruling on 4<sup>th</sup> October 2024 in respect to the affairs of the 1<sup>st</sup> Applicant. The learned judge was of the view that although courts are not supposed to micromanage companies, the present cases necessitated an injunction so as to prevent losses and untold suffering of the general insured public. The court proceeded to order for the formation of an interim board of directors to run the affairs of the 1<sup>st</sup> applicant pending the resolution of the shareholding case. The Court directed that ‘A temporary joint board be constituted forthwith consisting of 2 nominees each of AKM Investments Ltd, Janus Ltd and Royal Media Services Ltd’.



14. On 20 November 2024, In *Directline Assurance Co Ltd v Macharia & 11 others* (Civil Case E328 of 2024) [2024] KEHC 14374 (KLR) (Commercial and Tax) (20 November 2024) (Ruling) Justice Mabeya issued yet another Ruling. The court rendered itself thus
17. In this regard, by purporting to appoint the same individual(s) restrained by this Court to the interim board, Royal Credit Ltd was but attempting to circumvent the said orders of 4/10/2024. That won't do. None of those restrained is eligible for nomination to the interim board.
18. Senior Counsel Kamau submitted that the orders of 4/10/2024 placed the plaintiff under receivership. Nothing could be further from the truth. The measures undertaken vide the said orders were of an interim nature. The company was not put under receivership. The measures were geared towards enabling the plaintiff run pending the feuding parties in the arbitral proceedings expediting the process. Once the feuding parties conclude their dispute there, they will be welcome back to take over from where they left it. In the meantime, the plaintiff will be run by the interim board under the governance principles of company law and the Regulator of insurance business in this country.
19. As to whether the 4 nominees already approved by the 11th defendant can run the affairs of the plaintiff without waiting for the nominees of Royal Credit Ltd, the answer is in the affirmative. The orders of 4/10/2024 and 22/10/2024 meant that: -
  - a. there should have been 6 nominated directors to the interim board;
  - b. the said board was to be constituted under the direction, supervision and regulation of the 11th defendant (see para 4 of the ruling of 22/10/2024);
  - c. after 31/10/2024, the interim board was to conduct its business in accordance with the law, that is, the meetings are to be regulated by law;
  - d. the quorum therefor would be 3 and its decisions will be by majority of those attending the meeting;
  - e. any decision made by the majority of those attending would be binding and enforceable as such.
15. I have extensively quoted the ruling of my brother Justice Mabeya so as to fully show what the judge held. As at 20<sup>th</sup> November 2024, the joint caretaker board of directors was formed and allowed to run the affairs of the 1<sup>st</sup> Applicant. A question therefore begs, under which authority did Mr Samuel Kamau Macharia and Mrs Macharia pass the resolution relied on by Dr Kamau Kuria dated 30<sup>th</sup> November 2024?
16. Justice Mabeya's orders meant that the affairs of the company could only be run by the newly formed joint board of directors pursuant to a court order. The letter dated 30<sup>th</sup> November can only be described as an illegality. Mr and Mrs Macharia did not have any authority to pass a resolution as long as the orders of Justice Mabeya remained in force. This court cannot allow itself to be used to aid a party in the disobedience of court orders. Integrity and confidence in the judicial process can only be built if parties obey court orders. The exact action constitutes the highest form of disregard to the rule of law and judicial authority. Courts of law cannot and should not tolerate such practice.
17. If a party is dissatisfied with the decision of a judge, he or she can either apply to review the decision or appeal the decision. Indeed, in *Directline Assurance Company Limited v Macharia & 11 others* (Commercial Case E328 of 2024) [2025] KEHC 559 (KLR) (Commercial and Tax) (30 January 2025)



- (Ruling), the parties made an application to review the ruling of Justice Mabeya and replace the joint board of directors. The application was dismissed by Justice Gikonyo who held that
29. Therefore, the 4 were the interim board of directors which was deemed to be fully constituted for purposes of running the company as was ordered by the court.
  52. The dispute on shareholding and directorship of the plaintiff company has not been determined by the court. The interim board of directors is barely 4 months old. The plaintiff is an insurance company engaged in insuring the general public. Thus, the public interest in ensuring the company runs well for the benefit of the policyholders as well as third parties' liability covered under the insurance policies issued by the plaintiff, remains paramount.
  53. In these circumstances, it is too soon to review the court orders herein on interim board; which may invite the unhealthy back and forth scenario witnessed in these proceedings.
18. If this court was to accept the arguments made by Dr Kamau Kuria, it would amount to a mockery of the justice system. The orders on formation of the joint board of directors was issued so as to protect the general public from losses due to what the Judge described as poor corporate governance and not how to run a company. The said orders have not been set aside. Yet, Mr and Mrs Macharia proceeded to issue a resolution. I have said much on this issue save to reiterate that the said resolution is bereft of any legal backing and it is therefore null and void. Dr Kamau Kuria cannot therefore rely on it.
  19. Mr. Mbogori on his end relied on a resolution by the newly formed joint board of directors following the orders of Justice Mabeya. I have looked at the resolutions of the board of directors meeting held on 29 November 2024
    6. THAT pursuant thereto and for the avoidance of doubt, the board hereby resolves to pass a similar resolution to appoint and/or confirm the appointment of Andrew Mmbogori Advocate as the advocate for Directline Assurance Company limited
  20. The newly formed board of directors was merely confirming an earlier decision made by AKM and Janus Ltd who were described as the majority shareholders. The issue of shareholding is currently being considered elsewhere. To rest the matter however, Mr Mbogori clearly has the instructions to represent the 1st Applicant as his instructions were issued/confirmed by the board of directors formed pursuant to court orders.
  21. Further, even if I am wrong, Dr Kamau's intention to represent the 1<sup>st</sup> Applicant will suffer another attack. Although the issue of shareholding is in contention, the findings of the Arbitrator who confirmed the company's shareholding as per its CR12 dated 22<sup>nd</sup> June 2022 has not been stayed or varied. Although applications were filed in HC MSC E509 of 2022 and HC MSC E250 of 2021, no orders have been issued and the arbitrators finding that Mr Macharia, his wife and associated companies hold minority shares has not been set aside. Furthermore, the CR12 has not been set aside. Different courts have therefore upheld the resolution of the majority shareholders on this basis.
  22. Justice Mbaru in Nyagah *v Directline Assurance Company Limited & 5 others (Cause E004 of 2023)* [2023] KEELRC 795 (KLR) (28 March 2023) (Ruling) while upholding representation by the firm of Mbogori held as follows
    38. The court appreciates the obvious shareholders dispute now addressed in Nairobi High Court Misc Appl No E250 of 2021 – Directline Assurance Company Limited v Philip Alier & others following his appointment as the arbitral and the award thereof and there is also Nairobi High Court civil Appl No E509 of 2022 – Sureinvest Company Limited & 4 others v Royal Media



Services Ltd & others challenging the enforcement of the award of Philip Alier but such proceedings though ongoing have no orders of stay of the award.

39. These being matters relating to shareholding of the 1st respondent which are pending resolution before another court, for the purposes of the claim herein, the majority shareholders of the 1st respondent company based on the current CR-12 returns from the registrar of companies have appointed the firm of Andrew Mmbogori & Company Advocates to attend and defend the company interests as required of proceedings before this court pursuant to section 22 of the *Employment and Labour Relations Court Act*, 2011. Pending resolution of the ongoing matters on shareholding disputes, the claim before court shall proceed with the 1st respondent represented by such firm of advocates.
23. This ruling was also endorsed in Insurance Regulatory Authority v Directline Assurance Company Limited & 4 others; Equity Bank Kenya Limited & another (Interested Parties) (Miscellaneous Application E470 of 2024) [2024] KEHC 11891 (KLR) (Commercial and Tax) (4 October 2024) (Ruling) as follows
54. Furthermore, the court finds that there is already a ruling by Mbaru J allowing the firm of Andrew Mmbogori & Co Advocates to continue acting for the 1st respondent. In light thereof, the court finds that until the issue of directorship and shareholding is determined in the pending proceedings, the legality or otherwise of the appointment of Andrew Mmbogori & Co Advocates cannot be gone to. The company must continue to be represented in these and other proceedings.

## **F. Conclusion**

24. This court therefore arrives at the conclusion that Dr Kamau Kuria has not placed before this court a proper resolution by the board of directors or shareholders giving him instructions to represent the 1<sup>st</sup> applicant.
25. The firm of Andrew Mmbogori & Co Advocates was properly instructed to represent the 1<sup>st</sup> Applicant in these proceedings.

**DATED AND DELIVERED KIBERA THIS 25<sup>TH</sup> DAY OF MARCH 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

