



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu; DCJ & VP, Ibrahim, Wanjala, Lenaola & Ouko, SCJJ)

PETITION (APPLICATION) NO. E005 OF 2023

– BETWEEN –

STANBIC BANK KENYA LIMITED APPELLANT

– AND –

SANTOWELS LIMITED RESPONDENT

– AND –

**KENYA BANKERS
ASSOCIATION INTENDED AMICUS CURIAE /APPLICANT**

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

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*)

RULING OF THE COURT

[1] **WHEREAS** this Court by a Judgment dated 28th June 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 4th September 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 28th June 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 28th June 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 30th September, 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 4th September 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 4th September 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 30th September, 2024 and the applicant’s submissions of 16th October 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 15th October 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 vs. 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 vs. 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 vs. 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 30th September 2024 and filed on 1st October 2024 be and is hereby dismissed.***
- ii. Each party shall bear its own costs.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 14th day of March, 2025.

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
M.K. IBRAHIM
JUSTICE OF THE SUPREME COURT

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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

