



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI LAW COURTS

CIVIL DIVISION

MISC CIVIL APPLICATION NO 181 OF 2020 (O.S.)

IN THE MATTER OF SECTION 30, LAW SOCIETY OF KENYA ACT, 2014

AND

REGULATION 74, LAW SOCIETY, LAW SOCIETY OF KENYA (GENERAL) REGULATIONS

AND

APPLICATION FOR LEAVE TO HOLD THE POSTPONED LAW SOCIETY OF

KENYA ANNUAL GENERAL MEETING VIRTUALLY

BY LAW SOCIETY OF KENYA.....EX PARTE APPLICANT

JUDGMENT

1. In its Originating Summons dated 22nd May 2020 and filed on 2nd June 2020 which was supported by the Affidavit of its Chief Executive Officer (CEO), Mercy Wambua, that was sworn on 22nd May 2020, the Applicant sought leave to hold its and Advocates' Benevolent Association Annual General Meetings (AGMs) initially proposed for 28th March 2020 but postponed (**sic**) on 18th March 2020 through appropriate information and communication technology platforms, on a date to be communicated to members, by LSK Council. However, the said AGMs were not held due to the COVID-19 pandemic and pursuant to Legal Notices 51 to 54 of 2020 issued under the Public Health Act.
2. It pointed out that the general meeting was its supreme authority under Section 16 of the Law Society Act No 21 of 2014 (hereinafter referred to as "the Act") and that Section 30 of the Act stipulated that it shall convene an ordinary general meeting in the month of March of every year at such venue as may be determined by the Council. It further asserted that further Section 32 of the Act granted its Council some latitude in the manner of convening general meetings and the procedure to be adopted at those meetings. It added that Regulation 74 of the Law Society of Kenya (General) Regulations, 2020 (hereinafter referred to as "the Regulations") provides that the general meeting shall be held in Nairobi or such other place as the Council may determine.
3. It was its contention that Regulation 97 of the Regulations permits it in exercise of powers and the performance of its functions under the Act or Regulations to employ such information and communication technology as may be appropriate. It averred that there were several outstanding issues that needed to be deliberated upon and that no party would be prejudiced if the orders it had sought were granted. It had annexed several documents that needed to be deliberated upon during the Annual General Meeting(s) (hereinafter referred to as "the AGM (s)").
4. The court granted it leave to file a Further Affidavit annexing its resolutions to hold the AGMs through the virtual platform as the same had not been attached to the initial Affidavit of its CEO, the said Mercy Wambua.
5. In her Further Affidavit that was sworn on 10th June 2020, she pointed out that the AGMs were scheduled to take place on 28th March 2020 but that the same were postponed following the Ministry of Health (MOH) guidelines barring physical meetings after the outbreak of COVID- 19 pandemic.
6. The Applicant placed more emphasis on its AGM than on the AGM for the Advocates' Benevolent Association. Be that as it may, this court noted that both AGMs were to be held on the same date and that any directions that would be given in respect of its AGMS would

apply *mutatis mutandis*, if at all to the AGM of the Advocates Benevolent Association.

7. It was emphatic that the AGM had to be held for it to comply with the statutory provisions of the Act. Section 30(1) of Act stipulates that:-

“The Council shall, convene an ordinary general meeting of the Society in the month of March of every year at such venue as may be determined by the Council (emphasis court).”

8. Section 32 of the Act further provides that:-

“Subject to the provisions of this Act, the manner of convening general meetings of the Society and the procedure at a general meeting shall, be as may be prescribed, from time to time, by the Council.”

9. Regulation 74(2) of the Regulations states that:-

“A general meeting of the Society shall be held in Nairobi or such other place as the Council may determine.”

10. Further, Regulation 97 of the Regulations provides that:-

“The Society may, in exercise of powers and the performance of its functions under the Act or these regulations, employ such information and communication technology as may be appropriate.”

11. In line with the aforesaid provisions of the law, in Resolution No 1 of Minute 11: 8/6/2020, the Applicant’s Council resolved as follows:-

“The Law Society of Kenya Annual General Meeting shall be held on Thursday 23rd June 2020 through appropriate information and communication technology platforms.”

12. A similar resolution had been made in Minute 2:11/5/2020 where in Resolution No 1, it was stated thus:-

“The Council to hold the Law Society of Kenya Annual General Meeting through a virtual platform.”

13. The Applicant had argued that although the holding of its AGM through a virtual platform was permitted by Regulation 97 of the Regulations and that its Council’s determination of the place for holding the meeting through the virtual platform was in accordance with Section 30(1) of the Act, it would nonetheless require leave of court to proceed in such manner.

14. However, unlike the Applicant’s electronic voting process that was well set out in Part IV of the Regulations, the same could not be said of the AGMs. Notably, there was also no provision in the law that mandated it to seek leave to hold the meeting virtually.

15. Bearing in mind the public health laws, regulations and directives that have currently been put in place but not limited to the Public Health (Covid-19) Restriction of Movement of Persons and Related Measures) Rules, 2020 and the statutory obligations of the Society, this court was being called upon to expand the meaning of “venue” that was referred to in Section 30(1) of the Act and determine if the same included a virtual platform. The pronouncement by the court was therefore critical as this was the first time the AGM was going to be held electronically and there was no provision of the law to permit the same to be held in such manner.

16. According to the Concise Oxford English Dictionary 12th Edition, venue has been defined as:-

The place where something takes place(emphasis court), event such as a concert of sports.”

17. In the Black’s Law Dictionary 10th Edition has been defined as:-

“...the place where a meeting or conference is being held.”

18. The venue is a place where more than one person may meet and/or congregate. The purpose of physical venue for a meeting is therefore to bring persons to a physical space with a view to them communicating in whatever form and/or manner so as to conduct their business. The ongoing COVID-19 pandemic has brought about innovations to ensure that people still meet and still transact the same business that could also have been transacted in a meeting had they congregated physically. This is being done through various virtual platforms.

19. As a virtual platform is a defined space where people can log in at the same time and meet to transact the same business as they would have transacted had they been in a physical space at the same time, it would in the mind of this court be considered as a “venue”. As online banking, online schooling, online consultation and so forth are means by which people interact and achieve their objectives, there is therefore no reason why virtual space could not be recognised and/or accepted as a venue to meet and transact whatever business one may have.

20. Consequently, as it was not possible for the Applicant’s members to have held a physical meeting on 28th March 2020 due to the aforesaid MOH guidelines, this court was therefore persuaded that they could hold their AGM virtually as it was a mode that was permitted

by Regulation 97 of the Regulations law and the Council had determined the mode of conducting the AGM in accordance with Section 30(1) of the Act respectively.

21. Having said so, the concern of the court was whether or not the AGM slated for 23rd June 2020 had been properly convened. Notably, the case of **HC Misc Application No E680 of 2020 In the matter of WPP Scangroup PLC In the matter for an order allowing the convening of an extraordinary general meeting under Section 280 of the Companies Act, 2015** that the Applicant relied upon in support of its case was distinguishable from the facts of this case in two (2) aspects and hence did not provide much assistance to this court.

22. Firstly, unlike the Applicant herein which already had in place Regulations that permitted it in exercise its powers and the performance of its functions under the Act or these regulations to employ such information and communication technology as may be appropriate, the applicant in **HC Misc Application No E680 of 2020** was seeking to hold its general meeting outside the provisions of its Articles of Association on account of COVID-19. Secondly, the order in the said case was made pursuant to a consent order between the parties therein. It was not a matter that was determined on merit hence having little persuasive power to this court.

23. Having said so, in the said consent, the court noted that the parties therein recognised the importance of agreeing on the manner in which the virtual meeting would be held and the issuance of notice of the general meeting to the applicant's shareholders.

24. In its oral submissions to this court, the Applicant herein contended that since the Notice and Agenda for the AGM of 28th March 2020 had been sent to its membership, there was no need to issue another Notice and Agenda for the meeting slated to be held on 23rd June 2020. It had initially averred that its financial year was ending on 30th June 2020 but subsequently submitted that it would be convenient to hold the AGM before the end of the financial year on 30th June 2020 to enable its membership comment on the Finance Bill, oversight the activities of the National Budget and for its Council to start developing its two (2) properties at Gitanga Road and South C, Nairobi and meet its members after the elections that were conducted about five (5) months ago.

25. As it rightly pointed out, there was no express provision either in the Act or Regulations to hold the AGM by 30th June if the same was not held by March of a particular year. There was also no provision in the two (2) pieces of legislation setting out the procedure of how a meeting that had been postponed without ever having taken off was to be re-convened. Regulation 79 of the Regulations only addressed itself to a meeting being adjourned where there had been no quorum within fifteen (15) minutes from the time appointed for the meeting.

26. Further, Regulation 80 of the Regulations dealt with a meeting which had taken off but business had been left unfinished. It states that:-

“The president, may, with the consent of the meeting by a majority of the members present, adjourn the meeting from time to time and from place to place, but no business, other than the business left unfinished at the meeting from which the adjournment took place shall, without consent of the president, be transacted at an adjourned meeting.”

27. Obviously, the disruption of the nature of COVID-19 pandemic was unprecedented and was unforeseen by human kind. The law did not envisage an AGM not taking off due to *force majeure*. In view of this lacuna, it was the considered opinion of this court that sufficient notice had to be given in a case where an AGM had not taken off for any reason. This was particularly important because as in this case, the Applicant was adopting a new mode of conducting its AGM that many of its members would be interacting with for the first time.

28. The success of the AGMs was dependent on connectivity to the virtual platforms. The availability of physical infrastructure and finances to support members being online during the entire duration of the AGMs could not be understated. Each member irrespective of there he or she practises must be accorded full opportunity to make adequate arrangements to join the virtual platform to participate in the AGMs.

29. This court took the view that although the Notice for the AGM of 28th March 2020 was sent to the Applicant's members, a fresh notice notifying the Applicant's members of the date, time and venue of AGM had to be re-issued. As there was no other provision under which the Secretary would send a Notice to the Applicant's members notifying them of the date, time and venue of the AGM meeting and the agenda other than under Regulations 75 (1) and (4)(a) of the Regulations, this therefore meant that the notice had to comply with the provisions therein as that the court could not separate the notification of the date, time and venue from the period that was stipulated in the notice that had to be complied with.

30. Indeed, Regulation 75(1) and (4)(a) of the Regulations provides that this notice had to be sent out twenty eight (28) days before the date set for the meeting. The Agenda was also required to be sent out fourteen (14) days before the meeting. It states that:-

“1. The Secretary shall send notice of a general meeting to members of the Society at least 28 days before the date set for the meeting, setting out the date, time and venue of the meeting...”

4. Not later than 14 days before a scheduled meeting, the secretary shall send to members the agenda of the meeting...”

31. The Applicant's Council could not therefore purport to convene an AGM before the expiry of the notice period as it had indicated in Minute 11: 8/6/2020. In any event, it was very clear from Resolution No 3 of Minute 2: 11/5/2020 that the date of the AGM was to be agreed upon after the court orders were granted.

32. In addition, Prayer No 3 of the Originating Summons dated 22nd May 2020 had not stated the date for the AGM. It had sought an order that:-

“The Applicant be and is hereby granted leave to hold, the Law Society of Kenya and Advocates' Benevolent Annual General

Meetings slated for 28th March 2020 – but postponed on 18th March, 2020- through appropriate information and communication technology platforms, on a date to be communicated to members, by the LSK Council.”

33. This court was not obligated to grant orders that had not been formally sought by the Applicant in its Originating Summons. For the foregoing reasons, this court was not persuaded that it should order that the AGMs be held on 23rd June 2020 as the Applicant had orally sought during the hearing of this matter.

DISPOSITION

34. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Originating Summons dated 22nd May 2020 was merited and the same is hereby allowed in terms of Prayers Nos 2 and 3 as follows:-

1. THAT the application shall be served on the members of Law Society of Kenya via email within seven (7) days from the date of this Judgment.

2. THAT the Applicant be and is hereby granted leave to hold, the Law Society of Kenya and Advocates’ Benevolent Annual General Meetings that had slated for 28th March 2020 but postponed on 18th March 2020, through appropriate information and communication technology platforms, on a date to be communicated to members, by the LSK Council.

3. For the avoidance of doubt, the period of issuance of the requisite notices prior to convening the AGM and Agenda must be strictly complied with and/or adhered to and all members accorded an opportunity to participate in the said AGM as stipulated in the Law Society Act No 4 of 2015 and Law Society of Kenya (General) Regulations, 2020.

35. It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of June 2020

J. KAMAU

JUDGE