REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL RVIEW DIVISION

MISCL.CIVIL APPLICATION NO. 3 OF 2015

IN THE MATTER OF: AN APPLICATION FORORDERS OF CERTIORARI AND PROHIBITION

IN THE MATTER OF: NJURI NCHEKE SUPREME COUNCIL OF AMERU ELDERS

IN THE MATTER OF: THE SOCIETIES ACT. CAP. 108, LAWS OF KENYA

BETWEEN

REPUBLIC ……..…….....APPLICANT

-VERSUS-

REGISTRAR OF SOCIETIES ……..……..... 1ST RESPONDENT

COUNTY GOVERNMENT OF MERU ……..…….2ND RESPONDENT

AND

LINUS KATHERA ……..……..……. 1ST INTERESTED PARTY

JOSEPHAT MURANGIRI …….…….. 2ND INTERESTED PARTY

STEPHEN KIRAITHE …….…..……..... 3RD INTERESTED PARTY

JOSEPH MUTURA …….…….. 4TH INTERESTED PARTY

AYUB BUNDI …… 5TH INTERESTED PARTY

ALAHI MWENDA ……...…….. 6TH INTERESTED PARTY

EX PARTE

NJURI NCHEKE SUPREME COUNCIL OF AMERU ELDERS

(suing through its officials)

PAULO M'ITHINGIA alias PAULO M'IKOTHA M'MPRURUTHA

PHARES MUTWIRI RUTERE

SIMON MWAMBA MUKANGU

JUDGEMENT

1. The Ex parte applicants through ex-parte Chamber Summons dated 12th February 2015 sought leave to apply for Judicial Review orders for:

(a) An order of certiorari to bring into this Honourable Court and quash the results of Njuri Ncheke Elections organized an conducted by the2nd respondent on Saturday 7th February, 2014 at the applicants' headquarters at NchiruNjuri Ncheke Shrine in Meru County resulting in the purported election of the interested parties as officials of the applicant.

(b) An order of certiorari to bring into this Honourable Court and quash the decision of the second respondent contained in the Daily Nation of Tuesday February, 10, 2015 to hold a coronation ceremony on Saturday February, 14th 2015 or any other subsequent at the NjuriNcheke Shrine at Nchiru,MeruCounty to install the interested parties as the officials of the applicant.

(c) An order of prohibition to prohibit the first respondent – the Registrar of Societies – from registering the interested parties namely Linus Kathera, JosphatMurangiri, Stephen Kiraithe, Joseph Muturia, AyubBundi, AlhajiMwendia, elders of Njuri Ncheke as officials of the applicant.

(d) An order of prohibition to prohibit the second respondent –Meru County Government – from interfering with the operations, mandate and affairs of the applicant.

2. That leave was granted by the honourable court on 13th February, 2015. The exparte applicants filed the substantive notice of motion dated 25th February, 2015 on 26th February, 2015 seeking the following :-

(a) That an orderof certiorari to bring into this honourable court and quash the results of Njuri Ncheke Elections organized and conducted b the 2nd respondent on Saturday 7th February, 2014 at the Applicant's headquarters at NchiruNjuri Ncheke Shrine in Meru County resulting in the purported election of the interested parties as officials of the applicant.

(b) That an order of certiorari to bring into this Honoruable court and quash the decisionof the second respondent contained inthe Daily Nation of Tuesday February 10,2015 to hold a coronation ceremony on Saturday February 14, 2015 or any other subsequent at the NjuriNcheke Shrine at Nchiru, Meru County to install the interested parties as the officialsof the Applicant.

(c) That an order of prohibition to prohibit the firstrespondent – the Registrar of Societies from registering the interested parties namely Linus Kahera,JosphatMurangiri, Stephen Kiraithe, JosephMuturia, AuyuBundi, AlhajiMwendia elders of Njuri Ncheke as officials of the applicant.

(d) That an order ofprohibition toprohibit the second respondent – Meru County Government – from interfering with the operations, mandate and affairs of the

applicant.

(e) That the costs of this application be borne by the respondents.

3. The court at the pre-trial conference directed that the ex parte application to file and serve submissions after all further affidavits had been filed within 14 days after last day of filing of further affidavits and that the respondents and interested parties to file and serve their submissions within 14 days from the date of service and that the parties be ready to highlight on their submission on 11th May 2015.

4. M/s. Kinoti and Kibe company Advocates for the exparte applicants filed their submission dated 1st July 2015 on 2nd July 2015; M/s. MungaKibanga& Co. Advocates filed submissions on behalf of the 2nd respondent andthe 1st to the 6th interested partes dated 1st July 2015 on 2ND July 2015 whereas, M/s. Susan Lutta learned state counsel filed submission for the 1strespondent dated 6thJuly 2015 ON 6th July, 2015. The mattercame up for highlight on the submission on 6th July 2015 when Mr.KibeMungai, learned advocate appeared jointly with Mr. Dennis Muathe,learned advocate for the exparte applicants; Mr. Mutuma Kibangalearned advocate appeared for the 2ndrespondent and all interestparties and M/s. Susan Lutta learned state counsel appeared for the 1st respondent.

5. I have very carefully considered the pleadings by the exparte applicants, the respondents and interestedparties as well as the rival submissions by the advocates and their oral submission before me. Theissues for consideration arising out of the above can be summarized as follows:-

(a) Whether an order of certiorari to bring to this court and quash the results of njurincheke elections organized and conducted by the 2nd respondent on 7th February, 2014 at the applicants headquarters at nchirunjurinchekeshirine in Meru county resulting in the purported elections of the interested parties offficials of the application can issue?

(b) Whether an order of certiorari to bring into this honourable court and quash the decision of the second respondent contained in the daily nation of Tuesday February 10th, 2015 to hold a coronation ceremony on Saturday February 14th, 2015 or anyother subsequent date at njurincheke shrine at nchiru, Meru county to install the interested partes as the officials of the applicant can issue?

(c) Whether an order of prohibition to prohibit the first respondent – the registrar of society – from registering the interested parties namely Linus Kathera; JosephatMurngira; Stephen Kiraithe; Joseph Muturia, AyubBundi, AlahiMwendia; elders of njurincheke as officials of the applicant can issue?

(d) Whether an order of prohibition to prohibit the second respondent Meru county government from interfering with the operations, mandate and affairs of the applicant can issue?

(e) Who should get the costs of the application?

A. WHETHER AN ORDER OF CERTIORARI TO BRING TO THIS COURT AND QUASH THE RESULTS OF NJURI NCHEKE ELECTIONS ORGANIZED AND CONDUCTED BY THE 2ND RESPONDENT ON 7THFEBRUARY 2014 AT THE APPLICANT'S HEADQUARTERS AT NCHIRU NJURI NCHEKE SHRINE IN MERU COUNTY RESULTING TO THE PURPORTED ELECTION OF THE INTERESTED PARTIES OFFICIALS OR THE APPLICANTS CAN ISSUE?

6. Mr. Kibe Muigai, Learned advocate for the ex parte applicantS submitted that the dispute before this court relates to an arranged leadership dispute in the Njuri Ncheke.He urged the

uncontested facts that the association are for Meru people whose membership is eligible to male adults of the aforesaid Community wherever they reside in termsof regional structure and mainly Meru County; Tharaka Nithi County and Isiolo County (ancestrallandof Meru wherever located). He urged the Njuri Ncheke was founded by a man called KariraNdesau and that there is an agreement that Njuri Ncheke is an important and centralorganization in thetraditional leadership of the Meru people andits functions are constructive in dispute resolution and important cultural events. He urged that the society's organization and operation has been evolvingwith the AmeruSociety to meet cultural and contemporary changes in the social, economic, and political realms; thatorganizational structure of NjuriNcheke isrepresentative so as to ensure proper regional and unityof Ameru people. That NjuriNcheke as an organization decided to be registered so as to comply with the Laws of Kenya and as such was registered as a society with a Constitution to advance its objectives as per varifying affidavit dated 12th February 2015. That Njuri Ncheke is non-political Association and membership is open to all Meru adult males irrespective of all their political affiliation and that its policy is to work with the government of the day though it remains independent.

7. Mr. Kibe Muigai,learned advocatesubmitted that the events to this matter were triggered by a meeting on 7thFebruary 2015 at Njuri Ncheke Shrine in Meru County. He urged that an election was allegedly conducted in which the interested parties replaced the exparte officials. He submitted that in the Replying affidavit bythe 2ndrespondent, and interested parties they have all sought to justify why it wasjustified to oust the officials of Njuri Ncheke (at National level). Mr.Kibe Mungai further contended according to the Notice of Motion dated 25th February 2015, the exparte applicants seek interalia to challenge the legality of the purported electionsconducted on Saturday the 7th February 2014 at Njuri Shrine in Meru County*(underlining mine to emphasis part of what the ex parte applicants are seeking)*

8. Mr. Kibe Muigai, learned counsel submitted further that following the purported election the County Government of Meru published a press statement inthe Daily Nation of Thursday 10th February 2015 asper page 22 of their replying affidavit and stated that the government assisted the parties to ensure the elders were ousted andit stated culture is a function of the county government andthat it was entitled to do what it did. He urged the Njuri Ncheke is not a cultural organization but more important open to the current Constitution ofKenya urging the traditional Meru county falls within three (3) counties, Meru, Tharaka Niithi and Isioloand questioned insucha situation when do one county have jurisdiction to subject Njuri Ncheke to its county.

9. Mr.Kibe Mungai, learned counsel submitted that Njuri Ncheke is an association with membership of over 3000 people and within the meaning of Section 2 of the Societies Act, Cap. 204 it is a society.

Section 2 of the Societies Act, (Cap. 108) Laws Of Kenya defines a Society as follows:-

"Society includes any club, company, partnership or other associationof ten ormore persons, whatever its nature or object, established in Kenya or havingits headquarters or chief place ofbusiness inKenya, and any branch of a society, but does not, except in paragraphs (i) and(ii) of Section 11 (2) (f) of this Act include . . .

10. Mr.Kibe Mungai, learned advocate submitted therefore it was in conformity with the Kenya Laws that Njuri Ncheke was registered in 2009 as a Society. He further contended that under**Section 5 of the Society Act**, it is unlawful to manage unregistered society. He urged the respondents contention that Njuri Ncheke is incapable of registration has nobasis as the same is registered. He urged the respondents replying affidavit point to one thing, that is, a coup d'état was carried out to removelegitimately elected officials; that they were removed from positions created by the law and the same were assumed by the interestedparties.

11. He submitted further that thepoint of departure is where the interested parties in

corroboration with theGovernor should be removed from position that is not created by the Constitution especially where the registration of Njuri Ncheke has not been denied or challenged and more so when the interestedparties were admitted to Njuri Ncheke after 2009.

12. In support of the orders soughtby the exparte applicantsMr.KibeMuigai, learned advocate relied inthe case of **Kenya National Examination Council and Republic ex pate Geoffrey G. Njoroge& Others Civil Appeal No. 266 of 1996 (C.A. at Nairobi.** He urged the purposes of certiorari is to quash the election to replace the exparte applicants. He urged the exparte applicants had a Constitution providing that an election can take place during an annualmeetingor at the specialGeneral Meeting.

13. Mr.KibeMuigai, learned advocate submitted that no meeting has beenconvened by the Chairman andno Notice was issued to refrainNjuri Ncheke members from the meeting and that it is unknown who convened themeeting but on the same breath he urged it was the Governor and his supporters who caused themeetingto take place. He further submitted that there must have been a convenor of the meeting. He urged the Njuri Ncheke is governed by the Constitution and as such urged the court tonullify the election conducted on 7th February 2015.

14. M/s. SusanLutta,learned State Counsel appeared for the 1st respondent. She opposed the notice of motion andsubmitted that she relied on the replying affidavit filed on 23rd April 2015 and submission filed on 6th July 2015.

15. She submitted that the 1st respondent does not interfere with theinternal affairs of registered society, urging that the 1strespondents' mandate is to ensure compliance in the management of societies in accordance with Societies Act (Cap. 108) and Societies Constitution.

16. M/s. Susan Lutta, Learned State Counsel submitted as regards election the 1st respondent begins at a point of document submitted to itby the officials and confirm compliance with the Act and that the constructive constitution. She listed the requireddocuments to include dulysigned notice issued by the Secretary convening the AnnualGeneral Meeting; that is 21 days notice; Minutes of the Annual General Meeting duly signed by three (3) officials of the society; a list of members who attended the meeting and Form H (Notification of Change of officials) also signed by three (3) officials.

17. M/s. Susan Lutta, learned state counsel submitted that in the instance case, the 1st respondent has not received the above listed documents todateand as such the 1strespondent is astranger ontheissue of the alleged elections; that on their part they have taken no decision as regards approving the new officials as per election of 7th February 2015.

18. M/s. Susan Lutta learned state counsel further submitted that the exparte applicants did not exhaust the statutory internal dispute resolution mechanism provided for in the Societies Act.

19. Mr. Mutuma Kibanga learned advocate appeared for the 2nd respondentand the interested parties.He opposed thenotice of motion urging that inthis matter the courtmust be guided bythe nature of theclaim filed before the court and the prayers sought by the exparte applicants.

20. Mr.MutumaKibanga, learned advocate, stated the matter before court is of Judicial Review nature and that it is not a civil matter nor a criminal matter and therefore for the court tobe satisfied to grant theorders sought the degree ofproof is neither on balance of probabilitiesnorbeyond reasonable doubt. In support of that propositionhe referred thecourt to the caseof **Republic v Public Procurement Administrative Review Board and Kenya University &another Ex parte Sanitam Services (E.A)Ltd HC.JR.Misc. Appl. 204 of 2013 (Milimani LawCourts – Nairobi)** paragraph 30. Mr. Kibaga learned advocate submitted that the court in dealing withJudicialReview application is concerned with decision making process rather than

with its merits.

21. He urged that the first prayer of the exparte applicant is seeking to bring to this court and quash the results of Njuri Ncheke Elections organized and conducted by the 2nd respondent on Saturday 7th February 2014 at the applicant's headquarters at NchiruNjuri Ncheke shrine in Meru County resulting in the purported election of the interested parties as officials of the applicant.

22. Mr. Kibanga, learned advocate submitted that in dealing with Judicial Review matters the law is very clear that a party must challenge the process rather than the results unless the applicants wished to challenge the decision of a public body or officer. Mr. Kibangareferred to the case of **Republic v PublicProcurements Administrative Review Board and KenyattaUniversity&another, exparte – Sanitam Services (E.A.) Ltd(Supra) paragraph 31 and 37.**

23. Mr.Kibanga learned advocate submitted further that the court has no jurisdictionor power ina judicial review matter to quash the results without being invited to remove into thiscourt a decision that wasmade or allegedly made to engage that exercise.

24. He further urged thatconsiderable submission weremade to suggest that the2nd respondent engaged in the process of conducting election complained of but none of these submissions support the granting of prayer No.1 in the manner in which it has been presented before the court. He argued the Applicant is a private society as per certificate of registration dated 17/11/2009 No.31016 annexture **"PMR1".** He also referred to a letter by Registrar of societies dated 17/11/2009 which requires the society to keep a register of its members; keeping of one or more books of accounts, furnish the registrar with annual returns in respect of the immediately proceeding calendar year. He argued the list of members is missing from the documents filed in court by the Applicant. He further argued it has neither been shown that there has been books of accounts nor is there evidence of Annual Returns. He therefore argued that the court is dealing with a registered private society with capacity to sue and to be sued and own property. He therefore submitted it is therefore a legal person and not a general society in which every Meru male adult is presumed to be a member or where any male adult is legible for membership.

25. Mr. Mutuma Kibanga, learned Advocate submitted that the nature of this character who is the Applicant is shown that it did not exist as a society registered under Rule 4 of the Societies Rules before 17/11/2009. He argued the Applicants' Counsel submitted a history of Njuri Ncheke as an historical Entity which was not supported by any authority on record before court but the same was only intended to create a false connection between Njuri Ncheke as a traditional Meru Cultural Entity and a society on 17/11/2009.

26. Mr. Kibanga learned Advocate in his further submissions submitted that parties are always bound by their pleadings. He urged all historical explanations offered in the submissions are nowhere in any of the Applicants affidavit or replying affidavit or further affidavit by the Applicants and such he submitted that remains as a mere allegation. Mr. Kibanga learned Advocate took issue with contents of paragraph 4, of the verifying affidavit in which the Applicants aver that they are representatives of Meru people, and also paragraph 6 which he submitted the contents cannot be true.

27. He urged the nature of prayers sought against the 2nd Respondent cannot be granted as they are not prayers which can be granted in a Judicial Review application. He argued all matters raised in the verifying affidavit and further affidavit are all contested referring tothe replying dated 13th March 2015 by Hon. J. Muturi on behalf all parties at paragraph 5 in which he deponed that rules, regulation, membership, communication, proceeding, activities and records of Njuri Ncheke are not and have never been kept in a written form. The advocate submitted that this is in conflict with the requirements by the Registrar of Societies as regards keeping of minutes, As regards paragraph 13, 14 and 15 of further affidavit by the Applicant filed on 2/7/2015 he submitted there is no agreement on "***Ntuiko***" as explained by the Applicants.

28. Mr. M. Kibanga learned Advocate further pointed further disagreement on facts raised by the Applicants on election and leadership at paragraph 7 and 8 of affidavit by Hon. J. Muturi which the verifying affidavit dated 13/2/2015 bears an annexture which is the Constitution of the Applicant at page 7 (iii) contradicts the averments by Hon. J. Muturi when it come to election of officials of Njuri Ncheke as opposed to that of entity which is the Applicant as it states the official should hold office (Chairman) for life. He concluded by submitting that there is no doubt on perusal of the affidavits that there are serious contested facts leading to the question as to whether the Applicant is a registered Society with specific members or is a century old customarily entity of Meru people.

29. Mr. Kibanga learned Counsel wondered whether the court is being invited to address the issue as to whether the applicant is a registered society with specific members or is a century old customarily entity of the Meru people in a matter brought to this court by way of Judicial Review Application. In this regard he referred the court to the case of ***Republic -v- Public Procurement Administrative Review Board and Kenyatta University& Another, ex-parte – Sanitam Services (EA) Ltd (Supra)*** at paragraph 37. He urged the issues raised before this court requires the court to make a determination on the disputed issues, a fact which is not suitable for Judicial Review application. He further referred to the affidavit filed on 2/7/2015 at paragraph 5 and 6 urging the same makes reference to individuals who are not party to these proceedings specifically **Hon. Peter Munya, Hon. MithikaLinturi;Hon** and **Hon. Florence Kajuju** as individuals who allegedly participated in alleged move to remove exparte Applicants from the office. He pointed out that the deponents did not attend certain meetings and that their affidavits are hearsay.

30. He further submitted that there is an assumption that the Governor of Meru County Government acting on behalf of the 2nd Respondent convened a meeting on 7th February 2015 in order to remove certain officers of the Applicant from the office. He urged that such evidence is lacking as there is no tangible piece of evidence other than mere speculation. He urged as this court is a court of evidence it should not be drawn to make inferences and more so when replying affidavit by Mercy Mwendwa on behalf of the 2nd respondent filed on 13th March 2015 at paragraph 3 states that the 2nd respondent did not interfere with activities of the exparte applicants as alleged and that the 2nd respondent has no legal powers to interfere with the running on internal affairs of a lawfully registered entity like the applicant. She further pointed out thatannextures 4 and 5 of the applicant's verifying affidavit are mere Newspapers cuttings with no evidential value and constitute a hearsay. The learned Advocate submitted that the court is being asked to make an inference from the same annextures; that the 2ndrespondent agreed and conducted an election on 7th February 2015. He further submitted the Applicants are forcing this matter to be a Judicial Review by forcing County Government to be a party; urging the document relied upon do not refer tothe Applicant but refer to “Njuri Ncheke” as cultural institution that belong to the people of Meru relying on paragraph 4 of annexture 5 and urging that does not mean to convey and conducting elections and that the people mentioned are members of Meru community and not officers of the 2nd respondent.

31. Mr. Kibe Mungai, learned advocate in response to the submissions by the Advocates for the 2nd Respondent and Interested parties conceded that this a Judicial Review matter which is governed by Special Rules. He urged on the issue of prayers No.1, the issue (1) is on the legality of the elections submitting the issue of illegality is a basis for granting an order of certiorari as before an election a meeting must be convened by a convener who should also give a notice as to the purpose of the meeting. He pointed that the Interested Parties filed two affidavits and none of them admitted convening the meeting for the purpose of election. As regards the 2nd respondent he relied on annexures 5 under paragraph 2 and 3 in which he submitted it stated that the other elders petitioned the Government of Meru to come to the aid of the people. He urged that there was no law mandating them to do so urging annexture 5 is very clear what they did was illegal.

32. On the issue of the registered private society Mr. Kibe Mungai, learned Counsel urged that there is no distinction between private and public society save further the distinction is on

registration and non-registration. He further submitted that there is no denial that the exparte Applicant has a constitution, urging further that the applicants and the interested parties are all members of Njuri Ncheke. He added that Societies are not legal persons and are sued through the officials. Adding that the constitution submitted by the exparte Applicants has not been rejected. On history of Njuri Ncheke he referred to paragraph 8 of the further affidavit. On matters raised in the affidavit of Hon. J. Muturi that rules and minutes are not put down in writing. Mr. Kibe Mungai, learned Counsel reiterated the matter before court is on a point whether election took place on 7th February 2015. He added that the position remains that the meeting should have been convened by the Chairman but not by a publication to convene a meeting.

33. The exparte applicants in prayer No.1 are seeking orders of certiorari to bring into this court and quash the results of Njuri Ncheke Elections organized and conducted by the 2nd respondent on Saturday 7th February 2014 at the Applicants headquarters at NchiruNjuri Ncheke Shrine in Meru County resulting in the purported elections of the interested parties as officials by the applicant.

34. The exparte Applicants in their statutory statement dated 12th February 2015 under "C"Applicant prays for an order of certiorari to bring into this court and quash the results of Njuri Ncheke Elections organised and conducted by the 2nd respondent on the Saturday 7th February 2015, however in the verifying affidavit deponed upon by PharesMutwiriRutere dated 12th February 2015 under paragraph 13 he has stated "On Saturday 7th February 2015" the 2nd respondent purported to spearhead through the department of Sports, Culture and Social Services sensitization and education of a section of alleged applicant's members culminating in illegal and unlawful elections at the applicant's headquarters at NchiruNjuri Ncheke Shrine in Meru County. That though the pleadings are in conflict on the date the result sought to be quashed in the notice of motion being on 7th February 2014not on the date stated in chamber summons, I shall in the interest of justice proceed to consider the ground in the chamber summons instead of determining the notice of motion on the ground of technicalities bearing in mind that the respondents and the interested party did not raise the issue on the results sought to be quashed in the summons and notice of motion did exist.

35. In a recent case of Judicial Review, my sister Lady Justice MumbiNgugi, stated in the case of ***Republic -V- Public ProcurementAdministrative Review Boardand Kenyatta University& Another, Exparte – Sanitam Services (EA) LtdHCJR MISC. APP. No. 204 of 2013;***

"It is, I believe, settled law that a court excising judicial review jurisdiction is concerned with the procedural propriety of a decision, rather than with its merits. A court will consider the merits of a decision only in the circumstances set out in the case of Associated Provincial Picture Houses Ltd – versus- Wednesbury Corporation (supra) namely; where the administrative body has acted outside its jurisdiction, has taken into account matters it ought not to have taken into account, or failed to take into account matters it ought to have takeninto account, or that it has made a decision that is 'so unreasonable that no reasonable authority could ever come to it'.

Thus, the stating point in judicial review proceedings is that the remedy of judicial is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision making process. In the case of Municipal Council of Mombasa -vs- Republic &Umoja Consultants Ltd Civil Appeal No. 185 of 2001, the court of Appeal set out theparameters of Judicial Review when it held as follows;

*"**Judicial review is concerned with the decision making process, not with the merits of the decision itself, the court would concern itself such issues as to whether the decision makershad the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters ….. The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision".***

36. Further in order for exparte applicant to succeed in an application for judicial review he has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. In a a decision of the court of Uganda in case of ***Pastoli -VS- Kabala District Local GovernmentCouncil and Others [2008] 2 EA 300*** the court restated the ground on which the court exercises its judicial review jurisdiction. The court citing with approval the English case of ***Councilof Civil Servants Unions -VS- minister for the CivilService [1985] AC 2*** stated as follows;

"In order to succeed in an application for Judicial Review, the applicant has to sow that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety..... illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or utra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality where a Chief Administrator Officer of a District Interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service commission..... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards ….. Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statue or legislative instrument by which such authority exercises jurisdiction to make a decision".

37. In judicial review matters whether to grant the remedy of judicial review is discretionary. On the discretionary nature of judicial review orders, my brother Justice J.V. Odungu stated in the case of **Republic -V- Minister of Agricultureand 2 OthersEx-parte EquitorialNuts Processors Limited and 3 Others [2013] eKLR** thus;

"Accordingly, even if I were to find that the application was merited the law is that the decision whether or not to grant the remedy of judicial review is discretionary. In Republic -vs- Judicial Service Commission ex-parte Pareno [2004] 1 KLR 203-209 it was held that judicial review orders are discretionary and are not guaranteed and hence a court may refuse to grant them even where the requisite grounds exist since the court has to weigh one thing against another and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles. The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders and hence the court will refuse to grant judicial review remedy when it is no longer necessary; or has been overtaken by events; or where issues have become academic exercise; or serves no useful or practical significance. Since the court exercises a discretionary jurisdiction in granting prerogative orders, it can withhold the gravity of the order where among other reasons there has been delay and where a public body has done all that it can be expected to do to fulfill its duty or where theremedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realized. See Anthony John Dickson & Others -vs- Municipal Council of Mombasa HCMA NO.96 Of 2000".

38. Yet in the case of ***Republic -V- Tanathi Water ServicesBoard and Another and Attorney General Exparte SenatorJohnstoneMuthama***Hon Justice G. V. Odunga stated;

39. Judicial review is concerned with the decision making process and illegality or otherwise of the decision rather than with the merits thereof. As was held in **Municipal Council of Mombasa -vs- Republic &Umoja Consultants Ltd Civil** Appeal No. 185 of 2005 the court of appeal held;

"Judicial review is concerned with the decision making process, not with the merits of the

decision itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision marker took into account the relevant matters or did take into account irrelevant matters …. The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether thee was or there was not sufficient evidence to support the decision..... It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairnessdemands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it is a statutory body which can only do what is authorized by the statute creating it and in the manner authorized by statute".

38. It is therefore very clear from the above that judicial review jurisdiction is concerned with the decision making process and illegality or otherwise of the decision rather than with the merits thereof. The court is required to consider whether the decision makers had jurisdiction or whether persons affected by the decision were given an opportunity to be heard before the decision was made. In the instant judicial review application under prayer No.1 what is sought to be brought to this court and be quashed are the results of Njuri Ncheke Elections organized and conducted by the 2nd respondent on 7th February 2015. The exparte applicants are concerned with the results and not with the decision making process and not the illegality of the decision making process. The applicants prayer as framed it is not challenging the decision making process but the results and in my view this court has no jurisdiction or power to quash the results without having been invited to remove into this court a decision that was made or allegedly made to engage that exercise.

39. I have considered the evidence adduced by the parties in their respective affidavits and submissions by Counsel and have found no evidence to show that the 2nd Respondent engaged in the process and/or conducted the elections of 7th February, 2014 or any. Theres is no evidence that any public body or a particular individual conducted the election. The matter as raised in the ex-parte Applicant's verifying Affidavits and further affidavit are all contested by the 2nd Respondent and the interested parties. I am upon perusal of the rival parties affidavits satisfied that there are serious contention on facts which in my view cannot beresolved in a Judicial Review Application. In the case of:-

Republic Vs- Tanathi Water Services Board & another and Natural Resources & Another exparte- Senator Johnson Muthama (Supra) Justice G.V. Odungo stated:-

""37. It follows therefore that where the resolution of the dispute before the court requires the court to make a determination on disputed issues of fact that is not a suitable case for judicial review. Judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal and the Civil Procedure Act does not apply. It is governed by sections 8 and 9 of the Law Reform Act being the substantive law and Order 53 of the Civil Procedure Rules being the procedural law. section 8 of the Law Reform Act specifically sets out the orders that the High Court can issue in judicial review proceedings and the order are, mandamus, certiorari and prohibition. A declaration, for example, does not fall under the purview of judicial review for the simple reason that the court would require viva voce evidence to be adduced for the determination of the case on the merits before declaring who that owner of the land is. Judicial review on the other hand is only concerned with the reviewing of the decision making process and the evidence is found in the affidavits filed in support of the application. See Commissioner of Lands –vs- Hotel Kunste Ltd. Civil Appeal No. 234 of 1995 and Sanghani Investment Limited –vs- Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354.

40. In view of the seriously contested issues it follows for the same to be resolved or for the Court to make determination ofthe said issue the Court has to take viva voce evidence from the parties and their witnesses. For example whether the newspaper cutting relied upon by ex-parte applicants are true and in their contents whether individual mentioned by exparte applicants

participated in the alleged election. Further Judicial Review is special jurisdiction which is neither Civil or Criminal and as such Civil Procedure Act and/or Criminal Procedure Code do not apply . Judicial Review applications are governed by section 8 and 9 of the Law Reform Act being a substantive law and Order 53 of the Civil procedure Rules being the procedural Law. Section 8 of the Law Reform Act sets out the orders that the High Court can issue in Judicial Review proceedings , being mandamus, certiorari and prohibitions . In view ofrequirement of viva voce evidence on various disputed issues it is my finding that this suit is not a suitable case for a Judicial Review, as the exparte Applicant wants the court to draw inferences from annexed affidavits instead of basing its decision on uncontested evidence whereas this is a court of evidence it should not be drawn to making inferences on contested matters.

41. In view of the forgoing it is my finding that prayer No. 1 of the ex-parte Applicant's application cannot issue and the same is accordingly refused.

B. WHETHER AN ORDER TO BRING INTO THIS HONOURABLE COURT AND QUASH THE DECISION OF THE 2ND RESPONDENTS CONTAINED IN THE DAILY NATION OF TUESDAY FEBRUARY 10, 2015 TO HOLD A CORONATION CEREMONY ON SATURDAY FEBRUARY 14, 2015 OR ANY OTHER SUBSEQUENT DATE AT THE NJURI NCHEKE SHRINE AT NCHIRU, MERU COUNTY TO INSTAL THE INTERESTED PARTIES AS THE OFFICIALS OF THE APPLICANT CAN ISSUE?

42. Mr. Mungai, Learned Advocate urges that Hon. Lady Justice Wendoh at the time of granting leave to commerce these proceedings she also ordered the leave so granted to operate as a stay of the purported election of Njuri Ncheke Officials and Prohibited coronation process from taking place that the order was served but coronation proceeded and was conducted by Governor **Peter Munya, and Hon MithikaLinturi** and during that meeting they tried to give justification for their attendance. He further submitted that the Interested Parties acknowledged that some orders were given and that Njuri Ncheke is a traditional Society and is not amenable to judicial orders. He urged the position taken by Interested Party is not true in view of how the Association has been operating and submitted to the contrary that NJURI NCHEKE is amenable and subject to Kenya Laws. He addedthe Association was registered in 2009 and operates within the constitution as it is unlawful under section 5 to manage an unregistered society.

43. Mr. KibeMuigai , Learned Advocate submitted further that in the Replying Affidavit it is clear that a coupd'étattook place and removed officials who held post legitimately. That the Applicants were removed from the positions created by lawand the positions are the ones occupied by the interested parties.

44. Mr. Kibe Muigai, Learned Advocate urges that Applicants deserve the orders sought referring to the case of ***Kenya National Examination Counsel -vs- Republic, Exparte Geoffrey GathenjiNjoroge& Others Civil Appeal 266 of 1996 (C.A Nairobi).***He urged thepurpose of certiorari is to quash the election to replace the Applicants and urges that the Association has a Constitution governing election which was not followed. He urged it is unknown who convened the meeting as the Chairman did not. He however went on to state the Governor and his supporters caused the meeting to take place.

45. He urged that the coronation took place in defiance of the Courts Order in which Meru County Government decided to support one group, urging that the functions of the County Government is not to interfere with Njuri Ncheke affairs. He urged that the 2nd Respondent did not state any precise law to justify the County Government interference with the officials of the Njuri Ncheke Society.

46. Mr. Mutuma Kibanga, Learned Advocate for the 2nd respondents and Interested Parties replied by submitting that there is no evidence that the Court order of 13th February, 2015 was

served before 14th February,2015 on any of the parties hence the allegations of the violation of the Court's Order has no basis . He added had the order been served the same would have been obyed and parties would have moved this court appropriately as both the 2nd Respondent and the Interested parties are subject to the laws of this country by virtue of being Kenya citizens. He added that the 2nd Respondent as per affidavit of Mercy Mwendwa it meant to promote the cultural event of Ameru by devolved function in the counties. He further submitted annexture 5 did not constitute a decision capable of being moved and quash urging the court to take Judicial notice that the decisions of public institution are made through a duly established mechanism and any communication through public newspaper do not constitute a decision in itself capable of being quashed.

47. Mr. Mutuma Kibanga, Learned Counsel submitted further that it was admitted by the Applicants Counsel that the events that are subject of prayer No.2 has already taken place. He urged the court to find the order sought cannot issue as the event has already taken place.

48. In the case of **Kenya National Examination Council -vs- Republic, exparte -Geoffrey GathenjiNjoroge& others Civil Appeal No. 266 of 1996 (C.A at Nairobi)** the Court of appeal addressed itself thus :-

"That now brings us to the question we started with, namely, the efficacy and scope of mandamus, prohibition of certiorari. These remedies are only available against public bodies such as the Council in this case. What does an ORDER OF PROHIBITION do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the courts, practice or procedure of an *inferior tribunal, or a wrong decision on the merits of the proceedings – See HALSBURY's LAW OF ENGLAND,4th Edition, Vol1 at Pg. 37 paragraph 128. When those principles are applied to the present case, the council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether that power istobe exercised. If the Council of prohibition would be ineffectual against the conviction because such an orderwould not quash the conviction.The conviction could be quashed eitheron an appeal orbyanorder of certiorari. The point we are making is that an order of prohibition is powerlessagainst a decision whichhas already been made before suchanorderis issued. Such an order can only prevent them making of a decision. That, in ourunderstanding, is the efficacy and scope of anorder ofprohibition."*

49. The Daily Nation of Tuesday February, 10, 2015 in which it indicated the holding of coronation of the ceremony of Saturday February, 14, 2015 at Njuri Ncheke shrines at Nchiru, Meru County to install the interested parties and official of applicant annexture 5 issued by 2nd Respondent through Thuranira Thiane, Director of communication is a " press statement on the elections of Njuri Ncheke Council of elders". The press statement on the elections of Njuri Ncheke Council of elders as issued by the Director of the communication on behalf of the 2nd Respondent do not in my view constitute a decision of the 2nd Respondent. The decisions of public institution are made through a duly established mechanism but not through public newspapers . An advertisement or press statement through a newspaper cannot constitute a decision in itself that is capable of being quashed by court in a Judicial Review application.

50. In the instant case it is admitted that coronation took place on 14th February 2015. The coronation in view having been carried out a prohibition order cannot quash a decision which has already been made but can only prevent the making of an contemplated decision. The Court do not issue orders in vain even when it has jurisdiction and in my view court should not issue orders when it is no longer necessary as such orders would serve no purpose at all or where the prayers has been overtaken by events.

51. In view of the above I find that paragraph No. 2 has been overtaken by events, the same is not merited and I refuse to

grant the prayer as sought.

C. <u>WHETHER AN ORDER OF PROHIBITION TO PROHIBIT THE FIRST RESPONDENT THE REGISTRAR OF SOCIETIES FROM REGISTERING THE INTERESTED PAERTIES NAMELY LINUS KATHIRA, JOSPHAT MURANGIRI, STEPHEN KIRAITHE, JOSEPH MUTURIA, AYUB BUNDI, ALHAJI, MWENDA, ELDERS OF NJURI NCHEKE AS OFFICIALS OF THE APPLICANT CAN ISSUE ?</u>

52. The Exparte Applicants Contention is that the interested parties were installed into office through illegal means, as the current Chairman did not convene Annual General meeting nor was there notice issued with purpose for the meeting. That the meeting was convened by the Governor of Meru County Government who had no capacity to do. That the election conducted on 7th February, 2015 was null and void. That it was a coupd'étatand not an election. That the election of the Interested parties was and is against the Applicant's constitution.

53. M/s. Susan Lutta, Learned state Counsel appearing for the first Respondent submitted that the first Respondent is neutral in this matter and it has not todate received any documents regarding election of the Interested partes and as such are strangers to the issue of the alleged election. That the 1st Respondent has not taken any decision as regards supporting the new officials as per purported election of 7thFebruary , 2015.

54. M/s. Susan Lutta, learned state counsel, contends that an order of prohibition against the 1st Respondent cannot lie as the same is, premature, misplaced and an abuse of the court process as there is no decision made on their part. In support of her preposition she referred to the case of ***<u>Kenya National Examination Council -V- Republic .Exparte Geoffrey GathenjiNjoroge and others (Supra)</u>*** **<u>onpage 6</u>**. She urged that the first Respondent has not applied its jurisdiction in excess or in contravention of the law. And no action has been taken by the first respondent but status quo has been maintained on the part of 1st Respondent.

55. M/s. Susan Lutta , Learned State Counsel further stated under **<u>Section 18 of the Society Act (Cap 108) Laws of Kenya</u>** the Registrar of Society is mandated to take measures to resolve the dispute relating to the officials of the society or members urging both parties in this case has not notified or filed or referred the existing dispute to the Registrar of the Societies. That the Registrar of Societies cannot therefore be blamed for lack of action to resolve the issue, however the first Respondent is still willing as a regulator to avail the option to resolve the dispute. She urged the Court to find that the exparte Applicant did not exhaust the statutory internal dispute resolution mechanism provided under the Societies Act.

56. Mr. Kibanga, Learned Advocate on his part urged thatprayer No.3 cannot be granted as this is aJudicial Review matter and not an ordinary suit. He urged that the 2nd Respondent did not exercise any administrative action which can be subjected to Judicial Review urging that it has not been demonstrated that the 2nd Respondent exercised any administrative action in excess of any jurisdiction as the 2nd Respondent does not participate in the affairs of Njuri Ncheke but only in promoting the culture and that only individuals attend and participate in their individual capacity and that includes the governor as an individual member and not otherwise.

57. Mr. KibeMungai , Learned Advocate submitted that in spite of the documents referred to by the 1st Respondent having not been filed, the orders of prohibition lies. Referring to the<u>case No. 266 of 1996 referred to herein above.</u> He urged that all parties agree that they are members of the Njuri Ncheke and order should issue to prevent the making of a decision. He also referred to **<u>section 18 of the Societies Act</u>**on Registrar jurisdiction. He urged forSection 18 to apply the Registrar has to make a decision.

58. He further submitted that **section 24 of the Societies Act**makes it unlawful for unregistered person to act as an officer, urging the Registrar should be proactive and no explanation for the inaction has been given and no action has been taken against the interested parties. He submitted orders ofprohibition should issue against the 1st Respondent.

59. In the case of ***Kenya National Examination Council -v-Republic Ex-parte Geoffrey GathenjiNjoroge& others civil Appeal No 266 of 1996 (E.A at Nairobi)***Supra The Court addressed itself as follows:-

"What does an ORDER OF PROHIBITION do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the courts, practice or procedure of an *inferior tribunal, or a wrong decision on the merits of the proceedings – See HALSBURY's LAW OF ENGLAND, 4th Edition, Vol1 at Pg. 37 paragraph 128. When those principles are applied to the present case, the council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether that power is to be exercised. If the Council of prohibition would be ineffectual against the conviction because such an order would not quash the conviction. The conviction could be quashed either on an appeal or by an order of certiorari. The point we are making is that an order of prohibition is powerless against a decision which has already been made before such an order is issued. Such an order can only prevent them making of a decision. That, in our understanding, is the efficacy and scope of an order of prohibition."*

60. In the case ***Republic -V- Ministry of Agriculture & othersexparte Equatorial Nuts Processor Limited & 3 others [2013] e KLR***my brother Justice J.V. Odunga stated thus:-

"accordingly, even if i were to find that the application was merited the law is that the decision whether or not to grant the remedy of judicial review is discretionary. in Republic vs Judicial Service Commissioner ex parte Pareno [2004] 1 KLR 203-209 it washeld that judicial review orders are discretionary and are not guaranteedand hence a court may refuse to grant them evenwhere the requisite grounds exist since the court has to weigh onething againstanother and see whether ornotthe remedy is the most efficacious in the circumstancesobtaining and since the discretion of the court is a judicial one,itmust be exercised onthe evidence of sound legal principles. the court does not issue orders invain even where it has jurisdiction to issue prayed orders andhence the court will refuse to grant judicialreviewremedy when it is no longernecessary; or hasbeen overtaken byevents; or where issues have become academic exercise; or serves no useful or practicalsignificance. Since the court exercises a discretionary jurisdictiongrantingprerogativeorders, it can withholdthe gravity of the order where among other reasons there has been delay and where a public body has done all that it can be expected to do to fulfill its duty or where the remedy is not necessary or where its paths is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which application is made has already been realised. See Anthony John Dickson& others vsMunicipal Council of Mombasa HCMA No.96 of 2000."

61. The first Respondent in this matter has remained neutral and has ensured that the status quo is maintained. It has not received any complaint or disputes from the Applicants and the interested parties. It has not been demonstrated that the first Respondent has applied its jurisdiction in excess or in contravention of the Laws of the land nor has it departed from the rules of natural justice. It is yet to make a decision. I agree with the 1st Respondent submission that the orders sought against it are premature, misplaced and an abuse of the Court process.

62. **Section 18 of the Society Act** deals with disputes as to officers of a registered society and provides as follows:-

"18. (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result for which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Register may, be ordered in writing, require the society to produce to him, within one month of the service ofthe order, evidence of the settlement of the dispute andof the property appointment of thelawful officers of the societyor of the institution of proceedings for the settlement of such dispute."

63. In the instant case there is no dispute that the Registrar has powers to intervene in a matter involving members of a Society that is registered under the Society Act. The exparteapplicants and the interested parties are members of NjuriNjuke Society and are currently disputing on leadership of their society. That none of the parties had registered the dispute with the Registrar of the Societies before the filing of this matter in this court. **Section 18 of the Societies Act** provides for internal Disputes resolution mechanism. That where a statutory provides for internal disputes resolutionmechanism the procedure provided should first be exhausted before a matter can be filed in Court.

64. In view of the foregoing. I find and hold that the exparte applicants application is premature and misplaced as the internal dispute resolution mechanism provided by the Societies Act has not been exhausted. In view of the above reasons. I find and hold that orders of prohibition cannot issue against the first respondent from registering the interested, however , this cannot be taken as a licence for the Registrar of Societies to proceed to register the interested parties without proceeding to comply with **Section 18 of theSocieties Act** as there is a dispute existing between the exparte Applicants and the interested parties as to who are the legitimate officials of the exparte Applicant. The Registrar should be proactive by taking steps forthwith to resolve the parties dispute in terms of **Section 18 of the Societies Act**.

D. WHETHER AN ORDER OF PROHIBITION TO PROHIBIT THE SECOND RESPONDENT - MERU COUNTY GOVERNMENT -FROM INTERFERING WITH THE OPERATIONS, MANDATE AND AFFAIRS OF THE APPLICANT CAN ISSUE?

65. The exparte Applicants have averred that the 2nd Respondent purported to spearhead through its department of sports, culture and social services sensitization and re- education of section of alleged Applicant's members culminating in illegal and unlawful elections at the Applicants headquarters at the NchiruNjuri Ncheke shrine in Meru County. It is further alleged thatthe 2nd Respondent activities has been detrimental to the Njuri Ncheke members as it has been interfering with the mandate and the affairs of the Applicant. That the 2nd Respondent went ahead and held a coronation to install the Interested parties into the exparte Applicant's headquarters at NchiruNjuri Ncheke Shrine in Meru County.

66. The 2nd Respondent denied having interfered with the activities of the Applicants in anyway or as alleged and proceeded to state indeed she has no legal power to interfere with the running or internal affairs of lawfully registered entity like the applicant. It further stated the annextures

" P MR. 5"and **"PMR 6** has no relations to the applicant Society and that "**PM R 4"** and **"PMR 5"** cannot be relied upon being newspapers reports, hence hearsay and lastly that **"PMR 6"** was a public announcement to promote a cultural event of Njuri Ncheke and not the Applicant Society.

67. The exparte applicants averments are seriously contested by the 2nd Respondent in its affidavit. The 2ndRespondent denied having been interfering with the activities of the exparte Applicants and stated that it recognizes the Njuri Ncheke as a cultural entity of the Ameru people who constitute the vast majority of inhabitants of the Meru County and which entity has been in existence for many generations which is different from the exparte Applicant a registered society with its own members. The 2nd Respondent reiterated that it does not interfere with activities of

Njuri Ncheke but only individuals do so in their individual capacity.

68. I note from the respective parties affidavits and the Advocates submissions there are several contested facts which this court cannot make determination by relying on the filed affidavits. These matters can only be determined by way of viva voce evidence which is not provided for in a judicial review.

69. In my view where a determination of the dispute before Court cannot be resolved by relying on Affidavits alone but by requiring calling of oral evidence that is not a suitable matter for determination by way of Judicial Review. As Judicial Review do not provide for dispute to be determined by way of viva voce evidence.

70. In this case it is clear that the factual situation is far from being agreed upon. In order to determine whether the 2nd Respondent has been interfering with the activities of the exparte Applicant or not in my view the affidavits as well as annextures thereto would not suffice, as there would be necessity of viva voce evidence which would be subjected to examination in chief and cross examination to verify its veracity and probate value. That course is however not open to judicial review proceedings in which the courts deals with the process rather than the merit, of the decision in question.

71. Apart fromthat the ex parte Applicant has complainedof various individuals who have participated in its affairs who are not members of the 2nd Respondent. These individuals have not been enjoined in these proceedings.The individuals mainly pointed out include the Governor of Meru and a few MP's from Meru County. That the Governor of Meru and the MP'S mentioned as I have pointed out, are not parties to these proceedings, and by proceeding to make any adverse findings against any of them would clearly be violating the rules of natural justice by condemning them unheard and further breaching of their right of fair hearing as enshrined in the Constitution of Kenya 2010.

72. In view of the foregoing I find and hold that prayer No. 2 cannot issue.

73. That before concluding this judgment , I must express my gratitude to Learned Counsel for depth research undertaken by them and for well-prepared submissions ; and if I have not referred to the researched material it is simply because considering my finding herein, to do so may prejudice proceedings which might be instituted and in which the said authorities would be dealt with substantially.

74. **ORDER**

The upshot is that the notice of motion dated 25th February, 2015. The issues in this suit being premature,and misplaced, and not proper for determination by judicial review proceedings the notice of motion fails and is dismissed. On costs as the matter is of public interest of Ameru people as a community and to maintain peace and tranquility within the community I order that each party bears its own cost.

I further order and direct that Registrar of Societies do take up the matter between the parties and have the dispute between them resolved under Section 18 of the Societies Act by applying dispute resolution mechanism.

DATED AT MERU THIS 22ND DAY OCTOBER 2015.

J.A.MAKAU

JUDGE

22.10.2015

Delivered in Open Court in presence of:-

Mr. Kibe Mungai jointly

M/S Mr. Denis Mwathe for Exparte Applicant

Miss Susan Lutta for 1st Respondent

Mr. Munga Kibanga for 2nd Respondents and Interested party.

F. GIKONYO

JUDGE

22.10.2015