



**Kariuki & 2 others (Suing in their representative capacity as Chairman, Treasurer and Secretary of Paa Crescent Residents Association) v Registrar of Societies; Kenya Commercial Bank Ltd & 8 others (Interested Parties) (Application 170 of 2022) [2023] KEHC 24117 (KLR) (Judicial Review) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 170 OF 2022  
J NGAAH, J  
OCTOBER 27, 2023**

**BETWEEN**

**KINGSLEY KARIUKI ..... 1<sup>ST</sup> APPLICANT  
CATHERINE OTIENO ..... 2<sup>ND</sup> APPLICANT  
STEPHEN OTHIENO ..... 3<sup>RD</sup> APPLICANT  
SUING IN THEIR REPRESENTATIVE CAPACITY AS CHAIRMAN,  
TREASURER AND SECRETARY OF PAA CRESCENT RESIDENTS  
ASSOCIATION**

**AND**

**REGISTRAR OF SOCIETIES ..... RESPONDENT**

**AND**

**KENYA COMMERCIAL BANK LTD ..... INTERESTED PARTY  
EQUITY BANK LIMITED ..... INTERESTED PARTY  
VIRGINIA GETATA WANJIRU ..... INTERESTED PARTY  
GITHUMBI GITAU ..... INTERESTED PARTY  
MOSOBA ORIKI ..... INTERESTED PARTY  
DANIEL MUIA ..... INTERESTED PARTY  
CONSOLATA ONGUTO ..... INTERESTED PARTY  
PAULINE AJWANG' ..... INTERESTED PARTY  
AD LIVE LIMITED ..... INTERESTED PARTY**



## RULING

1. The application before court is for leave to apply for the judicial review orders of certiorari, mandamus and prohibition. In particular, the prayers for leave have been framed as follows:
  2. Leave be granted to the Applicant to apply for an order of Certiorari to remove into this Honourable Court and quash the decision of the Respondent to freeze the Applicant's Kenya Commercial Bank account number 1104073862 held at its Kipande House Branch and Equity Bank account number 1280279487355 held at its Nairobi West Branch.
  3. Leave be granted to the Applicant to apply for an order of Certiorari to remove into this honourable court for the purposes of quashing the decision of the Respondent to cancel the registration of the Applicant's certificate of registration number 24796 contained in the letter dated 9<sup>th</sup> November 2022.
  4. Leave be granted to the Applicant to apply for an order of Prohibition to remove into this honourable court and prohibit the Respondent from restricting, limiting or otherwise interfering with the Applicant's right to hold Annual General Meeting as required by the Applicant's constitution and the [Societies Act](#) Chapter 108 Laws of Kenya.
  5. Leave be granted to the Applicant to apply for an order of Mandamus to remove into this honourable court and compel the Respondent to allow the Applicant to hold its Annual General Meeting in earliest convenient date.”
2. If leave is granted, the applicant prays that it operates as stay of the respondent's decision to cancel its registration.
3. The application is expressed to be brought under sections 8 and 9 of the [Law Reform Act](#), cap. 26 and Order 53 Rule 1(1), (2) and (4) of the Civil Procedure Rules. It is based on a statutory statement dated 23 November 2022 and an affidavit sworn by the 1<sup>st</sup> applicant on even date.
4. The 1<sup>st</sup> applicant swears that he is the elected chairperson of PAA Crescent Association (hereinafter “the Association”) which is a society registered under the [Societies Act](#), cap. 108. PAA Crescent is, itself, a residential estate comprising 109 residential units and common areas which include alleys, walk paths, two fields and an area where Live Ad Limited, apparently an outdoor advertising company, has erected a billboard.
5. The Association is governed by its constitution and officials who are elected in accordance with that constitution. These officials have been named in these proceedings as respectively the chairman, secretary and treasurer. They were elected in office on 21 July 2019.
6. In the course of its existence, the Association entered into a license agreement with Live Limited, according to which the latter erected a billboard within the common area of the PAA crescent estate. Proceeds from the agreement constitute one of the sources of the Association's income the other being subscriptions by members of the Association.
7. However, the 3<sup>rd</sup> to 8<sup>th</sup> interested parties instituted a suit against the current officials of the Association and the Live Ad in Milimani Environment and Land Court Case No. E021 of 2021 accusing them



- of entering into a contract without the Association members' approval. They were also accused of misappropriation of funds.
8. The suit was abandoned and the 3<sup>rd</sup> to 8<sup>th</sup> respondents went further and registered a rival association called "Tyson One Association Nairobi West". They also lodged a complaint against officials of the Association with the respondent. Their complaint was that the officials of the Association had violated the Association's constitution and had also misappropriated its funds.
  9. The respondent wrote to the Association's officials informing them that a complaint had been lodged against them by some of the members of the Association and, therefore, invited them for a meeting to resolve the dispute. But the applicants' advocates wrote to the respondent informing her that there was a suit pending before court over the same dispute and, therefore, the matter was thus sub judice.
  10. The respondent then directed the 1<sup>st</sup> interested party to freeze the Association's bank account in the 1<sup>st</sup> interested party Bank.
  11. As far as the annual general meeting of the Association is concerned, it has been deposed that the meetings were not called in the years 2020 and 2021 due to Covid 19 pandemic and as a result of government directive to suspend all public gatherings. The attempts to convene the annual general meeting for 2022 has been frustrated by the respondent. The same respondent has frustrated any attempts to resolve the dispute amicably amongst the Association's members.
  12. On 17 October 2022, the respondent wrote a letter addressed to the Association secretary, issuing a 21-day notice of her intention to cancel the Association's registration. On 24 October 2022, the chairman of the Association wrote to the respondent giving the reasons and grounds why the applicant's registration should not be cancelled. However, on 10 November 2022, the respondent cancelled the registration of the Association.
  13. It is the applicant's case that the decision by the respondent to cancel the registration of the Association is punitive, excessive and made in bad faith. The respondent is also accused of having acted vindictively and unreasonably.
  14. Maria Goretti Nyariki who is the Registrar of Societies at the office of the Attorney General and Department of Justice swore a replying affidavit opposing the application. She has sworn that in her capacity as the Registrar, she has the core mandate to register and regulate registered societies pursuant to the provisions of Part III and part IV of the [Societies Act](#).
  15. Ms. Nyariki has also sworn that the applicants are improperly in office in light of the provision of Clause 4(b) of [the Constitution](#) of the Association according to which officials of association are to be elected in the Annual General Meeting to be held every year. Having been elected on 21 July 2019, the applicant's term expired on or about 21 July 2020; yet they have continued to illegally hold office and thus barring the interested parties, amongst other members of the Association, to exercise their democratic right to elect officials of their choice.
  16. The applicants have also been making unilateral decisions without the involvement of members of the Association. These, amongst other complaints from members of the Association, were brought to the attention of the respondent.
  17. In exercise of her mandate, the respondent invited the warring parties for a consultative meeting on 15 September 2022 in line with the mandate given to her under Part VI of the [Societies Act](#). The applicants were, however, opposed to the meeting and, therefore, the meeting did not take off.



18. As far as annual general meetings of societies generally are concerned, it has been sworn that vide a Gazette notice number 5998 dated 10 August 2020, the Registrar General issued a clear advisory of the conduct of virtual and hybrid general meetings by registered societies to enable them comply with the mandatory provisions of section 29 of the *Societies Act*. Thus, the applicants cannot blame it on Covid 19 pandemic for their failure to call for the annual general meetings of the Association.
19. It has further been sworn that the notice of intended cancellation followed the applicant's non-compliance with the respondent's letters dated 15 September 2022 and 29 September 2022 respectively. The notice was issued pursuant to section 12 (1) (e) and (i) and section 18 (1) and (2) of the *Societies Act*.
20. Subsequently, the cancellation notice was issued after the expiry of the show cause notice period and after failure by the applicants to show cause, to the satisfaction of the respondent. The cancellation was properly issued pursuant to section 12(1)(e) and (i) and section 18(1) and (2) of the *Societies Act*.
21. Accordingly, the respondent's decision to cancel registration of the decision was not punitive, or excessive and that the same was made in good faith. The decision was arrived at procedurally and in strict compliance to the laid down provisions of the *Societies Act*.
22. The 1<sup>st</sup> interested party filed grounds of objection in which it contended that it ought not to have been joined to the suit although it is ready and willing to abide by any order that this Honourable Court may grant.
23. The 3<sup>rd</sup> to 8<sup>th</sup> interested parties also filed grounds of objection in which they averred that the applicant's application contravenes the exhaustion doctrine and Article 159 (2) (c) of *the Constitution* which provides that alternative forms of dispute resolution including conciliation, mediation, arbitration and traditional dispute resolution mechanisms be promoted. Again, section 15 (1) (b) of the *Societies Act* spells out that any society aggrieved by the registrar's refusal to register it, or by the cancellation or suspension of its registration under section 12, may in the case of any other society appeal to the Cabinet secretary within 30 days of such refusal, cancellation or suspension and the Cabinet secretary shall consider, determine and communicate his decision on the appeal within ninety days of the appeal.
24. Thus, the applicant has not exhausted the mechanisms available to it. It has also been contended that following the decision of the respondent's decision to cancel the Applicant's registration on 9 November 2022, the applicant preferred an appeal to the Honourable Attorney General on 14 November 2022. To date, the applicant has not prosecuted the said appeal.
25. It has also been urged on behalf of the 3<sup>rd</sup> and 8<sup>th</sup> respondents that the applicant has not demonstrated exceptional circumstances pursuant to section 9 (4) of the *Fair Administrative Action Act* to be allowed to bring a judicial review application in this court before exhausting the alternative dispute resolution mechanisms set out by the *Societies Act*.
26. Besides the grounds of objection, the 3<sup>rd</sup> to 8<sup>th</sup> interested parties also filed a replying affidavit opposing the applicant's application. The affidavit was sworn on their behalf by the 5<sup>th</sup> interested party.
27. According to these interested parties, the applicants have held Association hostage because since 2018 they have not convened any annual general meeting for the Association.
28. As far as the agreement between the Association and Live Ad is concerned, it is the interested parties' position that the contract expired. And on the question of a suit over the same dispute brought in this application being in court, they have sworn that it is a land dispute matter whereas the complaint to the respondent dealt with the applicants' violation of the Association's constitution.



29. According to the interested parties, with or without the Covid 19 pandemic, the applicants have never made any efforts to hold the Association's Annual General Meeting.
30. The respondent cannot be blamed because the applicant spurned her invitation to resolve the dispute amongst the Association's members on the pretext that there is a pending dispute in court.
31. Thomas Mutua Mwau, swore a replying affidavit on behalf of the 9<sup>th</sup> interested party. According to Mr Mwau, in March 2022 the applicants approached the 9<sup>th</sup> interested party and indicated that the Association wanted to complete construction of a concrete road within the estate and that this project required funding. In the ensuing negotiations, the Association and the company agreed to extend to the licence agreement for a period of 5 years on condition that the licence fee payable being Kshs. 800,000 per year be paid at once for the entire term of the licence. The 9<sup>th</sup> interested party made the payments. Accordingly, the cancellation of the Association's certificate of registration has the potential of bringing irreparable damage to the 9<sup>th</sup> interested party.
32. In their respective written submissions, parties have gone as far as arguing the merits of the applicants' application as if it is the substantive motion before court. I will not take that path in determining the application because all that a judicial review court would ordinarily be concerned with at this stage of the proceedings, would be whether the applicant has made out an arguable case. In other words, whether it is a case which upon consideration may merit the grant of all or any of the judicial review orders that the applicants are seeking. The leave stage of the proceedings is not meant to determine whether or not the applicants' case will succeed but whether it is arguable.
33. In *IRC V National Federation of Self-Employed and Small Businesses Ltd* (1982) 617, (1981) 2 ALL ER 93), Lord Diplock as explained the need for leave as follows:

"Its purpose is to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived."
34. Thus, the purposes identified for leave are one, to save the court's time and, two, so as not to leave public authorities in a state of uncertainty as to whether they can safely proceed with their operations.
35. In the same case, Lord Scarman saw the need for leave as 'an essential protection against abuse of legal process'. In his words "It enables the court to prevent abuse by busybodies, cranks and other mischief makers". (see pages 653 and 113).
36. On his part, Woolf LJ referred to the need for leave, in the same case, as 'the unique statutory means by which the court can protect itself against abuse of judicial review'.
37. In order to guard against delving into the merits of the case, Lord Diplock, *IRC V National Federation of Self-Employed and Small Businesses Ltd* (supra) suggested the following approach.
38. If, on a quick perusal of the material then available, the court thinks the application discloses what might on further consideration turn out to be an arguable case in favor of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief."
39. Thus, on this basis, the applicant only has to show not that it is, but that it might turn out to be, an arguable case.



40. I will not, therefore, delve into the merits or lack thereof of the applicants' application as the parties have attempted to do.
41. An issue has been raised on whether the applicants can invoke the judicial review jurisdiction of this Honourable Court before exhausting the alternative dispute resolution mechanisms prescribed in the *Societies Act*. This is a fundamental question on which, in my humble view, the applicants' application does not only turn but which, by its very nature has to be determine in limine.
42. The applicants' primary concern is the respondent's cancellation of registration of the Association. It is their primary concern not just because they will be specifically seeking for an order of certiorari to quash the decision to deregister the Association if leave is granted but also because the rest of the orders of mandamus and prohibition would be of no consequence in the absence of the Association.
43. Section 12 of the *Societies Act* specifies the grounds upon which the respondent may exercise her powers and cancel or suspend the registration of a society. It reads as follows:

12. Cancellation or suspension of registration

- (1) Where, in respect of any registered society, the Registrar is of the opinion that the registration of a society should be cancelled or suspended on the ground that—
  - (a) the society has where he has reasonable cause to believe among its objects, or is, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya; or
  - (b) the interests of peace, welfare, or good order in Kenya would, where he has reasonable cause to believe, be likely to be prejudiced by the continued registration of the society; or
  - (c) the terms of *the constitution* or of the rules of the society are, where he has reasonable cause to believe, in any respect repugnant to or inconsistent with any law; or
  - (d) the society has wilfully, and after notice from the Registrar, contravened any



of the provisions of its constitution or of its rules, or has contravened section 20 of this Act; or

- (e) the society has failed to comply, within the time allowed for compliance, with an order made under section 31(1) of this Act; or
- (f) the society has dissolved itself; or
- (g) the executive of the society is constituted otherwise than in conformity with its constitution and rules; or
- (h) a person has become an officer of the society who has been at some time an officer of a society which has been refused registration under this Act or which has had its registration cancelled under this section, and the Registrar has given written notice to the society in the prescribed form that such officer must be removed within a period (not being less than seven days from the date of the notice) specified in the notice, and the officer has not been removed within that period; or
- (i) the society has failed to furnish, within the time allowed, one of the documents required by section 30(1) of this Act; or
- (j) the society is, or has without duly notifying the Registrar in the prescribed form become, a branch of or affiliated to, or connected with, any organization or group of a political nature established outside Kenya, the



Registrar shall give written notice in the prescribed form to the society calling upon the society to show cause, within such period as is specified in the notice, why its registration should not be cancelled or, as the case may be, suspended; and, if the society fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration of the society.

- (2) The Registrar may, with the approval of the Minister at any time cancel any registration made under section 10 of this Act and instead grant exemption from such registration under that section.
- (3) The Registrar shall cancel the registration of any registered society which has ceased to be a society within the meaning of this Act, or which the Minister has, under paragraph (ii) of the proviso to section 4(1) of this Act, declared to be a society dangerous to the good government of the Republic.
- (4) Where under subsection (1) of this section the Registrar cancels the registration of a society, he shall at the same time cancel the registration of every branch of that society.
- (5)
  - (a) Where the registration of a society has been suspended under subsection (1) or subsection (2) of this section, a society shall not take any action, nor permit any action to be taken, in furtherance of its objects except—
    - (i) the collection of subscriptions;
    - (ii) the payment of its



debts;  
and

(iii) such  
action  
as the  
Registrar  
may  
from  
time  
to  
time  
authorize.

(b) Any society which  
contravenes paragraph (a) of  
this subsection shall be guilty  
of an offence. (Emphasis  
added).

44. A further condition under which the respondent may exercise her powers to cancel registration of a society is found in section 18 of the Act. This section reads as follows:

18. Disputes as to officers

- (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.
- (2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.
- (3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation. (emphasis added).

45. According to the respondent, her decision to cancel the registration was informed by the applicants' or Association's failure to comply, within the time allowed for compliance, with an order made under section 31(1) of this Act. Under this provision, the respondent may call from the society any



information or, amongst other things, the society's accounts and record of minutes in which the officers of the society were elected.

46. The applicants were also unable to provide her with the evidence of the settlement of the dispute between the officers of the Association and of the proper appointment of the lawful officers of the Association or of the institution of proceedings for the settlement of such dispute within the prescribed time. She, therefore, proceeded to cancel the registration of the applicant on the basis section 12 (1) (e) and (i) and section 18 (2) of the Act.
47. Whether the respondent was justified in taking the decision she took against the Association is not the concern of this court at this stage of the proceedings. It would also be much less of a concern to the court in the main motion assuming leave was granted.
48. The primary question, which is the question of the moment, is whether a party aggrieved by the decision of the respondent in exercise of her powers under section 12 or 18 of the Act has been provided with a forum, other than a judicial review court, within which the grievance or grievances can be addressed.
49. In answer to this question, one needs look no further than sections 18 and 15 of the Act. According to section 18(3) a society aggrieved by the cancellation of its registration under subsection (2) may appeal directly to the High Court within thirty days of such cancellation. Section 15, on the other hand, deals with appeals from orders of refusal to register, cancellation or suspension of registration. It states as follows:

15. Appeal from order of refusal, cancellation or suspension

- (1) Any society aggrieved by the Registrar's refusal to register it, or by the cancellation or suspension of its registration under section 12 may—
  - (a) in the case of a political party, appeal to the High Court within thirty days of such refusal, cancellation or suspension; or
  - (b) in the case of any other society, appeal to the Cabinet Secretary within thirty days of such refusal, cancellation or suspension and the Cabinet Secretary shall consider, determine and communicate his decision on the appeal within ninety days of the appeal.
- (2) A society aggrieved by the decision of the Cabinet Secretary under subsection (1)(b) may appeal to the High Court within thirty days of the decision.



(3) Notwithstanding the provisions of subsection (1) of section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the proviso to section 4(1), lodges an appeal under subsection (1) of this section, such society shall not, pending the decision on the appeal, be an unlawful society.

50. The applicants have not invoked section 15 and appealed to the Cabinet Secretary. Neither have they invoked section 18 (2) and appealed to this Honourable Court. They are instead seeking leave to file a judicial review application which, of course, is not an appeal.

51. It is trite that the existence of an alternative remedy is never enough to oust jurisdiction in judicial review (see *Leech versus Deputy Governor of Parkhurst Prison* (1988) AC 533 per Lord Bridge at 562D). However, it has been held in *R versus Inland Revenue Commissioners, ex p Preston* (1985) AC 835 that:

"A remedy by way of judicial review is not to be made available where an alternative remedy exists...Judicial review is a collateral challenge: it is not an appeal. Where parliament has provided by statute appeal procedures, as in taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision..."

52. Addressing the same issue in *R versus Peterkin, ex p Soni* (1972) Imm AR 253 Lord Widgery CJ had this to say:

"Where Parliament has provided a form of appeal which is equally convenient in the sense that the appellate tribunal can deal with the injustice of which the applicant complains this court should in my judgement as a rule allow the appellate machinery to take its course. The prerogative orders form the general residual jurisdiction of this court whereby the court supervises the work of inferior tribunals and seeks to correct injustice where no other adequate remedy exists, but both authority and common sense seem to me to demand that the court should not allow its jurisdiction under the prerogative orders to be used merely as an alternative form of appeal when other and adequate jurisdiction exists elsewhere."

53. Our very own Court of Appeal has held in *the Speaker of the National Assembly v. Karume*, Civil Application No. NAI 92 OF 1992 that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. To quote the Court:

"In our view, there is considerable merit in the submissions that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."

54. This principle of exhaustion of alternative dispute resolution mechanisms has statutory underpinning in section 9(2) of the *Fair Administrative Action Act* which states that:

(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms



including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

55. Thus, both the statute and precedent point to the conclusion that it is pertinent for an aggrieved party to embrace alternative remedies including appellate procedures before moving court for judicial review remedies. The reviewing courts will always be conscious that in considering whether a public body may have abused its powers, they must not abuse their own by entertaining matters which they otherwise need not have entertained.
56. When the court asked counsel for the applicants why he had sidestepped the alternative procedures prescribed by the Act for resolution of the applicants' dispute, his answer was that the applicants have no confidence in the registrar hearing their dispute because she would thereby be a judge in her own case and that the applicants would not have had a fair hearing before her. But the Act does not say that the appeal is to be made to the registrar. It is to be made either to the Cabinet Secretary or to this Honourable Court.
57. And even if there is any merit in the learned counsel for the applicants' argument, then it was open to the applicants to invoke section 9 (4) of the *Fair Administrative Action Act* and seek exemption from the requirement to exhaust the procedures provided under the *Societies Act*. Subsection (4) of section 9 is the relevant provision but for better understanding, it is necessary that the entire section is reproduced; it reads as follows:

9. Procedure for judicial review.

- (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.
- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.



(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal. (Emphasis added).

58. This provision of the law is self-explanatory that the internal mechanisms for appeal or review must first be exhausted before an applicant moves the court for review of an administrative action. But there is a window for the court to intervene notwithstanding that the applicant has not exhausted the avenues for appeal or review if the circumstances so merit. These circumstances are what the Act describes as “exceptional circumstances” upon which an applicant may be exempted from exhausting the internal mechanisms of appeal or review. In that event, it is incumbent upon the applicant seeking exemption to move the court appropriately.
59. In the present case, the applicants did not make any attempt to be exempted assuming their dispute manifested exceptional circumstances envisaged under section 9(4) of the Act.
60. Both the decision of the Court of Appeal in the National Assembly case (supra) and section 9 (2) of the *Fair Administrative Action Act* point to the principle that judicial review should only be invoked as a last resort in resolution of disputes; and, where there is a procedure that is equally effective and convenient that procedure should be first exhausted.
61. In the application before court, it has not been demonstrated that the prescribed procedure would not be as effective or convenient as the judicial review one. Neither has it been demonstrated that the remedies available in the prescribed procedure are not as effective.
62. For the reasons I have given, the inevitable conclusion I have to reach is that the applicants have not made an arguable case for grant of leave to file a motion for judicial review. Leave is denied and their application is hereby dismissed. Parties will bear their respective costs. It is so ordered.

**SIGNED, DATED AND DELIVERED AT WAJIR ON 27 OCTOBER 2023**

**NGAAH JAIRUS**

**JUDGE**

