

REPUBLIC OF KENYA
HIGH COURT OF KENYA AT NAIROBI
DIVISION
CIVIL CASE NO. E _____ OF 2025

BENARD AMUCHIZI MUKAISI.....1ST APPLICANT
JOHN GICHEHA NJOROGI.....2ND APPLICANT

VERSUS

LAZARUS MUOKI MULI.....1ST RESPONDENT
SIMON KARIUKI NDERITU.....2ND RESPONDENT
MUSIC COPYRIGHT SOCIETY OF KENYA.....INTERESTED PARTY

CERTIFICATE OF URGENCY

I, **SIMON MBURU**, an advocate of the High Court of Kenya do certify this matter to be of utmost urgency and ought to be heard in the first instance for the following reasons:

1. **THAT** the Defendants have unlawfully extended their tenure as directors of the Interested Party, Music Copyright Society of Kenya (MCSK), despite the fact that their terms expired following a resolution passed by the membership during the Extraordinary General Meeting (EGM) held on 16th February 2024. Their continued occupation of office is illegal, amounts to an abuse of power, and violates the Memorandum and Articles of Association of the Interested Party.
2. **THAT** since the expiration of their tenure, the Defendants have engaged in intimidation and harassment of the membership by deploying individuals acting as “goons” to disrupt meetings, prevent members from asserting their rights, and interfere with the governance of the Interested Party. This unlawful conduct has created a climate of fear and hostility, thereby denying members their rightful access to services and participation in the affairs of the Interested Party.
3. **THAT** the continued interference by the Defendants has resulted in gross mismanagement and financial irregularities, which pose a serious risk to the interests of the members. If the illegal stay in office persists, the operations of the Interested Party will be severely undermined, causing irreparable loss and damage to the membership, which relies on the organization for royalty collection and distribution.
4. **THAT** despite the lodging of a complaint at Kileleshwa Police Station under **OB No.**

27/12/03/2025, no action has been taken against the Defendants, and they continue to interfere with the governance of the Interested Party with impunity. Their continued illegal occupation of office and suppression of the members' rights necessitate urgent intervention by this Honourable Court to restore the rule of law and prevent further violations.

5. **THAT** unless this Honourable Court urgently intervenes and issues the necessary injunctive reliefs, the Defendants will continue to unlawfully exercise powers they no longer hold, obstruct the legitimate governance of the Interested Party, and deny members their rights. The delay in granting the orders sought will expose the membership to irreparable harm, financial losses, and further oppression, necessitating the need for urgent judicial intervention.

DATED at Nairobi this 20th day of MARCH 2025.


KAGO MBURU & ASSOCIATES ADVOCATES
ADVOCATES FOR THE APPLICANTS

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TO BE SERVED UPON

1. LAZARUS MUOKI MULI
2. SIMON KARIUKI NDERITU

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NOTICE OF MOTION

(Under Order 40 Rules 1, 2, and 4 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the Civil Procedure Act, and all other enabling provisions of the law)

TAKE NOTICE that this Honourable Court shall be moved on the _____ day of _____
2025 at 9.00am or so soon thereafter as counsel for the Plaintiff may be heard for **ORDERS**:

1. **THAT** this application be certified as urgent and be heard ex parte in the first instance.
2. **THAT** pending the hearing and determination of this application *inter-parties*, a temporary injunction be issued restraining and injuncting the 1st and 2nd Defendants, whether by themselves, their agents, servants, or any persons acting under their instructions, from mobilizing, hiring, or bringing individuals and unauthorized persons to unlawfully disrupt the peace, intimidate members, or prevent the membership of the Interested Party from accessing services, attending meetings, or participating in the lawful governance of the organization at the Interested party's Offices located at Church Road Westlands Nairobi.
3. **THAT** pending the hearing and determination of the suit, a temporary injunction be issued restraining and injuncting the 1st and 2nd Defendants, whether by themselves, their agents, servants, or any persons acting under their instructions, from mobilizing, hiring, or bringing individuals and unauthorized persons to unlawfully disrupt the peace, intimidate members, or prevent the membership of the Interested Party from accessing services, attending meetings, or participating in the lawful governance of the

organization at Interested party's Offices located at Church Road Westlands Nairobi.

4. **THAT** pending the hearing and determination of this application inter partes, a temporary injunction be issued restraining and injuncting the 1st and 2nd Defendants, whether by themselves, their agents, servants, or any persons acting under their instructions, from purporting to act, representing themselves, or holding themselves out as officials or directors of the Interested Party, the Music Copyright Society of Kenya (MCSK), in any capacity whatsoever.
5. **THAT** pending the hearing and determination of the main suit, a temporary injunction be issued restraining and injuncting the 1st and 2nd Defendants, whether by themselves, their agents, servants, or any persons acting under their instructions, from managing, transacting, accessing funds, interfering with operations, making decisions, or carrying out any functions on behalf of the Interested Party.
6. **THAT** this Honourable Court be pleased to issue such further orders as may be necessary to preserve the rights and interests of the members of the Interested Party and to prevent further interference with its lawful operations.
7. **THAT** the costs of this application be borne by the Defendants.

WHICH APPLICATION is based on the following **GROUND**S:

1. **THAT** on 16th February 2024, the membership of the Interested Party, Music Copyright Society of Kenya (MCSK), convened an Extraordinary General Meeting (EGM) at Maanzoni, with the primary agenda being the election of new directors. This was necessitated by the fact that all serving directors had completed their two terms in office as prescribed under **Article 51** of the Interested Party's Memorandum and Articles of Association.
2. **THAT** in addition to conducting elections, the membership of the Interested Party duly amended the Memorandum and Articles of Association (MEMATS) during the said EGM to enhance governance structures and accountability. Specifically, the amendments introduced Article 51(c), which provided a transitional framework for the retirement and replacement of directors.
3. **THAT** pursuant to **Article 51(c) of MCSK's Memorandum and Articles of Association**, the term of all directors was subject to a strict electoral process. This provision explicitly

required that upon approval of the amended Memorandum and Articles of Association at the EGM, all directors would retire and seek a fresh electoral mandate. However, a maximum of two directors, who were ineligible for re-election, could have their term extended for a period not exceeding one year to allow for a structured transition.

4. **THAT** the 1st and 2nd Defendants' term as directors was, in concurrence with the membership's approval, strictly extended to lapse on **16th February 2025**. Consequently, as of **17th February 2025**, they ceased to hold any lawful mandate to act on behalf of the Interested Party. Their continued interference in the affairs of the Interested Party is therefore not only unlawful but borders on criminality, as it amounts to usurpation of corporate authority and fraudulent misrepresentation.
5. **THAT** since the expiration of their tenure, the Defendants have unlawfully and forcefully retained their positions through intimidation of the membership of the Interested Party. They have deployed individuals acting as "goons" to suppress any opposition, disrupt meetings, and prevent the members from asserting their rights. This unlawful conduct has created an atmosphere of fear and has stifled democratic participation within the Interested Party.
6. **THAT** following the unlawful and forceful retention of office by the Defendants, the membership of the Interested Party lodged a formal complaint for fraud and interference at Kileleshwa Police Station under **OB No. 27/12/03/2025**. This complaint detailed the Defendants' illegal actions, including their refusal to vacate office, their use of intimidation tactics, and their disruption of the Interested Party's governance processes.
7. **THAT** despite the complaint being duly recorded, no action has been taken by the relevant authorities to investigate or hold the Defendants accountable for their unlawful conduct. This inaction has emboldened the Defendants, who continue to interfere with the affairs of the Interested Party with impunity, disregarding both the resolutions of the membership and the rule of law.
8. **THAT** there is now an imminent and ongoing threat that unless this Honourable Court intervenes, the membership of the Interested Party will continue to suffer intimidation, financial loss, and the deprivation of their democratic rights. The Defendants' unlawful actions have not only disrupted the normal functioning of the Interested Party but have

also placed its members at risk of further harm, necessitating urgent injunctive relief.

9. **THAT** the Defendants' continued illegal stay in office has paralyzed the proper functioning of the Interested Party. By preventing the lawful transition of leadership, they have obstructed governance processes, disrupted service delivery, and created a leadership vacuum that has resulted in confusion and disarray among the membership.
10. **THAT** the illegal acts of the Defendants have significantly eroded the confidence and trust of the Interested Party's membership. The members, who rely on proper leadership and governance to safeguard their interests, now face uncertainty regarding the legitimacy of decisions being made on behalf of the organization.
11. **THAT** despite lacking legal authority, the Defendants have continued to transact business, issue directives, and purport to make binding decisions on behalf of the Interested Party. This exposes the Interested Party and its members to serious legal and financial liabilities, as any transactions conducted by the Defendants may be deemed unlawful and unenforceable.
12. **THAT** the Defendants have attempted to withdraw funds from the Interested Party's accounts in an unlawful manner. This act was only thwarted by the vigilance of the membership, who intervened to prevent the unauthorized depletion of the Interested Party's financial resources. The Defendants' continued access to and control over the organization's finances poses a significant risk of misappropriation, which could result in financial instability and loss to the members.
13. **THAT** on 10th March 2025, the Defendants, in furtherance of their illegal actions, purported to issue a directive sending the substantive CEO of the Interested Party, Dr. Ezekiel Mutua, on leave. They further appointed Mr. Richard Sereti Nyamweya as the acting CEO, despite lacking the legal mandate to do so. This action is void ab initio, as the Defendants' term in office had already expired, and they had no authority to interfere with the governance and management of the Interested Party.
14. **THAT** the unlawful removal of the substantive CEO and appointment of an acting CEO has further jeopardized the operations of the Interested Party, causing immense uncertainty and administrative paralysis. The Interested Party requires a functional and

legitimate leadership structure to ensure the smooth execution of its mandate, which is currently impossible due to the Defendants' interference.

15. **THAT** the Interested Party, MCSK, is a company limited by guarantee and a non-profit organization licensed by the Kenya Copyright Board (KECOBO) to collect royalties for authors, composers, arrangers, and publishers of musical works who are its members. It is responsible for ensuring that musicians and other rights holders receive fair compensation for the public performance and broadcast of their work. However, the Defendants' unlawful control has led to a breakdown in communication, service delivery, and the execution of the organization's mandate, leaving members frustrated and disenfranchised.
16. **THAT** the Defendants' illegal and self-serving actions have put at risk the primary purpose of the Interested Party—ensuring that artists receive their rightful earnings from royalties. By clinging to office illegally, they have disrupted the normal functioning of MCSK, leading to delays, mismanagement, and uncertainty in the collection and distribution of royalties. As a result, the livelihoods and well-being of the artists who rely on these earnings have been jeopardized, making it imperative that the court intervenes to restore lawful leadership.
17. **THAT** the Defendants' continued stay in office and interference with the Interested Party's affairs amounts to a gross violation of corporate governance principles, including transparency, accountability, and respect for due process. Their actions demonstrate a blatant disregard for the legal framework governing the Interested Party and have resulted in a complete breakdown of governance structures.
18. **THAT** the Defendants have deliberately frustrated any attempts by the rightful members to conduct fresh elections and restore order within the Interested Party. Their refusal to vacate office and their use of intimidation tactics have made it impossible for the membership to exercise its lawful rights, thereby violating the democratic principles that govern the Interested Party.
19. **THAT** the illegal acts of the Defendants have caused immense anxiety and distress among the members of the Interested Party. The continued governance crisis has left artists and other rights holders uncertain about the status of their earnings, their legal

rights, and the future stability of the organization. This uncertainty is detrimental to the welfare of the members, who depend on the Interested Party for their financial well-being.

20. **THAT** if the Defendants are not immediately restrained, the Interested Party and its members will continue to suffer irreparable harm. The unlawful actions of the Defendants have already caused significant disruptions, and any further delay in granting injunctive relief will allow them to further entrench themselves in office, making it more difficult to restore order and legality.

21. **THAT** the Plaintiffs have a prima facie case with a high probability of success, as the Defendants' illegal stay in office and interference with the Interested Party's affairs have no legal justification. The balance of convenience overwhelmingly tilts in favor of granting the injunctive orders sought, as failure to do so will result in continued injustice, financial loss, and the erosion of the rights of the members of the Interested Party.

AND WHICH APPLICATION is supported by the annexed affidavit of **BENARD AMUCHIZI MUKAISI**, and such further grounds, reasons, and arguments to be adduced at the hearing hereof.

DATED at Nairobi this 20th day of MARCH 2025.


KAGO MBURU & ASSOCIATES ADVOCATES
ADVOCATES FOR THE APPLICANTS

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TO BE SERVED UPON

3. LAZARUS MUOKI MULI

4. SIMON KARIUKI NDERITU

NB: *If any party served does not appear at the hearing of this application, the Court may proceed to hear and determine the matter in their absence.*

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SUPPORTING AFFIDAVIT

I, **BENARD AMUCHIZI MUKAISI**, a male adult of sound mind, residing in the Republic of Kenya, of **P.O. Box 210, Kakamega**, and a bonafide member of the Interested Party herein, do hereby make oath and state as follows:

1. **THAT** I am the 1st Applicant herein, well conversant with the facts of this matter, and therefore competent to swear this affidavit in support of the application. I have the express authority of the 2nd Applicant, **JOHN GICHEHA NJOROGE**, to make this affidavit on his behalf, and I do so with his full consent and instructions.
2. **THAT** the Interested Party, MCSK, is a company limited by guarantee and a non-profit organization licensed by the Kenya Copyright Board (KECOBO) to collect royalties for authors, composers, arrangers, and publishers of musical works who are its members. It is responsible for ensuring that musicians and other rights holders receive fair compensation for the public performance and broadcast of their work.
3. **THAT** I am a bonafide member of the Interested Party, the **Music Copyright Society of Kenya (MCSK)**, and my membership number is **420**. The 2nd Applicant, **JOHN GICHEHA NJOROGE**, is also a bonafide member of the Interested Party, holding membership number **1016**. Both of us have actively participated in the affairs of the Interested Party and have a legitimate interest in ensuring that its governance is conducted in accordance with the law and its Memorandum and Articles of Association.
4. **THAT** I have previously served as a **director** of the Interested Party, representing the **North Rift region** for two consecutive terms, in full compliance with the provisions of the

Memorandum and Articles of Association of the Interested Party. During my tenure, I actively contributed to the governance and policy-making processes of the society, always upholding the best interests of the membership and ensuring that proper structures were in place to benefit all stakeholders.

5. **THAT** this application is **further supported by eleven (11) other members of the Interested Party**, who have expressed their collective concern regarding the illegal stay in office by the Defendants and their unlawful interference with the governance of the society. *(Annexed Herein and Marked **Annexure “BAM-1”** is a copy of the members list supporting the application).*
6. **THAT** as per the **Constitution of the Interested Party**, the **membership** is the supreme decision-making organ. The Board of Directors is appointed by the membership and is entrusted with governance functions solely for the benefit of the members. The Board is expected to act transparently and in good faith to safeguard the rights and financial interests of the members. Any actions that undermine the will of the membership directly contravene the governance framework of the Interested Party. *(Annexed Herein and Marked **Annexure “BAM-2”** is a copy of the Interested Party Memorandum and Articles of Association).*
7. **THAT** on 16th February 2024, the membership of the Interested Party, Music Copyright Society of Kenya (MCSK), convened an Extraordinary General Meeting (EGM) at Maanzoni, with the primary agenda being the election of new directors. This was necessitated by the fact that all serving directors had completed their two terms in office as prescribed under **Article 51** of the Interested Party’s Memorandum and Articles of Association.
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10. **THAT** the 1st and 2nd Defendants' term as directors was, in concurrence with the membership's approval, strictly extended to lapse on **16th February 2025**. Consequently, as of **17th February 2025**, they ceased to hold any lawful mandate to act on behalf of the Interested Party. Their continued interference in the affairs of the Interested Party is therefore not only unlawful but borders on criminality, as it amounts to usurpation of corporate authority and fraudulent misrepresentation.
11. **THAT** since the expiration of their tenure, the Defendants have unlawfully and forcefully retained their positions through intimidation of the membership of the Interested Party. They have deployed individuals acting as "goons" to suppress any opposition, disrupt meetings, and prevent the members from asserting their rights. This unlawful conduct has created an atmosphere of fear and has stifled democratic participation within the Interested Party.
12. **THAT** following the unlawful and forceful retention of office by the Defendants, the membership of the Interested Party lodged a formal complaint for fraud and interference at Kileleshwa Police Station under **OB No. 27/12/03/2025**. This complaint detailed the Defendants' illegal actions, including their refusal to vacate office, their use of intimidation tactics, and their disruption of the Interested Party's governance processes. *(Annexed Herein and Marked **Annexure "BAM-3"** is a copy of the Police OB No dated 12/03/2025)*
13. **THAT** despite the complaint being duly recorded, no action has been taken by the relevant authorities to investigate or hold the Defendants accountable for their unlawful conduct. This inaction has emboldened the Defendants, who continue to interfere with the affairs of the Interested Party with impunity, disregarding both the resolutions of the membership and the rule of law.
14. **THAT** there is now an imminent and ongoing threat that unless this Honourable Court intervenes, the membership of the Interested Party will continue to suffer intimidation,

financial loss, and the deprivation of their democratic rights. The Defendants' unlawful actions have not only disrupted the normal functioning of the Interested Party but have also placed its members at risk of further harm, necessitating urgent injunctive relief.

15. **THAT** the Defendants' continued illegal stay in office has paralyzed the proper functioning of the Interested Party. By preventing the lawful transition of leadership, they have obstructed governance processes, disrupted service delivery, and created a leadership vacuum that has resulted in confusion and disarray among the membership.
16. **THAT** the illegal acts of the Defendants have significantly eroded the confidence and trust of the Interested Party's membership. The members, who rely on proper leadership and governance to safeguard their interests, now face uncertainty regarding the legitimacy of decisions being made on behalf of the organization.
17. **THAT** despite lacking legal authority, the Defendants have continued to transact business, issue directives, and purport to make binding decisions on behalf of the Interested Party. This exposes the Interested Party and its members to serious legal and financial liabilities, as any transactions conducted by the Defendants may be deemed unlawful and unenforceable.
18. **THAT** the Defendants have attempted to withdraw funds from the Interested Party's accounts in an unlawful manner. This act was only thwarted by the vigilance of the membership, who intervened to prevent the unauthorized depletion of the Interested Party's financial resources. The Defendants' continued access to and control over the organization's finances poses a significant risk of misappropriation, which could result in financial instability and loss to the members.
19. **THAT** on 10th March 2025, the Defendants, in furtherance of their illegal actions, purported to issue a directive sending the substantive CEO of the Interested Party, Dr. Ezekiel Mutua, on leave. They further appointed Mr. Richard Sereti Nyamweya as the acting CEO, despite lacking the legal mandate to do so. This action is void ab initio, as the Defendants' term in office had already expired, and they had no authority to interfere with the governance and management of the Interested Party. *(Annexed Herein and Marked **Annexure "BAM-4"** is a letter by the 1st Respondent purporting to send the substantive CEO on leave and appointing an acting CEO).*

20. **THAT** the unlawful removal of the substantive CEO and appointment of an acting CEO has further jeopardized the operations of the Interested Party, causing immense uncertainty and administrative paralysis. The Interested Party requires a functional and legitimate leadership structure to ensure the smooth execution of its mandate, which is currently impossible due to the Defendants' interference.
21. **THAT** the Defendants' illegal and self-serving actions have put at risk the primary purpose of the Interested Party—ensuring that artists receive their rightful earnings from royalties. By clinging to office illegally, they have disrupted the normal functioning of MCSK, leading to delays, mismanagement, and uncertainty in the collection and distribution of royalties. As a result, the livelihoods and well-being of the artists who rely on these earnings have been jeopardized, making it imperative that the court intervenes to restore lawful leadership.
22. **THAT** the Defendants' continued stay in office and interference with the Interested Party's affairs amounts to a gross violation of corporate governance principles, including transparency, accountability, and respect for due process. Their actions demonstrate a blatant disregard for the legal framework governing the Interested Party and have resulted in a complete breakdown of governance structures.
23. **THAT** the Defendants have deliberately frustrated any attempts by the rightful members to conduct fresh elections and restore order within the Interested Party. Their refusal to vacate office and their use of intimidation tactics have made it impossible for the membership to exercise its lawful rights, thereby violating the democratic principles that govern the Interested Party.
24. **THAT** the illegal acts of the Defendants have caused immense anxiety and distress among the members of the Interested Party. The continued governance crisis has left artists and other rights holders uncertain about the status of their earnings, their legal rights, and the future stability of the organization. This uncertainty is detrimental to the welfare of the members, who depend on the Interested Party for their financial well-being.
25. **THAT** if the Defendants are not immediately restrained, the Interested Party and its members will continue to suffer irreparable harm. The unlawful actions of the

Defendants have already caused significant disruptions, and any further delay in granting injunctive relief will allow them to further entrench themselves in office, making it more difficult to restore order and legality.

26. **THAT** the Plaintiffs have a prima facie case with a high probability of success, as the Defendants' illegal stay in office and interference with the Interested Party's affairs have no legal justification. The balance of convenience overwhelmingly tilts in favor of granting the injunctive orders sought, as failure to do so will result in continued injustice, financial loss, and the erosion of the rights of the members of the Interested Party.

27. **THAT** it is in the interest of justice that this Honourable Court grants the orders sought in the Notice of Motion to preserve the integrity of the Interested Party governance.

28. **THAT** what is deponed herein is true to the best of my knowledge, information, and belief.

SWORN at NAIROBI by the said

BENARD AMUCHIZI MUKAISI

This 20th Day of March 2025.

BEFORE ME

COMMISSIONER FOR OATHS



DEPONENT

DRAWN & FILED BY:

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