



Singh & 2 others v Registered Trustees of Siri Gurdwara Bazaar, Nairobi & another (Constitutional Petition E154 of 2022) [2022] KEHC 15949 (KLR) (Constitutional and Judicial Review) (25 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND JUDICIAL REVIEW
CONSTITUTIONAL PETITION E154 OF 2022**

**M THANDE, J
NOVEMBER 25, 2022**

BETWEEN

**MANJIT SINGH 1ST PETITIONER
DHARAM SINGH MATHARU 2ND PETITIONER
HARJINDER SINGH KALSI 3RD PETITIONER**

AND

**REGISTERED TRUSTEES OF SIRI GURDWARA BAZAAR,
NAIROBI 1ST RESPONDENT
REGISTRAR OF SOCIETIES KENYA 2ND RESPONDENT**

RULING

1. The application before me for consideration is dated 28.6.22 and filed by the 2nd Respondent, seeking the striking out of the Petition dated 12.4.22, on grounds that there is no cause of action against the 2nd Respondent.
2. In the petition, the petitioners seek the following reliefs:
 - a. An order of declaration declaring that Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1st Respondent herein are not validly in office.
 - b. AN order of prohibition prohibiting Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1st Respondent herein from further infringing the



Petitioners' right to freedom of worship of denying the Petitioners' access to the Siri Gurdwara Bazaar Temple.

- c. An order of *mandamus* compelling Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1st Respondent hereinto grant the Petitioners unlimited and unimpeded access to the Siri Gurdwara Bazaar Temple erected on the properties known as LR No 209/6398 and LR No 209/3271 and allow the Petitioners to manifest their right to freedom of worship.
 - d. An order of *mandamus* compelling the 2nd Respondent to hold elections of the society (Siri Gurdwara Bazaar, Nairobi) forthwith and register the officials elected in the election as the officers of the society and file a report in court.
 - e. An order for compensation for breach of the Petitioners' constitutional rights and issue any such orders that would be in the interest of justice and would protect the Petitioners' rights.
 - f. Costs of the petition, and
 - g. Any other orders that the honourable court may deem just and fit to grant as the justice of this case may permit.
3. It is the petitioners' case that that they are representatives of members of the 1st respondent and of the larger congregation of the Siri Gurdwara Bazaar Temple (the Temple), erected on Land Reference Numbers 209/6398 and 209/3271 (the properties). They state that the 1st Respondent is a society duly registered under the [Societies Act](#) chapter 108 of the laws of Kenya and holds the properties in trust. The Petitioners accused the 1st Respondent of purporting to sell the Temple without the members' knowledge, consent and/or approval and in blatant abuse of the trust bestowed upon it by the society's constitution. The petitioners further alleged that the trustees of the 1st Respondent are in office illegally having served for more than prescribed 6 years. In this regard, they accused the 2nd Respondent of failing to exercise its constitutional duty of supervising the 1st Respondent.
4. It is this claim against the 2nd Respondent that has provoked the present application. In an affidavit sworn on June 28, 2022, Goretti Nyariki, the Registrar of Societies, averred that the mandate of the 2nd respondent under the [Societies Act](#), is to ensure that all registered societies comply with the law regulating societies and has no obligation to supervise the trustees of any society including those of the 1st Respondent; that the law does not place any duty upon the 2nd Respondent with regard to disposition of property belonging to any society; that the Petitioners have not demonstrated how the 2nd Respondent has violated the fundamental rights and freedoms of the Petitioners; that the orders sought by the Petitioners against the 2nd Respondent are incapable of enforcement. The 2nd Respondent therefore urged that the Petition be struck out.
5. The Petitioners opposed the Application vide a replying affidavit sworn on 21.10.22 by the 1st Petitioner. It was averred that the issues raised by the 2nd Respondent as to whether there is a demonstration of violation of the Petitioners' rights go to the root of the Petition and cannot be canvassed through an interlocutory application. According to the Petitioners, they have demonstrated that the 2nd Respondent has failed to uphold national values and principles of governance thereby violating article 10(2)(c) and (d) of the [Constitution](#). The 1st Petitioner further averred that the 2nd Respondent has failed in its supervisory role over the 1st Respondent. Additionally, that the Petitioners did state that the registered trustees are in office illegally, having exceeded the prescribed term of 6 years.



They accused the 2nd Respondent of colluding with the 1st Respondent. The Petitioners contended that it is in view of the foregoing that they seek an order of mandamus compelling the 2nd Respondent to forthwith call for elections of the 1st Respondent, register and file a report of the elected officials in court, in line with section 12(1)(g) of the [Societies Act](#). The Petitioners urged the Court to dismiss the Application with costs, as to allow the same will be prejudicial to them and a travesty of justice in view of the impugned conduct of the Respondents.

6. In a further affidavit sworn on 17.10.22, Gorette Nyariki averred that the 1st Respondent is not registered with the 2nd Respondent. As such, the 2nd Respondent has no power to regulate the 1st Respondent. Accordingly, there is no cause of action against the 2nd Respondent.
7. The mandate of the 2nd Respondent is stipulated in section 9 of the [Societies Act](#) is to register or exempt from registration any society that makes an application. The 2nd Respondent's case is that there is no cause of action against it as the 1st Respondent is not registered by the 2nd Respondent.
8. The law governing registered trustees such as the 1st Respondent is the [Trustees \(Perpetual Succession\) Act](#) (cap 160) and not the [Societies Act](#). Cap 160 is an Act of Parliament to provide for the incorporation of certain trustees for the purpose of perpetual succession to property and for purposes connected therewith. Section 3(1) provides:

Any person or body of persons who have lawfully constituted themselves for the purpose of forming a trust may apply to the Principal Registrar for a certificate of incorporation.

9. Upon incorporation and issuance of a certificate of incorporation by the Principal Registrar, the trustees become a body corporate with power to sue and be sued in their corporate name. They also have power to hold and acquire and dispose of any movable or immovable property. Section 3(3) provides as follows:

The trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in their corporate name and, subject to the conditions and directions contained in the certificate, to hold and acquire, and by instruments under the common seal to convey, transfer, assign, charge and demise any movable or immovable property or any interest therein now or hereafter belonging to, or held for the benefit of, the trust concerned in the same manner and subject to such restrictions and provisions as trustees might so do without incorporation.

10. The 1st Respondent being registered under cap 160 is a body corporate with power to hold property, and as per the averments of the Petitioners, holds the subject properties. The 1st Respondent can also sue and be sued and that is why it has been sued by the Petitioners herein.
11. Given that the 1st Respondent is not a society registered under the [Societies Act](#), the 2nd respondent has no power or authority to exercise over the 1st Respondent. Indeed, a perusal of the Petition does not disclose any denial, violation or infringement or threat by the 2nd Respondent of any rights of the Petitioners guaranteed under the Bill of rights. Accordingly, the 2nd Respondent is mis-suited.
12. Where a party has been improperly joined in a petition such as the 2nd Respondent has, the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) provides that such party may be struck out. Rule 5(d)(i) provides:

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—



(i) order that the name of any party improperly joined, be struck out;

13. The issue of misjoinder was considered in the case of *Kizito M Lubano v Kemri Board of Management & 8 others* [2015] eKLR where Mbaru, J had this to say:

52. The above finding is not a departure from the position long held in the case of *Werrot and Company Ltd & others versus Andrew Douglas Gregory & others*, HCCC No 2363 of 1998, LLR 2828;

For determining the question of who is a necessary party there are two tests; (i) there must be a right to some relief against such a party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such a party.

53. The question should then be whether the current respondents are properly joined herein and if so whether such presence is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. There must be a demonstration by the Petitioner that there is a direct and real interest in the reliefs sought against the listed respondents and thus necessary parties herein.

14. In view of the court's finding that the 2nd respondent has no authority over the 1st respondent, there can be no right of the Petitioners to any form of relief against the 2nd respondent in the matter herein. Additionally, if the Petition were to proceed, an effective decree can be passed in the absence of the 2nd respondent.

15. The upshot is that I allow the application August dated 26, 2022 with the effect that the Petition dated April 12, 2022 as against the 2nd respondent is hereby struck out with costs.

DATED AND DELIVERED IN NAIROBI THIS 25TH DAY OF NOVEMBER 2022

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the 1st Respondent**

..... **for the 2nd Respondent**

..... **Court Assistant**

