



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

JR MISC CIVIL APPLICATION NO 6 OF 2018

REPUBLIC.....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIES.....RESPONDENT

AND

NAROK MUSLIM WELFARE SOCIETY.....EX PARTE APPLICANTS

AND

MOHAMED HASSAN YUNIS & OTHERS.....INTERESTED PARTIES

RULING

1. Pursuant to the provisions of Order 53 Rule 3 of the Civil Procedure RULES and sections 8 and 9 of the Law Reform Act (Cap 26) Laws of Kenya the *ex parte* applicants have through their notice of motion dated 7th March 2019 applied for the following orders.

1. An order of mandamus directing the respondent to cancel the letter dated 12th October 2015; which confirmed the interested parties as office bearers of Narok Muslim Welfare Society. Simultaneously, they also seek an order directing the respondent to issue a letter of confirmation to the *ex parte* applicants as the bona fide office bearers of Narok Muslim Welfare Association.

2. An order of prohibition to prohibit the respondent from recognizing the interested parties as the bona fide officials of Narok Muslim Association.

3. An order to restrain the interested parties from acting or holding themselves out to any person as the office bearers of Narok Muslim Welfare Association.

4. An order to make provision for costs of the instant application.

The application is supported by 19 grounds that are set out on the face of the notice of motion and a 22 paragraphs supporting affidavit.

2. The following are the major grounds in support of the motion. In October 2015, the interested parties, misrepresented themselves to the respondent that the *ex parte* applicants' society had conducted elections. The *ex parte* applicants forged the signature of the secretary at that time. It is through this fraudulent misrepresentation that the respondent confirmed the interested parties as the office bearers of the *ex parte* applicants' society. The *ex parte* applicants have stated in the majority of the grounds the history of litigation between them and the interested parties. They have also stated that on 5th December 2018, they demanded that the respondent withdraws the certificate of confirmation given to the interested parties, but the respondent failed to act. As a result of the interested parties' activities and the respondent's inaction, the activities of the *ex parte* applicant's society have stalled to the detriment of its members. This they state has also violated the freedom of association of the *ex parte* applicants and the members of the society.

3. In addition to the grounds in support of the notice of motion, the *ex parte* applicants have supported their application with the 20 paragraphs supporting affidavit of Ahmed Bashir Gele. The supporting affidavit has replicated the grounds that are set out on the face of the notice of motion.

4. Counsel for the *ex parte* applicants has filed written submissions. He has submitted that the gist of the *ex parte* applicant's case is that in October 2015 the interested parties misrepresented to the respondent that the society had conducted elections. Counsel has submitted that the said elections were as a result of fraud and misrepresentation. That despite the matter being brought to the attention of the registrar, the latter

has not taken any remedial action. Counsel has therefore submitted that this court has the mandate to issue the prerogative orders to remedy the position.

The case for the respondent

5. The Hon the Attorney General who appears for the respondent has filed grounds of opposition. He has submitted that the *ex parte* applicants have not proved by evidence that the interested parties committed fraud and misrepresentation in the process of being confirmed as the office bearers of the society. He has further submitted that judicial review concerns itself with the procedural processes in making the decision. It is not concerned with the merits of the decision.

6. He has therefore urged the court to dismiss the action since the respondent acted within the powers conferred upon him.

The case for the interested parties.

7. Counsel for the interested parties filed written submissions and urged the court to dismiss the application. Counsel cited many authorities in her written submissions.

ISSUES FOR DETERMINATION

8. In the light of the affidavit evidence of the *ex parte* applicants, submissions of their counsel, the grounds of opposition by the respondent and his submissions and the interested parties' submissions, I find the following to be the issues for determination.

1. Whether or not the application of the *ex parte* applicants is time barred.
2. Whether or not the matter is *re judicata*.
3. Who bears the costs of this application?

ISSUE 1

9. The matter complained of arose on 12th October 2015, when the registrar confirmed the interested parties as the office bearers of the Narok Muslim Society. The orders sought to quash the decision of the registrar of societies is mandatorily required to be filed within six months from 12th October 2015. By error I granted *ex parte* leave to the *ex parte* applicants to file for the orders sought. The court has no power to extend the period within which to file for the orders sought. In the circumstances, I find that the application is time barred in terms of Order 53 of the 2010 Civil Procedure Rules.

ISSUE 2

10. This matter is also *res judicata* by virtue of this court's ruling of 3rd December 2018.

ISSUE 3

11. The interested parties will have the costs of this application.

12. The upshot of the foregoing is that the application is dismissed with costs to the interested parties.

Ruling signed, date and delivered in open court at Narok this 25th day of July 2019 in the presence of Mr. Kilele holding brief for Mr. Chege and Ms Njeri for the interested parties and in the absence of the respondent.

J. M. Bwonwonga

Judge

25/7/2019