
CHAMBERS GLOBAL PRACTICE GUIDES

Collective Redress & Class Actions 2025

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**Kenya: Law and Practice
& Trends and Developments**
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KENYA



Law and Practice

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1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime

Kenya does not have a unitary law that governs collective redress. The applicable framework is spread across several laws, each with its own historic background. Key sources include the Constitution of Kenya, 2010 (the Constitution), the Consumer Protection Act, Cap 501 (the Consumer Protection Act), the Civil Procedure Rules, 2010 (the Civil Procedure Rules) and the Employment and Labour Relations Rules, 2024 (the Employment and Labour Relations Rules).

The Constitution, which is the supreme law of Kenya, permits collective redress. Articles 22 (2) (b) and 258 of the Constitution provide that a person can bring proceedings not only on their own behalf, but also:

- as a member of, or in the interest of, a group or class of persons;
- in the public interest; or
- through “an association acting in the interest of one or more of its members.”

Article 22 (2) (b) specifically applies to claims concerning the Bill of Rights, whereas Article 258 applies to breach or threatened breach of the Constitution.

These constitutional provisions relax the stringent rules on standing that previously restricted litigants from seeking collective redress. This significant change was noted by the Court of Appeal of Kenya in the case of *Matemu v Trusted Society of Human*

Rights Alliance & 5 others [2013] KECA 445 (KLR), where the court stated that the Constitution “fundamentally transformed” the concept of locus standi, thereby eliminating earlier requirements – such as obtaining the Attorney General’s consent or demonstrating a special interest – which requirements had historically hindered the pursuit of collective redress.

The severity of the restrictions on standing that existed prior to the promulgation of the Constitution are well demonstrated in the case of *Maathai v Kenya Times Media Trust Ltd* (1989) 1klr (e&l) [1989] KEHC 2 (KLR) (the Maathai Case). Wangari Maathai, who was a Kenyan environmentalist, filed this case to challenge the construction of a proposed high-rise complex at Uhuru Park, a public recreational space in Nairobi. The court dismissed the case because, among other reasons, Wangari Maathai had no standing to file the case. The court held that “It is well established that only the Attorney General could sue on behalf of the public...” This position has now changed, as the Constitution allows a single individual to file suit on behalf of the public.

Before the promulgation of the Constitution, the legal basis for collective redress was Order 1 Rule 8 of the Civil Procedure Rules, which provides that one person may sue or defend on behalf of others who share a common interest. This provision is arguably the oldest legal basis for collective redress in Kenya.

The lineage of the Civil Procedure Rules can be traced to Kenya’s colonial past. Kenya was then part of the British East Africa Protectorate and its civil procedure was governed by the Civil Procedure Ordinance of

1913. That Ordinance was modelled on India's Code of Civil Procedure, Act V of 1908, itself a revision of the Indian Code of Civil Procedure of 1882. Notably, the Indian Code of Civil Procedure of 1882 was heavily influenced by English practice.

Kenyan courts have long recognised Order 1 Rule 8 of the Civil Procedure Rules, despite it being contained in procedural law, as a foundation for collective redress. This recognition is primarily driven by considerations of efficiency. Rule 23 of the Employment and Labour Relations Rules also contains a similar provision and applies to the Employment and Labour Relations Court.

Section 4 of the Consumer Protection Act also codifies the right to institute class actions. This Act accords with Article 46 of the Constitution which provides that every consumer has, among others, the right to goods and services of reasonable quality and the right to compensation for loss or injury arising from defects in goods or services. The inclusion of these rights in the Constitution enables consumers to file collective proceedings that are not only based on Section 4 of the Consumer Protection Act but also on the strength of Articles 22 and 258 of the Constitution.

The principal policy justifications for collective redress in Kenya are discernible from a raft of court decisions including the Supreme Court decision in *Export Processing Zone Authority & 10 others v National Environment Management Authority & 6 others* [2024] KESC 75 (KLR) (the Owino Uhuru Case), a proceeding that combined elements of both class litigation and public-interest litigation. The case was brought on behalf of more than 3,000 residents seeking redress against a lead acid smelting plant and state agencies for environmental and health harms arising from lead poisoning.

Some of the key policy considerations for collective redress as identifiable from court decisions are:

- **Access to Justice:** The High Court in the case *Kayuga & another v Kioko & 2 others* [2022] KEHC 10703 (KLR) (the Kayuga Case) held that public interest litigation is intended to vindicate and effectuate public interest by preventing the vio-

lation of the constitutional or statutory rights of sizeable segments of the society who (the sizeable segments of society), owing to poverty, ignorance, social and economic disadvantages, cannot themselves assert the rights and may not even be aware of such rights.

- **Judicial Economy and Procedural Efficiency:** Collective redress proceedings avoid multiplicity of suits. This is a fact that Kenyan courts have consistently appreciated. By addressing common questions of fact and law in a single forum, the judiciary prevents duplicative actions, inconsistent rulings, and unnecessary expenditure of judicial time and resources. Courts have specifically recognised that collective redress proceedings are bound to be more economical than the pursuit of multiple individual claims.
- **Constitutional Rights:** The enforcement of fundamental rights through collective redress mechanisms has greatly assisted in safeguarding constitutional rights and advancing the relevant applicable laws.

Although the Owino Uhuru Case concerned environmental harm, the Supreme Court's analysis of class actions and representative suits provides a framework that applies across multiple legal domains. Potential applications include:

- **Employment and Labour Law:** Applying the efficiency rationale to uniform breaches of constitutional, statutory or contractual rights affecting large groups of employees.
- **Data Protection and Privacy:** Using the constitutional rights rationale to support group litigation arising from mass data breaches, where individual losses may be modest, but the aggregate harm is substantial.
- **Health Rights:** Relying on evidentiary principles articulated in the Owino Uhuru Case to support claims by communities affected by defective medical supplies, systemic negligence, or harmful public health practices.
- **Environmental Disasters:** The Owino Uhuru decision extends the applicability of class action suits arising from human-caused catastrophic events, where harm is widespread and impacts entire communities. Incidents such as industrial explo-

sions and infrastructure collapses may therefore be suitable for class actions. This would allow courts to examine systemic misconduct and structural failures in a unified proceeding to ensure that collective harm is adjudicated comprehensively.

1.2 Basis for the Legislative Regime, Including Analogous International Laws

Kenya's approach to collective legal action started by borrowing specific pieces of English procedural law (as incorporated in Indian procedural law). It has, however, since matured into a unique domestic model. Today, the framework balances international legal standards with Kenya's own constitutional values and local realities.

1.3 Implementation of the EU Collective Redress Regime

Not applicable.

2. Legal Framework

2.1 Collective Redress and Class Action Legislation

Kenya does not have a solitary statute that governs collective redress. Such actions are recognised and permitted under different legal provisions, such as the Constitution, the Civil Procedure Rules, and the Consumer Protection Act.

The Constitution

Kenya's framework for collective redress is primarily rooted in the Constitution, which provides a robust mechanism for collective redress. Under Articles 22 and 258, individuals, interest groups, and associations are empowered to file a suit on behalf of others, protecting both group interests and the broader public good.

While both articles facilitate class-style actions, they serve distinct purposes:

- Article 22 (Bill of Rights): Targets specific instances where fundamental rights and freedoms are denied, infringed, or threatened.

- Article 258 (Constitutional Enforcement): Acts as a broad gateway for any person to contest actual or threatened violations of the Constitution.

In addition to Articles 22 and 258, Article 70 of the Constitution specifically provides that any person who alleges that a right to a clean and healthy environment as recognised in the Bill of Rights is or is likely to be denied, violated, infringed or threatened may file court proceedings. Such an applicant does not need to demonstrate that they have incurred loss or suffered injury.

The Constitution has provisions that specifically apply to diverse legal areas such as data privacy, contract law, employment law, environmental law, and general civil disputes. Articles 22 and 258 of the Constitution can therefore be relied upon by an individual or class to institute a wide range of cases, including data privacy, contract law, labour rights, consumer protection.

The Consumer Protection Act

Another key statute governing collective redress in Kenya is the Consumer Protection Act. Section 4 of the Consumer Protection Act expressly authorises a consumer to initiate proceedings on behalf of a class of persons in relation to disputes arising from a consumer agreement. The Consumer Protection Act defines "consumer agreement" broadly to include any arrangement in which a supplier agrees to provide goods or services for payment.

The scope of class actions under the Consumer Protection Act is expanded through its broad definitions, such as:

- A consumer includes anyone to whom goods or services are marketed, and any user, recipient, or beneficiary of those goods or services – even if the person was not a party to the original transaction.
- A supplier includes an agent of the supplier, and any person who holds themselves out as a supplier or an agent of the supplier.

These expansive definitions significantly widen both the breadth of persons who can commence proceedings and the range of claims that may be pursued through class actions. Furthermore, Section 88 of the

Consumer Protection Act ring-fences the right to file consumer-related class actions in the High Court notwithstanding the existence of an arbitration clause, unless the parties agree otherwise.

Court Rules and Procedures

The procedural framework shifts, depending on the nature of the claim and the specific court being petitioned:

The High Court and subordinate courts

For general civil matters, the primary regulation is Order 1 Rule 8 of the Civil Procedure Rules. This rule facilitates representative suits under the following conditions:

Common Interest: One or more persons may sue or defend on behalf of a larger group sharing the same interest.

Mandatory Notification: Represented parties must be notified of the suit, either via personal service or public advertisement.

The “Leave” Debate: While some judicial decisions hold that litigants must seek the court’s permission (leave) before filing, the textual interpretation of the rule is that representation is permitted by default unless the court orders otherwise after the filing.

Specialist courts (equal status to the High Court)

The Employment and Labour Relations Court and the Environment and Land Court are specialist courts with the same status as the High Court. They were established pursuant to Article 162 (2) of the Constitution.

Employment and Labour Relations Court

Governed by the Employment and Labour Relations Rules, collective redress is specifically addressed under Rule 23, which permits a single claimant to file suit on behalf of others with a similar cause of action.

A key difference between the collective redress mechanism in the Employment and Labour Relations Rules and that under the Civil Procedure Rules is that every person represented (under the Employment and Labour Relations Rules) must sign a letter of authority to be filed alongside the Statement of Claim filed

in the Employment and Labour Relations Court. The Employment and Labour Relations Court can, however, do away with the requirement of providing a signed letter of authority.

Environment and Land Court

Collective redress in the Environment and Land Court is possible, pursuant to Order 1 Rule 8 of the Civil Procedure Rules which applies on account of Section 19 of the Environment and Land Court Act, Cap 8D. The Section provides that the Environment and Land Court is bound by the procedure laid down by the Civil Procedure Act, Cap 21. It should be noted that the Civil Procedure Rules are made pursuant to the Civil Procedure Act.

Section 3 of the Environmental Management and Coordination Act, Cap 387 provides another basis for collective redress in the Environment and Land Court. The Section is a replication and adoption of Article 22 of the Constitution.

2.2 Scope of Areas of Law to Which the Legislation Applies

In Kenya, the principal laws governing collective redress apply to a wide range of disputes. The main areas where class or representative actions arise include:

- Constitutional and Human Rights Matters: Claims involving violations or threats to rights guaranteed by the Bill of Rights and broader constitutional breaches (Articles 22 and 258 respectively).
- Consumer Protection Disputes: Unfair trade practices, defective products, misleading advertising, and disputes arising from consumer agreements under the Consumer Protection Act.
- Environmental and Land Matters: Community actions relating to environmental harm, pollution, ecological degradation, and land-rights disputes before the Environment and Land Court.
- Employment and Labour Disputes: Collective grievances involving groups of employees, unions, or multiple claimants before the Employment and Labour Relations Court.
- General Civil and Commercial Claims: Representative suits where parties share a common interest,

including tort, contract, and commercial actions under the Civil Procedure Rules.

2.3 Definition of Collective Redress/Class Actions

There is no statutory definition of “class action” or “collective redress” in Kenyan legislation. Judicial decisions, however, provide a useful guide. The Supreme Court in the *Owino Uhuru Case*, while differentiating a class action from a representative suit, held that a representative suit is “opt in” in nature with parties required to give notice of the suit to all persons with the same interest, while a class action is a proceeding where an individual or a group – sharing a common grievance – files a legal challenge on behalf of a larger “class” of persons who hold the same complaint against a specific entity or individual and, if successful, all consumers stand to be compensated.

As regards public interest litigation, the Supreme Court of Kenya in the case of *Okoiti & 2 others v Attorney General & 14 others* [2023] KESC 31 (KLR) (the *Okoiti Case*) held that public-interest litigation was aimed at addressing genuine public wrongs, whereas legal action was initiated for the enforcement and advancement of constitutional justice and public interest.

The High Court in the *Kayuga Case* relied on the 6th edition of *Black’s Law Dictionary* to define public-interest litigation as “a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.” This definition has been reiterated by the High Court in several other cases.

The High Court in the *Kayuga Case* notably held that in public-interest litigation, unlike the traditional dispute resolution mechanism, there is no determination or adjudication of individual rights.

A distinction between class action and public-interest litigation may further be inferred from the Constitution. Both Articles 22 and 258 of the Constitution itemise “public interest” as a standalone ground for filing proceedings, distinct and separate from the standing

derived by a person acting “as a member of, or in the interest of, a group or class of persons”.

The term “collective redress” is used here to refer to class action, representative suit and public interest litigation together.

3. Procedure for Bringing Collective Redress/Class Actions

3.1 Mechanisms for Bringing Collective Redress/Class Actions

The procedure for bringing a collective redress claim follows the general rules for filing of proceedings as set out in the different applicable legal frameworks. Territorial jurisdiction of the Kenya courts must, however, be established under the applicable legislation pertaining to the court entertaining the suit. Kenyan law governing the organisation of the court system sets out the cases over which each court has jurisdiction.

It should be noted that there is no court in Kenya with specialised jurisdiction to hear collective redress proceedings.

3.2 Overview of Procedure

In Kenya, collective redress proceedings may be initiated through two primary procedural pathways:

- **Constitutional Proceedings:** Where the claim is anchored on violations (actual or threatened) of the Constitution, collective redress proceedings are brought under the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as the *Mutunga Rules*).
- **Ordinary Civil Proceedings:** For non-constitutional claims, collective redress proceedings are filed pursuant to the procedural rules applicable to the specific court in which the proceeding is lodged, most commonly the High Court, the Employment and Labour Relations Court, or the Environment and Land Court, depending on the subject matter.

Key Steps in Bringing a Collective Redress/Class Action Suit

Filing the claim

Claims are lodged through Kenya's e-court filing system. The pleadings must set out the material facts with clarity and establish a reasonable foundation for the claim. The form of pleadings used depends on the nature of the proceedings.

In constitutional litigation, claimants often file a petition, and respondents typically respond by filing either a replying affidavit or grounds of opposition.

For ordinary civil proceedings, the claimant files a plaint (in the High Court or the Environment and Land Court), and the defendant responds with a statement of defence. In the Employment and Labour Relations Court, the claimant commences the matter by filing a statement of claim, while the respondent files a statement of response.

The Courts of equal status (the High Court, Employment and Labour Relations Court and Environment and Land Court) may determine constitutional issues that arise within the scope of their specialised subject-matter jurisdiction.

Preliminary judicial screening

The court may refuse to grant permission for a case to continue as a class action. The High Court in the case of *Andrew Muma And Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others* [2020] KEHC 10059 (KLR) (the Muma Case) declined to allow a matter to proceed as a class action.

Notification to class members

• Neither the Constitution nor the Mutunga Rules has a mandatory requirement for issuance of a notice to the public. The court, however, may direct that the notice of the filing of petitions be posted on the court's notice board or be published in the Kenya Gazette, a daily newspaper with national circulation or the judiciary's website. Kenyan courts have previously held that the publication of a notice is important, as it prevents a multiplicity of suits, among other measures.

- For representative suits (filed pursuant to Order 1 Rule 8 of the Civil Procedure Rules), once the suit is admitted past preliminary scrutiny, the court directs that class members be notified through public advertisement where personal service may not be reasonable. The Court of Appeal in the case of *Yipapas Ole Seese & 4 others v Sakita Ole Narok & 2 others* [2008] KECA 223 (KLR) held that the duty to direct issuance of a notice is "squarely on the court." Where this mandatory notice is not issued, the proceedings may easily be set aside.
- The Employment and Labour Relations Rules do not provide for the issuance of notices. This is possibly because any person suing on behalf of another with a similar cause of action should file a letter of authority signed by all the other parties. Notice is therefore deemed. The Employment and Labour Relations Rules, however, provide that the court may in appropriate circumstances dispense with the requirement for the filing of the signed list. It is highly likely that, in such a circumstance, the court will direct that a notice be issued.

It is not unusual for parties to litigate on whether a notice should be issued and if so, what the contents ought to be. Defendants/respondents often take issue with the proposed advertisement and the contents of the notice. This is to be expected, because public notices inherently invite more attention to the matter and may as a result increase financial exposure, lead to more evidence being availed and affect the reputation of person(s) subject to the publication. Courts often grant parties leave to advertise the petition with the caveat that such notices must not contain unnecessary information or innuendos. It should be noted that, under the Mutunga Rules, such notices must be approved by the court's Deputy Registrar.

Responses

After service, the respondent files a response, setting out all factual and legal arguments. Where a counterclaim is made, the applicant is permitted to file a response to the counterclaim.

Additional pleadings

The parties may file supplementary documents or seek leave to amend their pleadings at any time before the determination of the matter.

Preliminary hearing/case management

The court may convene a preliminary or case management hearing to define issues and streamline the conduct of proceedings.

Hearing

If the matter proceeds to trial, this would typically be before a single judge, who receives oral evidence – including expert testimony – and submissions from counsel. It is important to note that, under the Mutunga Rules, a hearing may be by way of affidavits and written submissions without oral evidence being taken.

Judgment and appeals

Written closing submissions are generally filed before judgment is delivered. Appeals from the High Court, Employment and Labour Relations Court and Environment and Land Court lie to:

- the Court of Appeal on matters of fact and law; and
- the Supreme Court on matters of law only.

Appeals are generally disposed of through written submissions, with the court permitting counsel to make brief oral highlights before the court issues its determination.

3.3 Standing

Articles 22 and 258 of the Constitution provide that every “person” whether corporate or non-incorporated has the right to institute proceedings. Article 260 of the Constitution defines “person” to include “a company, association or other body of persons whether incorporated or unincorporated.” These provisions are designed to ensure unhindered access to justice.

In the words of the High Court in the case of *African Centre For Corrective & Preventive Action & another (On Their Own Right and on Behalf of the Class of Persons Affected by the Use of Glyphosate, Paraquat, Imidacloprid, Clothianidin, Fipronil, Chlorpyrifos, Thiacloprid, Thiamethoxam, Fenitrothion, Malathion and Dinotefuran) v Agrochemicals Association of Kenya & 13 others; Kenya Plantation & Agricultural Workers’ Union (Interested Party)*, “The Constitution and the Mutunga Rules therefore permit *anyone* to file a claim alleging a breach of its provisions, regardless of whether they are directly affected by the violation.”

The expanded standing of parties to files cases challenging the contravention of the Constitution was aptly captured by the Supreme Court in the case of *Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] KESC 6 (KLR) where it was specifically stated that the phrase every “person” includes persons acting in the public interest and even if a party had been deregistered prior to filing a cause they would still have standing to challenge contravention of the Constitution on account of the broad definition of the term “person”.

For proceedings that do not involve actual or threatened violations of the Constitution, standing would be dependent on the applicable laws. For instance, standing to progress a collective redress action under the Civil Procedure Rules would be informed by a common interest, whereas standing under the Employment and Labour Relations Rules would depend on the person having a similar cause of action.

3.4 Class Members, Size and Mechanism – Opting In or Out

Collective redress proceedings anchored on the Constitution do not require parties to opt in. When such a claim succeeds, every member of the affected class is entitled to the relief or compensation awarded.

Non-constitutional proceedings, however, operate on an opt-in basis. Under the Civil Procedure Rules notice must be issued, whereas the Employment and Labour Relations Rules require a party filing a claim on behalf of others to submit a list signed by the people being represented.

There is no statutory cap on how many individuals may form a class.

Kenyan law does not establish a specific class-certification procedure. Nevertheless, it is not unusual for courts to conduct an initial review of the claim before allowing a class action to proceed. During this stage, a court may refuse to permit a matter to proceed as a class action where no proper class exists, as happened in the Muma Case.

Even so, both claimants and defendants may raise arguments regarding class membership during the proceedings.

3.5 Joinder

Both the Mutunga Rules and the Civil Procedure Rules allow for additional parties to be included at any stage of the proceedings. Any such addition may be based on the court's own motion or on the application of a party. The basis for the inclusion of those additional parties is that they should be a party to the proceedings or their presence before the court is necessary to enable the court to settle all questions involved in the matter effectively.

3.6 Case Management Powers of Courts

Kenyan courts exercise broad case management powers over matters, particularly representative suits. These powers include granting or denying leave to continue proceedings in a representative manner, defining or refining the composition of the represented group, and directing that public notices be issued to invite affected persons to join or object to the proceedings (Order 1 Rule 8 of the Civil Procedure Rules). Courts also control the timelines within which individuals may apply to be added to such suits.

Courts actively oversee the progress of such cases by convening pre-trial conferences, identifying and framing common issues, and setting schedules for pleadings, disclosure, witness statements and hearings. They issue practice directions aimed at avoiding delays and ensuring efficient resolution, drawing on the court's case-management mandate under Order 11 and Sections 1A–1B of the Civil Procedure Act.

Courts may further organise proceedings around shared questions of law or fact, designate a lead or "test" case to resolve issues central to multiple related claims, and regulate the consolidation or separation of parties and issues. They also supervise settlements involving large groups of claimants and manage costs, including imposing sanctions for non-compliance with directions. In practice, these powers extend to requiring newspaper or media notices to reach potential class members and supervising the opt-in process for additional claimants – approaches commonly used in representative suits – so that common liability

issues are determined first, with individual remedies addressed in later phases.

The power of the court also includes approving the notices to be published.

3.7 Length and Timetable for Proceedings

At present, the average length of proceedings in the High Court, the Employment and Labour Relations Court and Environment and Land Court is three to five years.

If the matter proceeds to appellate stages, parties should expect additional court time: proceedings before the Court of Appeal may take an average of two to four years from filing to judgment, while proceedings before the Supreme Court may take up another six months to three years (from filing to judgment).

The ongoing recruitment and appointment of new judges to the High Court and Court of Appeal may reduce the average length of cases in those two courts. 15 Judges were appointed to the Court of Appeal in January 2026. This increases the number of Court of Appeal Judges to 42 from 27. Recruitment for High Court Judges is ongoing. As of 3 February 2026, 100 people had been shortlisted for interviews.

3.8 Mechanisms for Changes to Length/ Timetable/Disposal of Proceedings

Kenya's law has procedural mechanisms that can lead to determination of suits in a shorter timeframe. These procedures are largely dependent on the conduct or course of action taken by the counterparty:

- Default judgment: For proceedings under the Civil Procedure Rules, where a defendant fails to enter appearance or file a defence within prescribed timelines, the claimant may obtain judgment as of right, subject to the defendant's ability to apply later for setting aside of the default judgment upon showing sufficient cause.
- Summary judgment: the court may determine a claim without a full trial where the plaintiff seeks a liquidated amount or other specified relief and the defendant raises no bona fide defence, or where the issue is admitted.

- Extensions or delays: courts retain discretion to enlarge time limits on application or by consent, enabling justified delays where fairness or case complexity requires.

Accordingly, Kenyan procedure facilitates the acceleration, summary disposal, or postponement of claims through these mechanisms, permitting flexibility in managing timelines while maintaining fairness.

At times, accelerated routes may inevitably delay proceedings further. This is because such outcomes are often challenged and it is not unusual for courts to set aside default judgments, in particular, in order to pave the way for trial with a view of ensuring substantive justice and eschewing procedural technicalities. Such outcomes greatly delay the determination of cases, as parties may have gone through the entire appeal mechanism only to return to a trial after six or more years.

3.9 Funding and Costs

The general rule on costs in Kenya is that they follow the event. Accordingly, the unsuccessful party is ordinarily required to pay the successful party's costs. These costs are assessed under the Advocates (Remuneration) Order and are intended to reimburse reasonable litigation expenses, such as court fees and regulated legal fees, rather than to punish the losing party. Recoverable costs are generally based on prescribed scales and may not fully match the actual fees charged between advocate and client.

Whereas the general rule often applies in non-constitutional proceedings, it is not always applied in public-interest litigation. The Supreme Court has on various occasions cautioned against awarding costs in public-interest litigation. In the *Okoiti Case*, the Supreme Court held that the rationale for not awarding costs in public-interest litigation is to avoid the promotion of self-interest at the expense of public interest. Another reason advanced by the Supreme Court is to shield public-interest litigants from an adverse order of costs should they not succeed. Despite this holding, there have been instances where courts have awarded costs to litigants in public-interest cases.

Regarding funding, Kenya continues to follow the common-law prohibition against maintenance and champerty agreements, which has been interpreted to bar third-party litigation funding and contingency fee arrangements (including “no win, no fee” models). Parties therefore generally fund proceedings from their own resources, or, where available, through pro bono assistance or state-supported legal aid.

3.10 Disclosure and Privilege

Under Kenya's law, parties must disclose all the documents that they intend to rely on at the trial before the trial. This requirement is well illustrated by Order 11 of the Civil Procedure Rules, which provides that parties must exchange pre-trial questionnaires and disclose all relevant documents, witness statements, and expert reports before the case management conference, at which the court sets deadlines for any further disclosure and trial preparation steps. Prior to trial, parties are required to file trial questionnaires identifying the evidence they will rely on, and the court is required to hold a trial conference to address, among others, admissibility issues. These mechanisms are designed to promote transparency and avoid surprise, particularly where the claims concern issues common to a class.

With respect to privilege, a key applicable rule is contained in Section 134 of the Evidence Act, Cap 80. The Section provides for the protection of communication between an advocate and client made for the purpose of obtaining legal advice or for use in litigation. This privilege also covers intermediaries such as interpreters and the clerks or servants of the advocate. The privilege does not apply where communication is made in furtherance of an illegal act, or where an advocate becomes aware – after being engaged – of facts indicating criminal or fraudulent conduct. Unless an exception applies, privileged materials cannot be compelled in disclosure. Where privilege is disputed, courts may examine the contested material privately, without the public or press, to balance fairness with the need to preserve confidentiality.

3.11 Remedies

Courts in Kenya have the power to issue a broad range of remedies in collective redress proceedings. Such remedies are often similar to those available in

ordinary civil litigation albeit adapted to the collective nature of the claims. Available remedies include:

- **Compensatory Damages:** Monetary compensation aimed at restoring members to the position they would have been in had the harm not occurred. Kenyan law emphasises compensation rather than punishment.
- **Restitution:** Orders requiring defendant(s) to return money, property, or benefits.
- **Declaratory Relief:** Court declarations that clarify rights, obligations, or legal positions.
- **Injunctive Relief:** Orders compelling or restraining certain conduct.
- **Account and Apportionment:** In matters involving fiduciary breaches or mismanagement, courts may order an account of profits and equitable distribution among affected persons.
- **Costs Orders:** Courts may award costs, although they exercise discretion to ensure fairness, given the often large and diverse group of claimants.

3.12 Settlement and ADR Mechanisms

Kenya's law offers both formal and informal mechanisms for settling cases outside the court system. Collective redress proceedings are generally not exempted from these mechanisms.

Article 159 (2) (c) of the Constitution requires courts to promote alternative dispute resolution (ADR), including mediation, arbitration, reconciliation, and traditional methods. In practice, disputes may be referred to mediation. Arbitration is also recognised as an alternative. However, section 88 of the Consumer Protection Act ring-fences the right to file consumer-related class actions in the High Court notwithstanding the existence of an arbitration clause, unless the parties agree otherwise.

Informal and community-based mechanisms – particularly traditional dispute resolution led by elders – remain relevant, especially in land-related or community-level collective grievances.

3.13 Judgments and Enforcement of Judgments

In class action proceedings, the judgment issued by the court is a final and binding determination on all

members of the class – both those who participated directly and those who were represented.

In representative suits, a party who was not notified of the proceedings is entitled to move the court to set aside or vary the decision of the court.

After judgment is delivered, it is formally converted into a decree in accordance with the Civil Procedure Act, Cap 21. This decree represents the court's conclusive decision on the rights and obligations of the parties, and its extraction enables the decree holder to pursue enforcement.

Judgments obtained from collective redress proceedings do not have a separate or distinct enforcement mechanism. Instead, enforcement is through the procedures available under the laws of Kenya. These include execution against property, garnishee proceedings, charging orders over land or securities, and, in cases of wilful non-compliance, the possibility of committal to civil jail. These mechanisms ensure that monetary awards, injunctive orders, or other forms of relief granted by the court are fully implemented.

There is a dire need for enforcement mechanisms, particularly in public-interest litigation where the government or state agencies are party. This is because the Government Proceedings Act, Cap 40, shields government from execution, attachment or any such processes for enforcing payment. This immunity (in the same or a slightly different manner) is extended to several state agencies under their respective establishing statutes. As a result, successful litigants against the government or state agencies are often unable to enforce judgments issued in their favour, particularly when monetary in nature. To illustrate this, the beneficiaries of the Owino Uhuru Case claim that they have yet to be compensated.

To ensure compliance with court orders against the government, decree holders often file contempt of court proceedings against the principal officer(s) of the relevant entity. Kenyan courts have held that such mechanisms are not about execution of court orders or decrees but rather to uphold the rule of law. Nonetheless, enforcing committal orders against government officers has also not been most effective, as

enforcement relies on goodwill from other state actors such as the National Police Service.

4. Legislative Reform

4.1 Policy Development

Currently, there are no identified policy changes or initiatives related to the issues outlined in the preceding sections.

4.2 Legislative Reform

No major legislative reforms have been implemented in relation to the issues previously discussed. However, there is growing advocacy for the development of a comprehensive class action regime in Kenya.

5. Key Trends

5.1 Impact of Key Trends

Kenya is witnessing several notable trends that are reshaping the landscape of collective redress and related legal domains. First, there has been marked growth in the collective redress litigation sphere, driven in part by landmark decisions such as the Owino Uhuru Case, which clarified the legal framework for class actions and affirmed the courts' readiness to grant substantial remedies. This signals a broader judicial shift toward enabling the aggregation of claims and strengthening large-scale rights' enforcement.

Consumer protection and public-interest litigation are also on the rise, increasing litigation exposure for corporates. In response, many organisations are implementing enhanced compliance and risk-management practices, including proactive internal audits and stronger consumer-focused policies.

Modernisation of the judiciary continues to influence these trends positively. Innovations such as digital filing systems and improved case-management processes are enhancing efficiency, reducing delays, and widening access to justice.

Regulatory agencies, particularly the Competition Authority of Kenya, are also contributing to this evolving environment through investigations and penalties that complement court-based remedies.

Emerging thematic areas, especially environmental protection and data privacy, are further broadening the scope of potential collective actions. These developments collectively reflect a shift toward stronger consumer and public-interest safeguards, increased corporate accountability, and a more accessible justice system overall.

Trends and Developments

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ADRA Advocates LLP specialises in complex litigation and big-ticket arbitration, with a strong reputation for handling high-stakes disputes. The firm regularly acts in collective redress proceedings and recently secured a multimillion-dollar judgment in a representative suit it was handling on behalf of expatriate medical practitioners. The firm's practice spans

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Legal Trends

The use of collective redress proceedings is growing significantly in Kenya. Private entities (including multinational corporations that arguably have no presence in Kenya) are increasingly being cited as parties. The Constitution of Kenya, 2010 (the Constitution) is a key reason for the increased popularity of collective redress mechanisms. This is because the Constitution expressly permits collective redress mechanisms. Kenyan courts, including the Supreme Court, have interpreted the relevant constitutional provisions allowing collective redress with approval.

Prior to the promulgation of the Constitution, litigants who wished to pursue collective redress proceedings such as class action and public-interest litigation faced a strict test of standing. The severity of this test is best illustrated by the case of *Maathai v Kenya Times Media Trust Ltd* (1989) 1klr (e&l) [1989] KEHC 2 (KLR) (the Maathai Case). Wangari Maathai, who was a Kenyan environmentalist, filed this case to challenge the construction of a proposed high-rise complex at Uhuru Park, a public recreational space in Nairobi. The Court dismissed the case for the reason, among others, that Wangari Maathai had no standing to file the case.

After the Maathai Case, there were a few decisions where the Court expressly relaxed the strict rules on standing. One of the most notable cases was *Albert Ruturi, J.K. Wanywela & Kenya Bankers Association v The Minister of Finance & Attorney General and Central Bank of Kenya*. This relaxation was, however, not statute-based and therefore could not be wholly relied on as primary grounding for collective redress proceedings.

The Civil Procedure Rules of Kenya (as amended from time to time) have for a long time permitted parties to file representative suits. Its provisions, however, state that one must have “the same interest”. In essence, it is still tied to strict rules of standing. Further, its provisions also provide that a court may disallow litigants from proceeding with the matter as a collective redress proceeding. These hurdles likely explain why it was not commonly relied on as a basis for collective redress proceedings.

Articles 22 (2) (b) and 258 of the Constitution now provide a solid anchor for collective redress proceedings by stating that a person can bring proceedings not only on their own behalf, but also:

- “as a member of, or in the interest of, a group or class of persons”;
- (2) in the public interest; or
- (3) through “an association acting in the interest of one or more of its members”.

Article 22 (2) (b) specifically applies to claims concerning the Bill of Rights, whereas Article 258 applies to breach or threatened breach of the Constitution.

These constitutional provisions have been used as the basis for several court cases, including the recent Supreme Court decision in *Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others* [2024] KESC 75 (KLR) (the Owino Uhuru Case), a collective redress proceeding where more than 3,000 residents sought relief against a lead acid smelting plant and state agencies for environmental and health harms arising from lead poisoning.

The Owino Uhuru case resulted in a KES1.3 billion (circa USD10 million) judgment in favour of the Plaintiffs, one of the highest awards yet in collective redress proceedings. Note, the Supreme Court, in this case, held that a class action related to “proceedings in which an individual or a group of people with a common complaint lodged a legal challenge in court against an organisation or an individual on behalf of a larger group or class of people. If successful, *all* consumers aggrieved stood to be compensated.”

The Supreme Court’s decision in the Owino Uhuru Case effectively means that a single person can sue on behalf of several parties (named or not) and the suit, if successful, can result in the compensation of an extremely large group of persons. This finding will likely be relied on extensively by litigants to secure far-reaching judgments against organisations in the future.

Private entities may be tempted to assume that they are unlikely to be named in collective redress proceedings anchored on the Constitution and that public entities would instead be more susceptible to such litigation. The Constitution, however, covers a broad range of rights that facilitate bringing private entities within the ambit of collective redress proceedings based on the Constitution.

Some of the Constitutional provisions that may inform a cause of action against private entities are (this list is not exhaustive):

- Article 31, which provides that every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed and the right not to have the privacy of their communications infringed;
- Article 41, which provides that every person has the right to fair labour practices. Article 41 (2) further provides that every worker has the right to fair remuneration and reasonable working conditions, among others;
- Article 46, which provides that consumers have the right to goods and services of reasonable quality, to the information necessary for them to gain full benefit from goods and services, to the protection of their health, safety and economic interests and to compensation for loss or injury arising from defects in goods or services.

Technology companies, employers, and service providers of goods and services are therefore within easy reach of constitutionally anchored collective redress proceedings based on the Constitution.

The Supreme Court of Kenya, in the case of *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* [2014] KESC 53 (KLR), held that a court should not determine a constitutional issue when the matter, whether civil or criminal, may be decided on another basis (the principle of avoidance). This principle is not unique to Kenya. In fact, the Supreme Court has quoted the United States of America's Supreme Court decision in *Ashwander v Tennessee Valley Authority*, 297 US 288, 347 (1936).

The principle of avoidance, however, does not seem to dissuade litigants from filing collective redress proceedings based on the Constitution. Some possible reasons for this are that, under Kenyan law, constitutional proceedings can be disposed of by way of affidavit evidence without the need for oral evidence. This inherently reduces the length of proceedings as parties do not have to be examined, the rules of standing are significantly relaxed and, arguably, it may be easier for a litigant ultimately to access the Supreme Court if their claim is based on the Constitution.

Notable Ongoing Collective Redress Proceedings

Safaricom PLC, Kenya's leading telecommunications company is increasingly the target of collective redress proceedings based on the Constitution. As recently as 21 February 2026, an individual who accuses Safaricom of sharing his data (including location) with security agencies, publicly demanded that Safaricom pay him KES200 million (circa USD1.5 million) or else he would file proceedings against Safaricom seeking KES1 trillion (circa USD7.75 million) in damages.

Meta Platforms, Inc (formerly The Facebook, Inc) and Meta Platforms Ireland Limited are currently the subject of several collective redress proceedings in Kenya anchored on the Constitution, among others.

Meta's attempts to resist the litigation have so far been unsuccessful. Some of the arguments so far rejected by the court are that the petitioners are not Kenyan, but foreigners, and that the court has no jurisdiction over Meta because it is a foreign corporation that is not resident, domiciled, or trading in Kenya. The disallowance of these objections indicates that there may be instances where foreign private entities are sued in Kenya by non-Kenyan citizens.

With respect to employment matters, it is imperative to note that the term "employer" is widely defined under the Employment Act, Cap 226, Laws of Kenya to include "any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company." As a result, parent companies and individual directors may find themselves liable in collective redress proceed-

ings initiated against subsidiaries. The veil of incorporation may not be sufficient in such employment-related matters.

The Employment and Labour Relations Court of Kenya has upheld the expansive definition of the term “employer” in various cases. An early example was in the case of *Daniel Mutisya Masesi vs Romy Madan & Another* [2013] eKLR, where the Court held that “the Employment Act 2007 does not bar directors and their companies from being joined in the same claim, filed by their employees... The Employment Act defines the term ‘employer’ expansively and does not suggest anywhere that directors cannot be joined with their corporate business vehicles in redressing employment wrongs...”.

More recently, the Employment Court, while dismissing an application for certain parties (including managers) to be struck out from an employment claim, held that “The Court discerns that the 2nd to 8th Respondents are covered in the definition of the section 2 of the Employment Act contrary to their assertions. As such, their efforts to be excused from the proceedings must, of necessity, fail.”

Based on the highlighted risks, it is prudent for private entities (whether foreign or domestic) to audit their operations continuously to ensure they comply not only with the law but also with global standards and best practices. The importance of complying with global standards is critical, because Articles 2 (5) and (6) of the Constitution respectively incorporate the general rules of international law in Kenyan law and any treaty or convention ratified by Kenya.

The Court of Appeal has previously relied on Article 2 (5) of the Constitution to hold that a treaty that has not been ratified by Kenya forms part of Kenyan law, on account of general principles of international law. This holding greatly expands the laws that are deemed to apply in Kenya.

Private entities operating in Kenya, or those with a nexus to Kenya, should implement robust data protection frameworks. In addition, such entities should establish effective internal redress mechanisms that address employee and consumer concerns promptly and meaningfully. Regular compliance audits should also be conducted to ensure adherence to applicable laws. While these measures cannot fully insulate organisations from litigation, they can significantly reduce the risk of unnecessary disputes and mitigate exposure to avoidable damage awards.

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