



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Koome; CJ & P, Mwilu; DCJ & VP, N Ndungu, Lenaola & Ouko SCJJ)*

**PETITION (APPLICATION) NO. E041 OF 2025**

**BETWEEN**

**COALITION ON VIOLENCE AGAINST WOMEN.....1<sup>ST</sup> PETITIONER**

**INDEPENDENT MEDICO-LEGAL UNIT .....2<sup>ND</sup> PETITIONER**

**THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF  
JURISTS.....3<sup>RD</sup> PETITIONER**

**PHYSICIANS FOR HUMAN RIGHTS..... 4<sup>TH</sup> PETITIONER**

**JWM**

(a female victim of sexual and gender-based violence).....5<sup>TH</sup> PETITIONER

**PKK**

(a female victim of Sexual and gender-based violence).....6<sup>TH</sup> PETITIONER

**SMM**

(a female victim of sexual and gender-based violence) .....7<sup>TH</sup> PETITIONER

**CNR**

(a female victim of sexual and gender-based violence) .....8<sup>TH</sup> PETITIONER

**LGS**

(a female victim of sexual and gender-based violence) .....9<sup>TH</sup> PETITIONER

**SKO**

(a female Victim of sexual and gender-based violence) .....10<sup>TH</sup> PETITIONER  
**DOJ**  
(a female victim of sexual and gender-based violence) .....11<sup>TH</sup> PETITIONER  
**FOO**  
(a female victim of sexual and, gender-based violence) .....12<sup>TH</sup> PETITIONER  
**AND**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**  
**DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**  
**INDEPENDENT POLICING**  
**OVERSIGHT AUTHORITY.....3<sup>RD</sup> RESPONDENT**  
**INSPECTOR-GENERAL OF POLICE ..... 4<sup>TH</sup> RESPONDENT**  
**CABINET SECRETARY,**  
**MINISTRY OF HEALTH.....5<sup>TH</sup> RESPONDENT**  
**KATIBA INSTITUTE.....INTENDED AMICUS CURIAE**

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*(Being an application of the intended amicus curiae to join and participate in the Appeal filed by the petitioners herein against the decision of the Court of Appeal at Nairobi (Musinga, Tuiyott & Odunga JJ. A) dated 8<sup>th</sup> August 2025 in Civil Appeal No. E645 of 2021)*

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**Representation:**

Ms. Emily Kinama and Ms. Nkirote for the Intended Interested Party  
*(Katiba Insitute)*

Dr. Owiso, Mr. Willis Otieno and Ms. Leah Chanimbaga for the Petitioners  
*(Otieno & Ogola & Advocates)*

Ms. Angela Fuchaka for the 2<sup>nd</sup> and 4<sup>th</sup> Respondents  
*(Office of the Director of Public Prosecutions)*

Ms. Bernadette Mutie-Nzwii for the 3<sup>rd</sup> Respondent  
(*Independent Policing Oversight Authority*)

Mr. Emmanuel Bitta for the 1<sup>st</sup> and 5<sup>th</sup> Respondents  
(*Attorney General*)

## **RULING OF THE COURT**

**[1] UPON PERUSING** the Notice of Motion dated 7<sup>th</sup> October 2025 and filed before this Court on 14<sup>th</sup> October 2025, by the intended *amicus curiae* seeking orders *inter alia* –

- a) *Leave be granted to Katiba Institute to join and participate in these proceedings as an Amicus Curiae.*
- b) *Leave be granted to Katiba Institute to present its submissions through an Amicus Curiae Brief.*
- c) *Upon granting leave to participate in the proceedings, the Honourable Court allows the Amicus Curiae to present/ highlight oral submissions.*
- d) *An order that no costs be awarded incident to this Application.*
- e) *Such further orders as the Court may deem fit.*

**2] TAKING INTO ACCOUNT** the averments in the affidavit in support of the Motion sworn by **Norah Mbagathi**, the intended *amicus curiae*'s Executive Director, on 7<sup>th</sup> October 2025, contending that the intended *amicus curiae* is a non-profit organization dedicated to the faithful implementation of the Constitution of Kenya, 2010, particularly the principles of the rule of law and human rights protection, and has no interest in the outcome of these proceedings; that it has remained independent in its submissions and in the *amicus* brief it has filed before this Court; that, if admitted, it will assist the Court without causing any prejudice to the parties by highlighting issues relating to the State's due diligence obligations to victims of sexual and gender-based violence committed by non-state actors in conflict situations; that it was admitted as the 2<sup>nd</sup> *amicus curiae* before the High

Court and as *amicus curiae* before the Court of Appeal, where it filed written submissions on points of law; that it will provide expertise derived from its research and litigation work in constitutional and human rights law; that it has previously participated as *amicus curiae* in several matters before this Court; and that the application should be allowed given the public interest nature of the case and the potential impact of the Court's determination on victims of sexual and gender-based violence, particularly in situations of unrest; and

**[3] UPON FURTHER CONSIDERATION** of the intended *amicus curiae*'s attached *amicus* brief, which addresses issues of law arising from the constitutional and international human rights interpretation of State obligations in cases of sexual and gender-based violence committed by non-state actors in conflict situations, the applicable burden and standard of proof where a failure of due diligence is alleged, and the nature of transformative remedies sought in the petition of appeal; and

**[4] UPON READING** the submissions of the intended *amicus curiae* wherein it reiterates the contents of the supporting affidavit and further submits that it has met the criteria for admission of an *amicus curiae* set out under Rule 19 of the Supreme Court Rules, 2020 as well as the guidelines developed by this Court in the case of ***Trusted Society of Human Rights Alliance Vs Mumo Matemu & 3 others*** (Petition 12 of 2013) [2015] KESC 26 (KLR); and

**[5] BEARING IN MIND** the consent signed by all the parties dated 25<sup>th</sup> November 2025, and filed on 9<sup>th</sup> December 2025, wherein all parties consented to the intended *amicus curiae* being granted leave to join and participate in the proceedings as *amicus curiae* with no orders as to costs; and

**[6] Having considered the application and submissions before us, WE NOW OPINE AND DETERMINE** as follows:

- i. The instructive provision on joinder of *amicus curiae* is Rule 19 of the Supreme Court Rules 2020, which provides as follows:

**“19. Participation of friends of the court.**

**(1) The court may on its own motion, or at the request of any party, permit a person with particular expertise to appear in any matter as a friend of the court.**

**(2) The court shall, before admitting a person as a friend of the court, consider:**

**a. proven expertise of the person;**

**(b) independence and impartiality of the person;**  
**or**

**(c) the public interest.”**

- ii. This court has also set the guiding principles applicable in determining an application for joinder as *amicus curiae* in the ***Trusted Society of Human Rights Alliance Vs Mumo Matemu & 3 others*** (Petition 12 of 2013) [2015] KESC 26 (KLR) where it stated 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 point(s) 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.”***

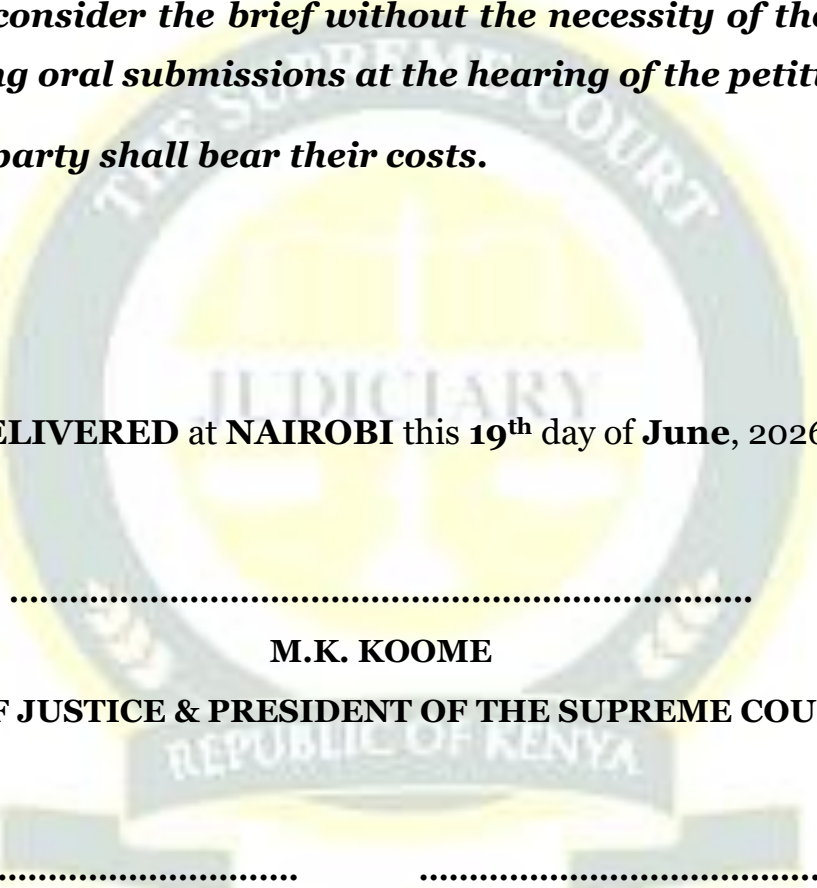
- iii. Having considered the proposed amicus brief annexed to the affidavit in support of the application, we note that the intended amicus curiae intends to address the court on points of law that no party in the proceedings has addressed, including issues of law arising from the constitutional and international human rights interpretation of State obligations in cases of sexual and gender-based violence committed by non-state actors in conflict situations; the applicable burden and standard of proof where a failure of due diligence is alleged; and the nature of transformative remedies sought in the petition of appeal. We perceive from the applicant’s amicus brief that its submissions will be of valuable assistance to this Court in addressing the issues raised in the appeal, and the applicant has demonstrated expertise in its field, which we find relevant to the appeal. We also note that the applicant participated in the two courts below as an *amicus curiae*, and the parties have not objected to its participation before this Court. In the circumstances, we are inclined to allow the application for admission of the intended amicus curiae. However, its participation shall be limited only to the *amicus* brief filed, which the court will consider in determining the appeal.
- iv. While it is settled that costs follow the event, we are alive to the fact that parties recorded a consent that the application be allowed with no orders as to costs, and by and large that this matter constitutes public interest litigation. In these circumstances, we find that each party do bear their own costs.

[7] **CONSEQUENTLY** and for the reasons afore-stated, we make the following Orders:

- a) The applicant’s Notice of Motion dated 7<sup>th</sup> October 2025 and filed before this Court on 14<sup>th</sup> October 2025 be and is hereby allowed.***
- b) The amicus brief attached to the application is deemed as duly filed with the Court’s leave, and it is directed that the Court shall consider the brief without the necessity of the applicant making oral submissions at the hearing of the petitions.***
- c) Each party shall bear their costs.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> day of June, 2026.**



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**M.K. KOOME**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

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**P.M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE  
PRESIDENT OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**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 OF KENYA**

