



Republic v Sacco Societies Regulation Authority; Nandi Hekima Societies Limited (Interested Party) Ex parte John Korir (Judicial Review 2 of 2013) [2019] KEHC 5110 (KLR) (24 June 2019) (Judgment)

Republic v Sacco Societies Regulation Authority; Nandi Hekima Societies Limited (Interested Party) Ex parte John Korir [2019] eKLR

Neutral citation: [2019] KEHC 5110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
JUDICIAL REVIEW 2 OF 2013
HA OMONDI, J
JUNE 24, 2019
IN THE MATTER OF AN APPLICATION FOR
ORDERS OF CERTIORARI AND PROHIBITION**

BETWEEN

REPUBLIC APPLICANT

AND

SACCO SOCIETIES REGULATION AUTHORITY RESPONDENT

AND

SACCO SOCIETIES REGULATORY AUTHORITY RESPONDENT

AND

NANDI HEKIMA SOCIETIES LIMITED INTERESTED PARTY

AND

JOHN KORIR EXPARTE APPLICANT

JUDGMENT

1. The *ex-parte* applicant was a former CEO of the interested party who had been appointed by the respondent. The respondent is a public Authority established under Section 4(1) of the [Sacco Societies Act](#) 2008 (Act no. 14 of 2008), whereas the interested party is a Cooperative Society established under the [Cooperative Societies Act](#) No. 12 of 1997 and regulated under the [Sacco Societies Act](#) No. 14 of 2008.



2. The court on 18.3.2013 to institute judicial review proceedings granted leave. The applicant filed a notice of motion dated 22.3.2013 and filed on the same day. The applicant sought for the following orders:
 - a) An order of *certiorari* do issue to remove into this honorable court and quash the decision of the Sacco Society Regulatory Authority (SASRA) given on 26.9.2012 removing John Korir as a director of Nandi Hekima Sacco, the 2nd respondent.
 - b) An order of prohibition do issue prohibiting the respondent from relying on an alleged report that allegedly culminated in the decision of 26.9.2012 before according the *ex-parte* applicant the right to be heard,
 - c) Costs be provided for.
3. The application was premised on the grounds that the respondent had no jurisdiction to remove the applicant from being a director thus acted outside section 51 of the [Sacco Society Act](#) No.14/2008. The respondent had acted ultravires and had offended the doctrine of *gudi alterum peterm*. The applicant further deposed that he was one of the nine directors of the interested party. Allegation had been made that the Board had embezzled funds and inspection was done on 18.19.2011 and 14.9.2011. The Board had approved investments in Hekima Cooperative Holdings and Hekima Stores. On 15.2.2012 the Board of directors responded to the respondent's complaints and on 27.2.2012 they were summoned to have a special meeting of the Board of directors on 3.8.2012. On this day the applicant was absent for the meeting, although his other co-directors were given 60 days suspension. The respondent had no jurisdiction under section 51(c), 67 and 72(6) of the [Sacco Regulations 2010](#) to dismiss him.
4. The respondent filed its replying affidavit through Carilus Ademba the CEO and averred that all Sacco Societies undertaking deposit-taking business have to be registered under the [Cooperative Societies Act](#) (Cap 490 of the Laws of Kenya). The Sacco offers quasi-banking financial services thus are governed by [Sacco Societies Act](#), 2008. The interested party has since the year 2011 been licensed to conduct deposit-taking business regulated by the [Sacco Societies \(deposit-taking Sacco business\) Regulations 2010](#).
5. Section 51 of the [Act](#) empowers the authority to take supervising enforcement against a Sacco Society when there is reason to believe the Sacco is being conducted in a contrary manner. The interested party did not issue a report on its dealings with Hekima Coop Holdings Ltd. The respondent discovered the Sacco was being conducted in a manner detrimental to the best interests of the Sacco members. The interested party was meant to be a shareholder of Hekima Coop Holdings Ltd but the Company's documents of incorporation and registration did not show. The directors of Hekima Coop Holdings were also the directors of the interested party. Loans had been advanced on land purchased by the interested party but had been registered under Hekima Coop Holdings Ltd.
6. The applicant was suspended for 60 days and was given a chance to respond within 15 days to the specific allegations made against him as required by the rules of natural justice. The suspension letter dated 3.8.2012 contained the specifics of allegations and reasons for his dismissal. He failed to respond to those allegations and on 26.9.2012 he was removed from office and prohibited from holding any position in any Sacco. Article 47 on fair administrative action and Article 50 was not breached. Sec 51(c) of the [Sacco Societies Act](#), 2008 as read with Regulation 67 and 72 of the [Sacco Societies \(Deposit -taking Sacco Business\) Regulations 2010](#) allows the authority to direct suspension or removal from office. The applicant herein and 3 other Directors had filed a Judicial Review Application case vide JR Case No. 20 of 2012 at Eldoret High Court.
7. By an order issued on 21.3.2017 the interested party was ordered to file and serve this response within 21 days, however there is no such response on record.



Submissions

Applicant's submissions

8. The applicant could only be removed from office through a general meeting of the interested party, the respondent could only regulate and recommend his removal. Even if he was to be removed he was to be accorded a hearing first. In *Ridge v. Balduisin* 1964 AC 40 clarified that the rules of natural justice in particular right to fair hearing (audi alteram partem rule) applied not only to bodies hearing a duty to act judicially but also to the bodies accusing administrative duties.
9. Also Article 47(1) and 50(1) of the *Constitution* provides for right to administrative action and fair and public hearing before a court of law or tribunal respectively. In *JSC v. Mbalu Mutawa & Anor* (2016) eKLR held that the right to fair hearing under common law is a general right albeit a universal one. It is a reflection of some of the national values in Article 10 such as the Rule of law, human dignity, social justice and good governance.
10. The respondent was punishing the applicant for enforcing decisions by the board instead of punishing the Board. The court was referred to *R v. Public Procurement Administrative Review Board & Anor*, Nairobi HC Misc Applc No. 356/2015.
11. In addition to the above the respondent ought to have made the decision in good faith since it was based on malicious allegations by parties, and the notice was verbal hence invalid. The applicant urged the court to allow the application.

Respondent's submissions

12. The respondents urged that the Court of Appeal had already made a determination in a case with similar circumstances as this in Civil Appeal No. 76/2015, *Silas Kipkemboi v. Sacco Societies Regulatory Authority & Anor*.
13. Section 5 of the *Sacco Act* mandates the respondent to regulate and supervise Sacco Societies. The respondent had conducted investigations on mismanagement and financial impropriety of the Sacco and based on that the applicant was to respond to the allegations, but he failed to show cause. Section 51(c) provides for suspension or removal of any officer involved in such conduct from the service. This is also provided for in Rule 72(6) of the *Sacco Society Regulations* which provides as follows:

“The Authority or Sacco may remove an officer from the office if the officer directly or indirectly violates the *Act*, these regulations or the Sacco societies bylaws,, engages or participates in any unsafe or unsound practice in connection with the Sacco Society.”

In addition to this the respondent did not act ultra vires as alleged by the applicant. The law shown above gives the respondent power to suspend and remove an officer employed by the Sacco.
14. The applicant had alleged that he was not given a fair hearing by giving his side of story.

The applicant was served with a letter on 26th September 2012 giving reasons for his proposed removal; he was given 15 days to respond which he didn't. The court in *Silas Kipkemboi (supra)* case, the court observed the applicant had been invited to respond to his proposed removal which was inline with section 43(3) of the 15 *Act (Fair Administrative Actions Act)*.
15. The decision to remove the applicant from office was in no way discriminative.



He had failed to show how the decision was discriminatory. In *R v. National Police Service Commission Ex-parte Daniel Chacha* [2016] eKLR the court in dismissing an allegation on discrimination held that, no record was produced before the court on the basis, which the court would determine that the applicant was treated in a discriminatory way. Finally the court was urged to dismiss the application.

16. The issues that arise for determination are;
- I. Whether the applicant was given a fair hearing
 - II. Whether the respondent acted ultra vires
 - III. Whether the orders can be granted.
17. The applicant herein moved the court seeking for judicial review orders. It is not in dispute that the applicant was a director with the interested party. It is also not in dispute that the applicant was removed from office. The *ex-parte* applicant urged the court to allow the notice of motion application. The case in *Commissioner of Land v. Kunste Hotel Ltd* [1995-1998] 1EA 1 (CAK) laid the principle on Judicial review whereby the court of Appeal judges held that,

“in exercising the power to issue an order of *certiorari*. The court would be exercising a special jurisdiction outside the ambit of section 136(1) of the *Government Lands Act* and section 13 A of the *Government Proceedings Act*.”

Further

“Judicial Review is concerned not with the private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he has been subjected”

As was held in *Republic v. Secretary of State for Education and Science ex-parte Avon County Council* [1991] 1 All ER 282.

18. The purpose of judicial review as was held by Githua J in *Republic v. Commissioner of Customs Services ex-parte Africa K-Link International Limited* Nairobi HC Misc. JR No. 157 of 2012 [2012] eKLR held as follows:

“It must always be remembered that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself. Once it has been established that a statutory body has made its decision within its jurisdiction following all the statutory procedures, unless the said decision is shown to be so unreasonable that it defies logic, the court cannot intervene to quash such a decision or to issue an order prohibiting its implementation since a judicial review court does not function as an appellate court. The court cannot substitute its own decision with that of the Respondent. Besides, the purpose of judicial review is to prevent statutory bodies from injuring the rights of citizens by either abusing their powers in the execution of their statutory duties and function or acting outside of their jurisdiction. Judicial review cannot be used to curtail or stop statutory bodies or public officers from the lawful exercise of power within their statutory mandates.”

19. This court has a duty to look at the decision process itself and ensure that it was in accordance with the law. The Saccos in Kenya are governed by the *Sacco Societies Act* and the *Sacco Society Regulations Act*.



20. The applicant averred that he was not given a fair hearing by the respondent. Article 47 provides: every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (1) If a right or fundamental freedom of a person has been or is likely to be adversely affected by an administrative action, the person has right to be given written reasons for the action
 - (2) Parliament shall enact legislation to give effect to the rights in clause (1) and the legislation shall-
 - a. Provide for the review of administrative action by a court or, if appropriate an independent and impartial tribunal, and
 - b. Promote efficient administration.

The respondent had carried out investigations and made several recommendations to the interested party. The interested party was to inform the respondent how the recommendations were going to be addressed, which they responded to by a letter dated 2.2.2012 and by a further letter dated 15.2.2012 the respondent was informed that Hekima Coop Holdings Company Secretary would address issues in regard to business with the interested party.

21. The applicant by a letter dated 26.9.2012 was issued with a letter. Its title read, “Suspension & notice of intention to remove as an officer of a Sacco Society” it was written pursuant to the provisions of Section 51(c) of the *Sacco Societies Act*, 2008 and Regulations 67 and 72 of the *Sacco Societies (Deposit taking Sacco Business Regulations 2010)*. The letter contained the grounds on which it was made, specific statement of facts constituting the grounds for removal. He was required to give a written explanation within 15 days on why he should not be removed from office as a member of Board of Directors of the Sacco and from holding office in any Sacco Society. He was further barred from performing any duty as a director till he responded to the issues addressed to him. The applicant herein chose not to respond to this letter, though he is alleging he was not given right to fair administrative action, he had urged the court to rely on *JSC v. Mbalu Mutava & Anor* (*supra*), however the case is different from the instant suit since a commission was to be formed after his suspension, which was mandated to conduct a preliminary inquiry to see that the complaints against the respondent were not frivolous or lacked in substance. This is different from the instant case.
22. In *R v. Public Procurement Administrative Review Board & 2 Ors* the board had acted in excess of its power and jurisdiction. However in the instant suit the respondent had even cited the law that it had relied on in arriving at its decision. Had the applicant responded to the respondent’s letter and he was still not given a chance to represent himself, then the respondent would have acted unfairly by not observing the rules of natural justice. That is not the case here.
23. Section 51 of the *Sacco Societies Act* provides,
- “where the Authority determines that a Sacco Society conducts its business in a manner contrary to the provisions of this *Act* or of any regulations made thereunder or any other Act or in a manner detrimental to or not in the best interest of its members or members of the public, or a Sacco Society is undercapitalized, the Authority shall-
- (3) direct the suspension or removal of any officer involved in such conduct from service of society.”
24. The application has no merit. The respondent acted within the law to suspend the applicant. The application lacks merit and is dismissed with costs to Respondent.



DELIVERED, SIGNED & DATED THIS 24TH DAY OF JUNE 2019 AT ELDORET.

H. A. OMONDI

JUDGE

