



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

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

PETITION (APPLICATION) NO. E008 OF 2026

-BETWEEN-

BLOGGERS ASSOCIATION OF KENYA (BAKE).....1ST PETITIONER
LAW SOCIETY OF KENYA.....2ND PETITIONER/APPLICANT
ARTICLE 19 EAST AFRICA.....3RD PETITIONER
KENYA UNION OF JOURNALISTS.....4TH PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION1ST RESPONDENT
ATTORNEY GENERAL2ND RESPONDENT
INSPECTOR GENERAL OF
NATIONAL POLICE SERVICE.....3RD RESPONDENT
SPEAKER, NATIONAL ASSEMBLY.....4TH RESPONDENT

(Being an application to depart from the Court's previous decision)

Representation

Mr. Malidzo, Mr. Ndong & Ms. Marion for the applicant

(Bond Advocates LLP)

Ms. Angela Fuchaka & Ms. Makena for the 1st respondent

(Office of the Director of Public Prosecutions)

Mr. Joshua Kiilu & Ms. Nganyi for the 3rd respondent

(S.M. Mwenda, Advocate)

Mr. Patrick Barasa h/b for Mr. Nyamodi for the 2nd & 3rd Respondents

(V.A Nyamodi & Co. Advocates)

RULING OF THE COURT

[1] The **Law Society of Kenya** (*hereinafter referred to as LSK*) filed a Notice of Motion dated 30th April 2026 supported by the sworn Affidavit of Florence Wairimu Muturi, LSK's Chief Executive Officer, and submissions all of even date wherein it urges this Court to depart from its holding in ***Mbaazi Avenue Residents' Association & another v Metricon Home Nairobi Company Limited & 2 others*** SC Pet. (Appl.) No. E047 of 2025 [2026] KESC 30 (KLR) barring an interested party from appealing an adverse outcome, or in the alternative, that the Court does waive the application of the ***Mbaazi*** decision for LSK in this appeal.

[2] LSK states that, following the enactment of the **Computer Misuse and Cybercrimes Act 2016**, it exercised its constitutional duty and statutory mandate by filing **High Court Petition No. 222 of 2018** challenging the Act now the subject of the appeal. On 3rd December 2018, the High Court (*Mwita J*) closed LSK's file and added it as an interested party not a co-petitioner to **High Court Petition No. 206 of 2018** filed by the Bloggers Association of Kenya (BAKE). LSK takes the view that its participation as an interested party was, for that reason, involuntary and court-ordered. This averment is important for reasons to be set out later in this Ruling.

[3] LSK submits that it participated before the Court of Appeal as a respondent with the full rights of a substantive party and was not treated as an interested party.

Being a “*person aggrieved*” now by the Court of Appeal's decision, it further submits that it has exercised its lawful right to jointly appeal against the decision as “*a matter of right*”. Furthermore, although the Supreme Court registry received its appeal, registry staff expressed concern about “*how*” LSK had filed a substantive appeal while it was “*a mere interested party*”. LSK is thus concerned that the Supreme Court could unconstitutionally, unfairly, and unlawfully deny it audience or restrict its participation on that premise alone.

[4] On procedure, it submits that for the Court to depart from its previous decision or for it to review any of its past decisions, it can only be moved by a formal application and cites ***In re Commission on the Administration of Justice*** Advisory Opinion No. 1 of 2025 [2026] KESC 21 (KLR), ***Macharia & another Vs Kenya Commercial Bank Ltd & 2 Others*** SC Pet. No. 9 (E011) of 2012 [2012] KESC 8 (KLR), ***Outa Vs Okello & 3 Others***, SC Petition No. 6 of 2014 [2017] KESC 25 (KLR) in support of that proposition. On its plea for departure from the ***Mbaazi*** decision, LSK believes that, in the context of constitutional claims, ***Mbaazi*** was rendered *per incuriam* the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (***the Mutunga Rules***), which define an interested party as one with an “*identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings.*” LSK urges that the ***Mutunga Rules*** are constitutionally underpinned by Article 22 of the Constitution and are therefore constitutional instruments requiring broad and liberal interpretation which most favours the enjoyment of the right to a fair hearing.

[5] LSK further submits that the ***Mbaazi*** decision denies interested parties the right to appeal an adverse decision of the Court of Appeal, and that, in this instance, it did not join the dispute as a bystander or busybody; it did so as a statutory duty under Section 4 of the Law Society Act and in the public interest. It argues in that regard that public interest, by its very nature, outlives the primary

parties to a dispute. The other ground for departure presented is that the restrictive nature of the holding makes it impracticable and unjust in some instances. For example, the **Mbaazi** decision, it is argued, fails to appreciate situations in which a petitioner with no substantive stake institutes a suit under Articles 22 and 258 of the Constitution. In such cases, if a petitioner is incapable of proceeding with a suit by reason of death or bankruptcy, the public interest doesn't end with them or because of their changed circumstances. Persons who rightly have a recognizable stake in taking a substantive role during the pendency of the suit ought to be allowed the opportunity to do so,... It also maintains that these facts fall within the grounds for departure from prior decisions set by this Court in **Kidero & 4 Others vs Waititu & 4 Others** SC Pet. No. 18 & 20 of 2014 (Consolidated) [2014] KESC 11 (KLR) as there is a complete disassociation of the factual situation between the previous case and the one being considered.

[6] The **Director of Public Prosecutions** (*the 1st respondent*) filed its response through a replying affidavit dated 8th June 2026 sworn by **Becky Himlin Arunga**, a prosecution counsel in the office of the 1st respondent, wherein she depones that LSK'S contention that its description as an interested party was an involuntary and court-ordered act of the High Court (*Mwita J*) on 3rd December 2018 is legally untenable and a belated attempt to rewrite the procedural history of the matter before this Court. She further avers that, having failed to prefer an appeal or seek a review against the High Court's decision designating it as an interested party and not a substantive party, LSK is legally estopped from alleging that the said designation was adverse or contrary to its legal interest. She also states that, for a continuous, uninterrupted period of nearly eight (8) years, LSK actively submitted its specialized designation as an interested party before the High Court and subsequently participated as a respondent before the Court of Appeal without raising any jurisdictional complaints. She therefore concludes that the principle of estoppel by acquiescence strictly bars LSK from retrospectively

disowning its settled procedural status at this apex level simply to bypass the legal boundaries criteria attached to that specific designation at the Supreme Court.

[7] On the procedure adopted in filing the present application, the 1st respondent argues that the principal respondents in the present matter were completely foreign to, and were not parties to, the **Mbaazi** litigation. That being the case, this Court cannot properly review the **Mbaazi** decision within a completely separate, distinct dispute where the present array of parties had no connection to the historical litigation being assailed. In addition, to allow LSK to escape the binding authority of **Mbaazi** via an interlocutory Motion in proceedings separate from **Mbaazi** would cause severe legal prejudice and injustice to the current respondents who would be bound by a retroactive restructuring of standing based on an external authority they had no opportunity to litigate on.

[8] Regarding the question whether there is a potential miscarriage of justice, she states that there are two distinct substantive petitions before this Court addressing rival issues and competing constitutional interpretations, i.e. **SCPET E007 of 2026** and **SCPET E008 of 2026**; these twin petitions provide a robust, comprehensive arena where all primary questions of law, public interest and constitutional validity have already been fully raised and framed by the principal parties and the LSK can elect to associate with either of the two petitions, anchoring its arguments on the expansive parameters already established by the primary contenders. She therefore urges that the doors to justice are not closed to the LSK and the application is a clear abuse of the court process designed to circumvent established jurisprudence on *locus standi*.

[9] The Speaker of the National Assembly (*the 4th respondent*) filed Grounds of Opposition and written submissions both dated 5th June 2026 while the Attorney General and the National Police Service (*2nd and 3rd respondent*) filed submissions dated 15th June 2026 predicated on the same arguments as those of the 1st respondent. The 3rd and 4th respondent, in particular, cite **Muruatetu &**

another vs Republic; Kenya National Commission on Human Rights & 2 Others (Interested Parties); Death Penalty project (Intended Amicus Curiae) SC Petition No. 15 & 16 of 2015 [2016] KESC 12 (KLR) to submit that the overriding interest in the dispute is between the principal parties, and no prejudice will be occasioned to the LSK on its continued participation as an interested party, a position it has occupied comfortably since the High Court.

[10] The 1st petitioner, did not participate in the application by filing any responses. The applicant's counsel, however, indicated that he also represents the 3rd and 4th petitioners, though they too did not file any responses to the application.

ANALYSIS AND DETERMINATION

[11] The trial court proceedings that are the genesis of the application before us are those of 3rd December 2018. For clarity, we reproduce the proceedings verbatim as follows:

E.C. MWITA

JUDGE

3.12.18

Mr. Ochiel:

We wish to be enjoined in this petition as the 3rd Interested Party

Mr. Ashimosi

We have no objection

Court:

The Law Society of Kenya is hereby enjoined in these proceedings as the interested party. The 3rd Interested Party do file and serve a response and written submissions to the petition within 14 days from the date hereby. Hearing on 6.3.2019

[12] Contrary to submissions before us therefore, the LSK was not added to the proceedings at the High Court as an interested party by a judicial order made by *Mwita J* without hearing the parties and involuntarily so, but by a direct, pointed and deliberate application on the part of the LSK. To state otherwise would be a belated attempt to rewrite the record of the High Court. A preliminary issue we should however first address concerns the procedure adopted by LSK in seeking a review of the decision in ***Mbaazi***. The respondents submit that they were not parties to the dispute in ***Mbaazi*** and are therefore not properly placed to address the issues raised therein. They further take the view that, highly contentious issues, such as a departure from a previous decision of this Court, cannot be procedurally determined in an interlocutory application such as the one before the Court.

[13] In that regard, the Supreme Court Act in Section 21A, and, following the decision in ***Outa*** (supra), provides that this Court has the jurisdiction to review its own decisions in the following circumstances:

- (a) where the judgement, ruling or order was obtained through fraud, deceit or misrepresentation of facts;***
- (b) where the judgement, ruling or order is a nullity by virtue of being made by a court which was not competent;***
- (c) where the court was misled into giving a judgement, ruling or order under the belief that the parties have consented; or***
- (d) where the judgement, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision.***

[14] The procedure for approaching the Court under Section 21A of the Supreme Court Act is to file an application within the same proceedings. In this case, and contrary to that well known procedure, the parties herein are different from those in ***Mbaazi***, and the challenge posed is also not within the confines of Section 21 of the Supreme Court Act. We nonetheless understand the LSK to be of the view

that the decision in ***Mbaazi*** was made *per incuriam* and is not binding on it or the other parties in the present proceedings. The issues, it submits, therefore fall within the confines of our decision in ***Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others*** SC Petition 4 of 2012 [2013] eKLR, (*Rai* decision), where the Court laid out the factors to be considered when it is called upon to overturn its past decisions. In that case, we determined that we can depart from a previous decision of the Court in the following circumstances:

- (i) where there are conflicting past decisions of the Court, it may opt to sustain and to apply one of them;***
- (ii) the Court may disregard a previous decision if it is shown that such decision was given per incuriam;***
- (iii) a previous decision will not be disregarded merely because some, or all of the members of the Bench that decided it might now arrive at a different conclusion;***
- (iv) the Court will not depart from its earlier decision on grounds of mere doubts as to its correctness.***

[15] In ***Council of Governors & 47 others v Attorney General & 3 others (Interested Parties); Katiba Institute & 2 others (Amicus Curiae)*** SC Reference No. 3 of 2019 [2020] eKLR, the Speaker of the National Assembly invited the Court to depart from its decision in ***In the Matter of the Speaker of Senate & Another v. the Attorney General & Another & 4 Others***; Ref. No. 2 of 2013. In addressing that issue, the Court stated as follows:

“...A litigant cannot urge the Court to depart from its previous decision simply because he disagrees with it, or that the decision, militates against his case. Departing from a previous pronouncement of the law is a momentous course of action, which by its very nature must fundamentally upset pre-existing legal relations. As such, any party intending to steer the Court

in that direction, ought to ideally make a formal application in which he states the reasons in justification of such a motion. The application has to be served upon all the respondents who in turn will urge their case either in support or opposition thereto. At the end of the day, the Court will have benefitted from the reasoned submissions of counsel before rendering a decision....”

(Emphasis ours)

[16] The Supreme Court Act 2011 and the Supreme Court Rules 2020 do not provide a distinct procedure for approaching the Court when a party seeks to invoke the principles in **Rai**, and so the LSK cannot be faulted for making the application, but that finding is solely limited to the procedure and not the merits of its application. Further, the issues raised are neither frivolous nor idle and would require guidance from us, whichever way we rule, at the end of our consideration of the application, in the wider interests of justice and in executing our mandate to settle the law whenever called upon to do so. In the circumstances, we are inclined to adopt the procedure outlined in **Council of Governors (supra)** and find that the applicant followed due procedure in presenting its application to us. We shall therefore proceed to consider the merits of the application from that premise.

[17] There is, in our view, a distinction between the approach adopted by this Court in **Outa** and that taken in **Rai**. The LSK in that context urges us, on the strength of our determination in **Rai**, to depart from our previous decision in **Mbaazi** and allow it to appear as a co-appellant/petitioner in the present appeal and not as an interested party. The proper inquiry in that regard is, however, not confined to whether the factual circumstances of the earlier decision (**Mbaazi**) are identical to the one presently before us. While the factual matrix remains relevant generally, and may in an appropriate case assume particular significance, the more fundamental consideration is whether the question presented for determination bears sufficient similarity to that previously considered by the Court and follows

the same jurisprudential trajectory. Viewed from that perspective, we are satisfied that the question presented by the applicant bears a material similarity to that which fell for determination in **Mbaazi**. At the core of both matters is the question whether an interested party, by virtue of that status, has the capacity to prefer an appeal in proceedings in which it was not a principal party.

[18] The LSK, to succeed in its quest, must further demonstrate a proper jurisprudential basis for this Court to depart from that decision. The invocation of **Rai**, without more, does not displace the determination in **Mbaazi**. The next question, therefore, is whether the public-interest character of the dispute before us provides a sufficient basis for distinguishing **Mbaazi** or for departing from it under the Supreme Court's principles on precedent.

[19] The **Black's Law Dictionary 9th Edition Pg. 1232** defines an *interested party* as a party which has a recognizable stake (and therefore standing) in a matter. This is different from an *aggrieved party* which is a party entitled to a remedy; especially, a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment. Such a party is also termed *party aggrieved* or *person aggrieved*.

[20] Rule 7 of the **Mutunga Rules**, by way of example only, provides for the participation of parties in the capacity of an interested party. The Rule provides that:

(1) A person may, with leave of the Court, make an oral or written application to be joined as an interested party.

(2) A court may on its own motion join any interested party to the proceedings before it.

[21] Rule 24 of the Supreme Court Rules also provides for the joining of an interested party by providing as follows:

(1) A person may, within seven days of filing a response in any proceedings, apply for leave to be joined as an interested party.

(2) An application under sub-rule (1) shall include—

(a) a description of the interested party;

(b) a depiction of such prejudice as the interested party would suffer if the intervention was denied; and

(c) the grounds or submissions to be advanced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties.

(3) An application under this rule shall be determined on the basis of written submissions.

[22] In *Trusted Society of Human Rights Alliance Vs Mumo Matemu & 5 Others* SC Petition No. 12 of 2013, [2014] eKLR we expounded on the definition of an interested party in paras. 17 -18 and stated thus:

“...Suffice it to say that while an interested party has a ‘stake interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.

Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or

she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved....”

[23] In *Muruatetu* (supra) we drew a distinction between an interested party and an *amicus curia* in the following terms:

“The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

[24] Further, while dismissing an application for the joining of Katiba Institute as an interested party, we went on to state:

“...Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party

may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.....Parties, particularly Katiba Institute, cited Article 22 of the Constitution as allowing them to join this matter so as to protect the public interest.....Clearly, this Article cannot be a basis for admission of an interested party to any existing proceedings, where such a party has not shown a personal stake/interest in the matter, and only seeks to champion the public interest. The said article allows a party acting on behalf of another, or of the public, to ‘commence or institute’ a matter before a Court of law. Article 22 is not a formula for the admission of interested parties to any and all Court proceedings...” [Emphasis Ours]

[25] In *Macharia & another Vs Director of Public Prosecutions & 11 others* SC Petition No. 9 (E011) of 2022 [2022] KESC 61 (KLR) we equally opined as follows:

“.... Ultimately, we respectfully agree that the petitioners, though interested parties before the superior courts below, cannot, at this juncture, have overriding interests above and beyond the primary parties or mutate from having a peripheral stake into central core parties complete with freshly and new formulated constitutional grounds that were not the issues determined by the court appealed from....”

[26] There is no doubt from a concise reading of the above decisions that *Mbaazi* followed the outlined trajectory of this Court’s prior position on the subject at hand

and that is why, regarding the question of the standing of Mbaazi Avenue Residents Association in the **Mbaazi** matter, we categorically held as follows:

“...The 1st applicant has been christened as an appellant, whereas its true character ought to be that of an interested party. Invoking the cited provisions of the law and noting that the dispute between the 2nd applicant and the respondents remains live while the 1st applicant's status as an interested party has not been denied nor contested, we hereby direct that henceforth, and during the pendency of these proceedings, the 1st petitioner/applicant herein shall maintain the status of and be referred to as an interested party. The record of the court and all further pleadings shall reflect this change....”

[27] The decision in **Mbaazi** was therefore clearly made upon proper consideration of relevant precedents and was not made in error nor *per incuriam* as suggested by the LSK. The LSK's plea to treat public interest as an exceptional consideration and to be invoked in the present case was also addressed in **Muruatetu**, where the Court determined that it is not an exception for interested parties, whatever their other circumstances. The roles of an aggrieved party and an interested party are distinct: the appeal process is reserved for the former, while the latter's involvement is to support one party's case, not to introduce its own case under the label of *interest*. We therefore agree with the respondents that the LSK, which has participated as an interested party for over eight (8) years, cannot, at this final appeal level, suddenly transform itself into an appellant. Additionally, the LSK has not explained how its claim differs from that of the principal parties, who have filed their own appeals, and why it must therefore transform itself into an appellant. We are also certain that allowing the LSK to continue to participate in the appeals as an interested party will not cause any prejudice to it. No prejudice has been caused in eight years, and none is apparent now.

[28] The above findings notwithstanding, we must appreciate the applicant's efforts to prod the Court to develop the law on departure from its past decisions. We, however, find that the LSK in this case voluntarily took the position of an interested party and remained in that position until the conclusion of the litigation in the courts below and before this Court. If any further guidance is required, parties and the courts below, especially the Court of Appeal, should not allow interested parties to appear as parties other than interested parties in proceedings before them. Much confusion has been created where interested parties before the High Court, for example, are suddenly recorded as respondents before the Court of Appeal even if they are in support of an appellant's case before that court. We have seen the same confusion in this Court. Consequently, and for the above reasons, the application is without merit and must be dismissed.

[29] On costs, we have no doubt that this is a fit case for each party to bear its costs of the application.

[30] The final Orders that commend themselves to us are therefore that:

- i. The Notice of Motion dated 30th April 2026 is hereby dismissed.*
- ii. Each party shall bear its cost thereof.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of October 2026

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

.....
S. WANJALA
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

.....
M. WARSAME
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original.

**REGISTRAR,
SUPREME COURT OF KENYA**

