REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 247 OF 2012

IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF THE REGISTRATION OF SOCIETIES AND THE EXECUTIVE COMMITTEE OF THE EAST AFRICAN RAMGARHIA BOARD NAIROBI

AND

IN THE MATTER OF SECTINS 8 AND 9 OF THE LAW REFORM ACT, CHAPTER 26 LAWS OF EKNYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES, CHAPTER 21 LAWS OF KENYA

BETWEEN

REPUBLIC .....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIES, NAIROBI, KENYA .....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL .....2ND RESPONDENT

AND

MANJIT SINGH SETHI (Chairman)

SURINDER SINGH SIHRA (General Secretary)

JASPAL SINGH VIRDEE (Treasurer)

In their capacity as Chairman, General Secretary and Treasurer of

THE EAST AFRICAN RAMGHARIA BOARD NAIROBI.....INTERESTED PARTIES

AND

SURINDER SINGH PHULL

GURDEVE SINGH VIRDEE .....EX PARTE APPLICANTS

JUDGEMENT

1. By a Notice of Motion dated 2nd July, 2012, the applicants herein, **Surinder Singh Phull** and **Gudeve Singh Virdeee** are seeking the following orders:

   1. Certiorari directed at the Respondent to remove to this Court the Registrar of Societies' decision to approve the amended constitution for the East African Ramgharia Boar Nairobi as contained in his letter dated 1st March 2012.

   2. Mandamus directed at the Respondent to recall, cancel and revoke the amended constitution of the East African Ramgharia Board Nairobi which was un-procedurally passed at an Extra Ordinary General Meeting of the East African Ramgharia Board Nairobi held on 19th February 2012.

   3. Prohibition directed against the Registrar of Societies and/or any other person from implementing the decision of the Registrar of Societies to approve the amended constitution of the East African Ramgharia Board Nairobi as contained in his letter dated 1st March 2012.

   4. Costs of the Application be provided for.

Applicants' Case

2. The application was supported by a verifying affidavit sworn by **Surinder Singh Phull**, the 1st applicant herein on 12th June, 2012.
3. According to the deponent, on the 1st of February 2012 the General Secretary issued a Notice for an Extra Ordinary General Meeting in a local daily newspaper and a Notice was also circulated via post to the members of the society in respect of the Extra-Ordinary General Meeting to be held on 19th February 2012 which notice vaguely included a point of Order Number three as "Adoption of New Constitution". However, the Notice for an Extra-Ordinary General Meeting published in the said local daily newspaper was markedly different to the Notice circulated via post to the members of the society, such difference going to the root of the society's constitution in that the said publication was at variance, non-compliant and un-procedural.
4. On the 19th of February 2012 the Extra-Ordinary General meeting was held with a quorum of Two Hundred and Sixty Three Members (263) being a little over Thirty Fiver Percent (35%) of the society's members at which meeting an Amended Constitution of the club was un-procedurally passed and adopted as a "New Constitution" thereby revoking the existing constitution.
5. Thereafter, the deponent amongst others lodged a complaint with the Registrar via a letter dated 21st February 2012 on the grounds that the Extra Ordinary General meeting held on 19th of February 2012 called by the executive committee for purposes of amending the constitution failed to meet the requirement of a 2/3rd majority approval for amendment as set out in Article 126 of the Constitution of the East African Ramgharia Board Nairobi and Section 20 of the ***Societies Act***.
6. On the 1st of March 2012 the Registrar of Societies responded to the said letter of objection and overruled the same citing an unreasonable justification of his actions based on a misconstrued understanding of the existing constitution.
7. The deponent further averred that he, amongst others also, vide a letter from the applicant's Advocate **Mr. Tariq Khan** dated 20th April 2012, objected to the amendment of the Constitution being in contravention of Section 20 (1) (a) 20 (2) and 20 (3) of the *Societies Act*. However, the Registrar of Societies ignored the pertinent issues raised in the applicant's Advocates' said letter and has failed to demonstrate compliance by the East African Ramgharia Board Nairobi with

Section 20 of the Societies Act despite a valid objection having been lodged via letters dated 21st February 2012 and 20th April 2012.

8. It was therefore the deponent's view that the Registrar of Societies has perpetuated and act of procedural ultra vires in arriving at his decision to approve the amended constitution of the East African Ramgharia Board Nairobi without applying section 20 of the ***Societies Act*** which he was as a matter of law required to have given due regard to and that no justifiable and/or convincing reasons were advanced by the Respondent to warrant the approval of the amended constitution of the East African Ramgharia Board Nairobi in light of the objection raised.
9. To the deponent, it is apparent that the Registrar of Societies decision to approve the amended constitution of the East African Ramgharia Board Nairobi is unprincipled and unreasonable in light of the peculiar circumstances of this case and in light of the objection raised with regard to the procedural impropriety of the executive committee of the society in approving the amended constitution. Further, the Registrar of Societies has misconstrued Article 126 of the constitution of the East African Ramhgaria Board Nairobi and Section 20 of the ***Societies Act*** in arriving at its decision to approve the amended constitution.
10. It was deposed that the office bearers of the Interested Party intends to hold an Annual General Meeting on the 17th of June 2012 under the auspices of the amended constitution which was un-procedurally passed at the extra ordinary general meeting held on 19th February 2012 yet the Respondent's actions are unfair, discriminatory, arbitrary and against the rule of law.

Interested Party's Case

11. In opposition to the application, the interested party, The East African Ramgharhia Board, Nairobi filed an affidavit sworn by **Manjit Sibgh Sethi**, its Chairman of the Executive Committee on 6th September, 2012.
12. According to him, the application herein is incompetent, frivolous and vexatious and deserves to be dismissed *in limine*. In his view, the Board runs its affairs under the provisions of the ***Societies Act***, Cap 108 of the Laws of Kenya and is governed under its Constitution which sets out the objectives of the Board, the governance and leadership structure, rules relating to its management and membership as well as rights, obligations, duties among others.
13. According to him, around July 2007, the Board set in motion plans to revise its old constitution as a result of which a lot of consultations were held and on 1st March 2012, the Board's Revised Constitution was approved by the Registrar of Societies as required pursuant to Section 20 of the ***Societies Act*** and the Revised Constitution was adopted in an Extra Ordinary Annual General meeting (hereinafter referred to as "the said meeting") held on 19th February 2012 which meeting was held pursuant to the provisions of Clause 126 of the Old Constitution as read together with Clauses 27, 28, 29, 30, 31, 32 and 33 thereof pursuant to which the quorum was at least 35% of the membership. In his view, as at 31st December 2011, the membership of the Board was 477 and in the said meeting, 264 members attended and 263 thereof voted for the adoption of the Revised Constitution with only one member, **Mr. Gurdip Singh Birdi** opposing the adoption of the Revised Constitution. To him, the said meeting was attended by over 55% of the membership and the same was accordingly quorate and in accordance with Clause 31as read together with Clauses 33 and 126 of the Old Constitution. Even if the membership of the Board was to be 650 as the complaint in SSP-7 suggests, the quorum of 35% was still met.
14. In spite of the foregoing, the ex parte applicants, **Mr. Hukam Pradeep Singh Flora** were unhappy and have written complaints to the Registrar of Societies and the Board, which complaint the Registrar of Societies considered and concluded were frivolous, unmeritorious and unfounded. Subsequently, the Registrar of Societies issued to the Board a certified copy of the Revised Constitution on 7th march 2012 and therefore duly recognized the Revised Constitution as the proper and only constitution of the Board.
15. It was deposed that **Surinder Singh Phull** the deponent of the verifying affidavit attended the meeting and did not object to the adoption of the Revised Constitution but to the contrary endorsed the Revised Constitution hence his objection is therefore an afterthought and mischievous. The other complainants failed to attend the meeting and yet are complaining about the quorum.

16. According to the deponent, for the ex parte applicants to succeed in this case, they must demonstrate bad faith, dishonesty or unreasonableness on the part of the Registrar and demonstrate that the Registrar paid attention to extraneous circumstances or disregarded public policy or ignored relevant for consideration. However, according to him, the Registrar directed himself properly in law and called his attention to the matters which he was bound to consider and further, excluded from his consideration matters which are irrelevant to the matter at hand including the complaints lodged by the ex parte applicants. To the interested party, the ex parte applicants have failed to demonstrate how the enactment of the Revised Constitution has affected them by for example depriving them of some benefit or advantage which in the past they had enjoyed and which they could legitimately expect to be permitted to continue to enjoy. Further, the ex parte applicants were given due notice and ample opportunity to comment on the contents of the Revised Constitution or contribute thereto prior to its enactment and there was wide consultation and the same was passed by 99.6% support of all the members present in the said meeting.

The Respondent's Case

17. As for the Respondents, a replying affidavit was filed sworn by **Joseph L. Onyango**, the Deputy Registrar General and Senior Principal State Counsel in charge of Societies.
18. According to him, the entire application is a gross abuse of the process of this Honourable court brought in bad faith since all the requisite procedures and due process of the law was followed.
19. He deposed that the prayers sought by the Ex parte applicants have lapsed as the Registrar of Societies duly approved the amended constitution on 1st March 2012 upon being satisfied that the due process had been followed.
20. He averred that all registered societies are governed by their Constitution which is usually registered with the Registrar of Societies and the ***Societies Act***, Cap 108 Laws of Kenya and that the office of the Registrar gave consent to the society to amend its constitution on 30th January 2012 subsequent to which the Society made an application for approval of their amended constitution on 20th February 2012 which application was approved by the Office of the Registrar on 1st March 2012. To him, the Registrar in approving the amendment was satisfied that the relevant procedure had been complied with and all necessary documents had been lodged with his office as per Section 20 of the Societies Act.
21. However, even after fully satisfying himself that the due process of the law had been followed, the applicants through one **Pardeep S. Flora**, **Hukam Singh Sagoo**, **Tarlochan Singh**, **Surinder S. Phul** and **Avtar S. Phull** wrote to the Registrar objecting to the amended constitution to which objection the office of the Registrar responded through a letter dated 1st March 2012, noting that their complaints were frivolous, unmeritorious and unfounded.
22. The deponent was of the view that as per section 136 of the society's old constitution read together with section 31, the society may amend its rules and regulations at an annual or extra ordinary general meeting for which quorum shall not be less than 35%. However, the 2nd paragraph of section 126 to which the applicants allude to, relates to the winding up of the society and not amendments to its constitution. It was therefore his view that the applicants are mere busy bodies who want to waste court's time because the Registrar of societies applied the law properly in approving the amendment and this can be confirmed by the fact that they have not demonstrated to this Honourable court how the said approval of the amendment of the constitution will cause any prejudice to them as members of the society.
23. He therefore contended that the application is therefore baseless, no merits and the orders sought should not be granted because if granted, there is likely to be a breach of peace, order which is not the intended goal rather than the promotion of public good yet it is the statutory duty of the Registrar of Societies to ensure that all registered societies act in accordance with the provisions of the ***Societies Act*** (Cap 108, Laws of Kenya) and their registered constitution.
24. To him, the entire application is a gross abuse of the process of this Honourable court brought in bad faith since all the requisite procedures and due process of the law was followed.

Determinations

25. I have considered the application, the affidavits both in support of and in opposition thereto as well as the submissions filed.
26. On the issue of failure to hear the parties it is my view and I so hold that the law is that before an adverse decision is made, the party against whom the decision is made ought to be heard. To quash a decision on the ground that a party in whose favour a decision was made, was not heard, as is being contended by the applicants herein would in my view be an absurd decision. In fact Article 47(2) of the Constitution is clear that "if a right or fundamental freedom of a person has been or is likely to be ***adversely affected*** by administrative action, the person has the right to be given written reasons for the action." [Emphasis mine]. It is therefore clear that only a person who is likely to be adversely affected who ought to be heard. It was therefore unnecessary for the Registrar to hear the interested party in arriving at a decision which was favourable to it.

13. It is further contended that the Respondents ought to have provided the applicants and the interested party with an open forum to air their grievances. However, as it is stated by Michael Fordham in ***Judicial Review Handbook***; 4th Edn. at page 1007:

"procedural fairness is a flexi-principle. Natural justice has always been an entirely contextual principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair. The content of the duty depends on the particular function and circumstances of the individual case".

14. In **Kenya Revenue Authority vs. Menginya Salim Murgani Civil Appeal No. 108 of 2009,** the Court of appeal delivered itself as follows:

"There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed."

15. In **R vs. Aga Khan Education Services *ex parte* Ali Sele & 20 Others High Court Misc. Application No. 12 of 2002**, it was held *inter alia* as follows:

"On the allegation that there was breach of the rules of natural justice, it is not in every situation that the other side must be heard. There are situations where a hearing would be unnecessary and even in some cases obstructive. Each case must be put on the scales by the court and there cannot be general requirement for hearing in all situations. There will be for example situations when the need for expedition in decision making far outweighs the need to hear the other side and in such situations, the court has to strike a balance."

16. In **Russel vs. Duke of Norfork [1949] 1 All ER at 118**, the Court expressed itself as hereunder:

"There are in my view no words which are of unusual application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on circumstances of the case, the nature of the inquiry, rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. Accordingly I do not derive much assistance from the definition of natural justice which have been from time to time being used, but whatever standard is adopted one essential is that the person concerned would have had a reasonable opportunity of presenting his case."

17. As was held in **Simon Gakuo vs. Kenyatta University and 2 Others Misc. Civil Application No. 34 of 2009:**

"The *audi alteram partem* rule should not be interpreted to mean a full adversarial hearing or anything close to it as per the courtroom situations and as per section 77 of the Constitution. Interpreting the demands of natural justice as requiring an adversarial hearing or anything similar is a serious misdirection in law. There are no rigid or universal

rules as to what is needed in order to be procedurally fair. What is needed is what the court considers sufficient in the context of each situation with its own unique facts with the needs of good administration in view. I urge practitioners of law not to rigidly import the hearing requirements in court room situation etc."

27. It is therefore my view that the mere fact that the applicant and interested party were not given an open forum to air their views does not justify the Court in interfering with the decision of the Registrar.
28. The applicants contend that sections 20(1) and (2) of the ***Societies Act*** Cap 108 Laws of Kenya were not complied with. The said sections provide as follows:

> ***No registered society shall—***
>
> ***(a) amend its name, or its constitution or rules; or***
>
> ***(b) become a branch of, or affiliated to or connected with, any organization or group of a political nature established outside Kenya; or***
>
> ***(c) dissolve itself,***
>
> ***except with the prior consent in writing of the Registrar, obtained upon written application to him signed by three of the officers of the society.***
>
> ***(2) An application by a society to do any of the things specified in subsection (1) of this section shall be accompanied by a copy of the minutes of the meeting at which the resolution to do that thing was passed, certified as a true copy by three of the officers of the society, and the application shall be delivered to the Registrar within fourteen days after the day on which the resolution was passed.***

29. The Respondent and the interested party have exhibited copies of letters which to them prove that the foregoing legal provisions were complied with. The applicants however dispute the authenticity of the letters to and from the Registrar seeking and granting permission to amend the Constitution. In order for this Court find that the said letters were an afterthought as the applicants allege, this Court would have to investigate the circumstances under which the same were dispatched and received and that is a process which may require the Court take *viva voce* evidence. As was held in **Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354**:

> **"Section 8 of the Law Reform Act specifically sets out the orders that the High Court can issue in judicial review proceedings and the orders are, mandamus, *certiorari* and prohibition. A declaration 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…...…Whereas it is true that the underlying dispute herein is ownership of the land, Judicial Review proceedings is not a forum where such a dispute can be adjudicated and determined as there would be a need for *viva voce* evidence to be adduced on how the land was acquired and came to be registered in the names of the applicant; whether the title is genuine or not. In cases where the subject matter or the question to be determined involves ownership of land, and the rights to occupy land namely occupation, and disposition, there would be need to allow *viva voce evidence* and cross-examination of the witnesses which is not available in judicial review proceedings. Even if the respondents had filed documents, they would be copies that would not be sufficient to establish authenticity of the title. The original documents would need to be produced at a full hearing where oral evidence would be adduced…….It may indeed be true that the notice that is impugned is irregular or unlawful and an order of *certiorari***

would be deserved, but it is not in every case that the court will grant an order of judicial review even though it is deserved. Judicial review being discretionary remedy will only issue if it will serve some purpose. *Certiorari* is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the Court being a judicial one must be exercised on the basis of evidence and sound legal principles…..So that in this case, even though this application were properly before this Court and the application had merit, the court may not have granted an order of *certiorari* because it would not be the most efficacious remedy in the circumstances. Even if the notice under challenge is quashed, the issue over the ownership of the land still stands and it will require determination by way of filing pleadings and *viva voce evidence* at another forum preferably the Civil Courts."

30. What the applicants are saying in not so many words is that the said letters may have been made up. That is however a decision which I cannot arrive at based on the mode of proceedings prescribed in judicial review matters. In this case the Respondent has exhibited documents showing that the relevant legal requirements were adhered to. As to whether or not the documents relied upon were by the Respondent were doctored or manufactured, that is beyond the scope of this inquiry as that inquiry belongs to the ordinary civil courts' jurisdiction.
31. The applicants' contention that the Respondent and the interested party have not produced documents which would have formed the basis of the Registrar's decision hence the Court ought to adversely find against the Respondent and the interested party would amount to the Court shifting the onus of proof onto the Respondent and the interested party. It is the applicant who has moved the Court alleging that there was non-compliance with the law hence the primary burden of proving that allegation falls squarely on them.
32. With respect to the allegations that the Respondent failed to comply with its Constitution, whereas that may be a ground for setting aside the interested party's actions, the default in so complying cannot be transferred to the Respondent in order to justify the Court in quashing the decision of the Respondent since such omissions are not attributable to the Respondent but rather to the interested party.
33. Even if the Court were to find that the interested part's actions were in breach of its constitution, those actions would not be amenable to the orders of certiorari. As was held in In **Mureithi & 2 Others (For Mbari Ya Murathimi Clan) vs. Attorney General & 5 Others Nairobi HCMCA No. 158 of 2005**, **Nyamu, J** (as he then was held:

"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 in 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 herein lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. That is why it is said prohibition looks to the future so that if a tribunal were to arrange in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However where a decision has been made ... an order of prohibition would not be efficacious against the decision made. Prohibition cannot quash a decision which has already been made it can only prevent the making of a contemplated decision. There is nothing the respondents have failed to do, as matter of statute law or legal duty. The other reason why the claim must fail is that the 5th and 6th respondents are not public bodies but only some juristic land owners. Thus the remedies of *mandamus*, prohibition or *certiorari* are only available against public bodies. The 5th and 6th respondents could be sued in respect of the ownership of the land should the applicants have evidence that the alienation was not done in accordance with the outlined provisions of the relevant Land registration Acts under which the parcels fall, they might also have relief for full compensation under the Trust Land provisions of the Constitution if as stated above, land adjudication and registration or the setting apart were not done as envisaged under the Constitution and the Land Adjudication Act. There is no

proof that the alternative remedies as set out above would be less convenient beneficial, or effectual."

34. On the scope of the judicial review remedies of *Certiorari*, *Mandamus* and Prohibition, the Court of Appeal in **Kenya National Examinations Council vs. Republic *Ex parte* Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 (CAK) [1997] eKLR** expressed itself *inter alia* as follows:

"Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision…Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in 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 course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings…The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way… These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done…Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of *certiorari* and that is all the court wants to say on that aspect of the matter."

35. Similarly, in **Mureithi & 2 Others vs. Attorney General & 4 Others [2006] 1 KLR (E&L) 707** that:

"A *mandamus* issues to enforce a duty the performance of which is imperative and not optional or discretionary…The order of *mandamus* is of a most extensive remedial nature, and is, in form, of justice, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing thereon specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a

specific legal right and no specific remedy for enforcing that right and it may issue in cases, where although there is an alternative legal remedy yet the mode of redress is less convenient, beneficial and effectual."

36. It follows therefore that the order of prohibition sought herein to the extent that it seeks to prohibit the implementation of the decision of the Registrar of Societies, which decision has in fact been implemented by approving the Constitution is not capable of being granted.
37. With respect to *mandamus*, it is clear that there is no legal obligation placed on the Registrar to recall, cancel and revoke the amended Constitutions of Societies. Mandamus only compels the performance of legal or public duties but not in a particular manner where body is exercising a discretion.
38. It must now be clear that the Notice of Motion dated 2nd July, 2012 is devoid of merit.
39. In the result the order which commends itself to me and which I hereby grant is that the said Motion be and is hereby dismissed with costs to the Respondents and interested party.

Dated at Nairobi this 28th day of February 2014

G V ODUNGA

JUDGE

Delivered in the presence of Mr Dar for the applicant and Mr Mutembei for the interested parties.