



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 139 OF 2015

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF SOCIETIES.....RESPONDENT

AND

MANJEET SINGH BHULLER.....1ST INTERESTED PARTY

NARINDER SINGH ROOPRA.....2ND INTERESTED PARTY

DARSHAN SINGH CHANA3RD INTERESTED PARTY

(SUED AS THE OFFICIAL OF THE EAST AFRICAN NAMDHARI SANGAT SOC/903)

Ex-parte

SATVINDER SINGH SIAN

KEWAL SINGH FLORA

RULING

1. Through the chamber summons application dated 24th April, 2015 Satvinder Singh Sian and Kewal Singh Flora pray for orders as follows:

- “1. The Interested-Parties/Applicants be granted leave to apply for orders of mandamus, Prohibition and Certiorari as the case may be.**
- 2. The said leave do apply as stay prohibiting the society’s officials from dealing, selling, managing and/or putting to waste any of the society’s assets Nos. IR CR209/24/3, IR/CR209/27/48 and IR/CR209/41/36–Nairobi or finances until the hearing and determination of these proceedings.**
- 3. The honourable court do appoint an adhoc committee to manage the affairs of the society herein in the intervening period.**
- 4. Costs of this application be provided for.”**

The application is supported by the affidavit of Satvinder Singh Sian sworn on 24th April, 2015.

2. Order 53 Rule 1(2) of the Civil Procedure Rules, 2010 (CPR) provides that:

“(2) An application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.”

3. In order for the Court to decide whether to grant leave to an applicant to commence judicial review proceedings, the Court has to consider the contents of the statement. In the statement dated 24th April, 2015 the reliefs sought are:

1. **An order of PROHIBITION to prohibit the Interested-Parties/Respondents their servants or agents from dealing, selling and/or putting to waste the assets of the society Nos. IR/CR209/24/3, IR/CR209/27/48 and IR/CR209/41/36-Nairobi pending the hearing and determination of this matter.**
2. **An order of MANDAMUS commanding the Interested-Parties/Respondents to allow the immediate registration of new membership into the society as the case may be.**
3. **An order of CERTIORARI directed at the Registrar of Societies (Respondent) removing to this honourable court its decision made on 31st December 2013 registering the Interested Parties/Respondents as the bonafide officials of the society for purposes of having the decision quashed and new elections ordered forthwith.”**
4. A perusal of the reliefs sought shows that the applicants seek an order to prohibit the officials of East African Namdhari Sangat (Soc/903) (“the Society”) from disposing of some properties in Nairobi. The said order is also to apply to the Respondent, the Registrar of Societies. This kind of order though called a prohibition is actually an application for injunction which is available in civil cases. The applicants ought to approach the correct court for an order of injunction.
5. The second relief to be sought if leave is granted is an order of mandamus commanding the officials of the Society and the Respondent to allow the immediate registration of new members into the Society. Once again, the public law remedy of mandamus cannot issue to compel a private organization to admit new members. Additionally, there is nothing placed before the Court to show that the Respondent has a statutory duty to compel the Society to admit new members and that the Respondent has failed to perform that duty.
6. The third prayer is for an order of certiorari to remove into this Court and quash the decision dated 31st December, 2013 by the Respondent to register the current officials of the Society. This prayer has been overtaken by events as Order 53 Rule 2 CPR requires that an application for leave to apply for an order of certiorari should be made not later than six months after the date of the impugned decision. Sixteen months have passed from the time the challenged decision was made on 31st December, 2013.
7. In short, the applicants have not established an arguable case and their application for leave to institute judicial review proceedings fails for want of merit. The said application is therefore rejected and dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 14th day of May, 2015.

W. KORIR,

HIGH COURT OF KENYA