



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 469 OF 2013

BETWEEN

JESUS CARE CENTRE MINISTRY

INTERNATIONAL 1ST PETITIONER

REV. BISHOP THOMAS

KAKALA TSUMA 2ND PETITIONER

AND

REGISTRAR OF SOCIETIES 1ST RESPONDENT

JOSEPH ONYANGO,

DEPUTY REGISTRAR OF SOCIETIES 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

REDEEMED GOSPEL CHURCH INC 4TH RESPONDENT

JUDGMENT

Introduction

1. The 1st petitioner, Jesus Care Centre Ministry International (“JCCMI”), was registered under the *Societies Act (Chapter 108 of the Laws of Kenya)* on 30th September 2010. It is a Christian based society whose objects include the spread of the word of God by religious preaching of the Gospel and establish churches. The 2nd petitioner is its founder, chairman and Bishop.
2. The gravamen of the petitioner’s case is that its registration as a society was cancelled by the 1st respondent without due as process protected under **Article 47(1)** of the Constitution which entitles every person to fair administrative action.

Background and Facts

3. The facts of this matter concern the process of cancellation of the 1st petitioner's certificate of registration under the **Societies Act**. The facts are set out in the petition dated 23rd September 2013 and the supporting affidavit of the 2nd petitioner sworn on 20th September 2013. The 1st, 2nd and 3rd respondents rely on the affidavit of Joseph Onyango, a Deputy Registrar General and the Senior Principal State Counsel sworn on 18th February 2014.
4. Paragraph 54 of the petition states that, "*There exists a Judicial Review application filed by the Petitioners' and others seeking to quash the decision by the 1st and 2nd Respondents to deregister the 1st Petitioner. This is Miscellaneous Application No. 7 of 2013 (Malindi).*" The pleadings of that case were not referred to in the depositions or in argument. As a result, I directed the petitioners to file and serve a further affidavit annexing all the pleadings in **Miscellaneous Application No. 7 of 2013 (Malindi)**. Although the petitioner did not file the affidavit as directed, the 4th respondent, through its advocate, Ms Barasa, filed an affidavit sworn on 20th May 2014 with all the pleadings and documents filed in court. The original court file was also provided to the court for perusal.
5. The genesis of this matter can be traced to a complaint by Redeemed Gospel Church Inc. to the Registrar of Societies ("the Registrar") complaining about the registration of Jesus Care Centre Ministry International. It claimed that the 1st petitioner was part of its ministry and was operating from its branch church and in the circumstances it ought not to have been registered.
6. The 1st petitioner received a letter dated 30th January 2013 from the 1st respondent stating, in part, as follows; "*It has come to our attention that you applied for the above registration/society while you are a pastor in the Redeemed Gospel Church International. Jesus Cares Centre, the branch church which was registered is actually a branch Church of Redeemed Gospel Church based in Malindi. Further, it is clear that the buildings and facilities you are using belongs to Redeemed Gospel Church International. For the reasons stated above and the serious complaints raised by the officials of Redeemed Gospel Church International, you are hereby required to show cause why the Registrar should not go ahead and de-register this society. Unless we receive your response and/or defence within the next 21 days, this office will proceed with the de-registration process.*"
7. The 1st petitioner avers that it received the letter on 25th March 2013, about two months after it was authored. Upon receipt of the letter, the 2nd petitioner contacted their advocates, *Munyithya and Company Advocates*, who responded through a letter dated 27th March 2013 addressed to the Deputy Registrar. The letter stated in part, that, "*We have noted that there are serious complaints raised by the officials of Redeemed Gospel Church International. The nature of these alleged complaints was not disclosed to our clients. To enable us advise our client to reply to your letter under reference, kindly supply us with copies of documents which communicates the alleged complaints to your office.*"
8. The Registrar avers that he responded to the petitioners' advocates by the letter dated 12th April 2013 which letter forwarded the complaint received from Redeemed Gospel Church Inc. dated 7th January 2013.
9. On 27th May 2013 addressed to its secretary stating as follows;

The Secretary

Jesus Cares Ministry International

P O Box 5231 -80200

MALINDI

Dear Sir

RE: SOCIETIES ACT (CAP. 108)

JESUS CARES CENTRE MINISTRY INTERNATIONAL SOC/58949

NOTIFICATION OF CANCELLATION/SUSPENSION OF REGISTRATION

I Joseph Onyango, Deputy Registrar of Societies hereby give you notice in accordance with section 12 of the Societies Act, I have this day cancelled your registration under the said Act on the grounds that;

1. The said Society is a branch of Redeemed Church Inc.
2. All facilities the said church is using belongs to Redeemed Gospel Church Inc.
3. You have continued to act independent and without authority of Redeemed Church Inc.
4. You have failed, refused and or neglected to respond to complaints from Redeemed Gospel Church Inc. and letters from the office of the Registrar of Societies.

Dated at Nairobi this 27th day of May 2013

SIGNED

DEPUTY REGISTRAR OF SOCIETIES

Submissions

10. The petitioner's case is that the rules of natural justice were violated and JCCMI was condemned unheard before its registration was cancelled by the 1st respondent who had a duty to act fairly. The petitioner also avers that the decision to cancel its registration violates the spirit and letter of **Article 32** of the Constitution which protects the right to freedom of conscience, religion, thought, belief and opinion.
11. The 1st, 2nd and 3rd respondents oppose the petition on the ground that the Registrar accorded the 1st petitioner an opportunity to be heard. The Deputy Registrar contends that he addressed a notice to show cause letter to the 1st petitioner and responded to the advocates' letter by forwarding the complaint by the Redeemed Gospel Church Inc., as evidenced by the postal list. The respondent avers that there was more than sufficient time for the petitioners to respond before the cancellation of the registration was effected. The respondents aver that the petitioners have a right of appeal to the Minister under **section 15** of the **Societies Act**.
12. The 4th respondent, who is the complainant in the matter, supported the position of the Registrar and asserted that the 1st petitioner had been given sufficient opportunity to address the complaints raised and address the notice to show cause. The 4th respondent avers that the petition is an abuse of the court process as the petitioner has filed a similar case at the Malindi High Court being **Miscellaneous Application No. 7 of 2013 (Republic v Registrar of Societies and Joseph Onyango ex-parte Arthur Kitonga and Others)** seeking to quash the decision by the Registrar of Societies cancelling the registration of the 1st petitioner.

Determination

13. In the cause of proceedings I called for the proceedings in **Miscellaneous Application No. 7 of 2013**. The original record confirms that the matter was discontinued by an order of the court dated 7th October 2013 hence it is no longer pending. However, I deprecate the fact that the petitioners

- failed to disclose the fact that they had filed a similar case at the Malindi High Court and that when they applied for leave on 18th June 2013, the learned judge granted leave but declined to grant a stay directing instead that the matter be heard inter-parties but the matter was withdrawn before it could be heard.
14. The existence of a right of appeal under **section 15** of the **Societies Act** does not take away the jurisdiction of the High Court under **Article 165(3)(b)** of the Constitution to adjudicate violation of fundamental rights and freedoms. It is the body making the adverse decision which is obliged to afford the party to be affected an opportunity of being heard and not the appellate body. In a proper case the court may defer to statutory means of resolving the dispute if the same are efficacious. In this case the 30 day time limited for appeal has expired and the case for the petitioners is that they were denied the opportunity to be heard on the issue of cancellation. This is a matter that falls within the four corners of **Article 47(1)** of the Constitution.
 15. The issue in this matter is whether the 1st petitioner was heard before its certificate of registration was cancelled. The rules of natural justice are engraved in the administrative process and given constitutional imprimatur in **Articles 47(1)** and **50** of the Constitution. As was held in **Onyango Oloo v Attorney General [1986-1989] EA 456**, *“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard... There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice... To “consider” is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... “Consider” implies looking at the whole matter before reaching a conclusion...”*
 16. The court must determine whether the 1st petitioner was served with the notice calling upon it show cause why its registration should not be cancelled and whether upon review of the circumstances the petitioner right to be heard was violated. It is not in dispute that the 1st petitioner received the letter dated 30th January 2013 calling it to show cause why it should not be deregistered. The 1st petitioner received the notification and responded by the advocate requesting further information by the letter dated 27th March 2013. The 1st respondent replied by the letter dated 12th April 2013 enclosing the 4th respondent’s letter of complainant addressed to the 1st respondent and dated 7th January 2013. It is at this point that the petitioners aver that the letter was received on 6th June 2013 and that the complainant’s letter was not enclosed. By this time, the 1st petitioner states that the cancellation letter had already been issued denying it the opportunity to defend itself.
 17. The 1st respondent has shown that it posted the letter dated 12th April 2013 to the 1st petitioner’s advocates on 22nd April 2013 as evidenced by the list of registered packets annexed as **JLO-4** which shows the letter as #289. The Court of Appeal in **Trust Bank Limited v Kiran Ramji Kotedia CA Nairobi Civil Appeal No. 61 of 2000 [2000]eKLR** dealt with service by registered post under **section 74** of **Registered Land Act (Repealed)** where it held that, *“If the notice had been sent by registered post, all the appellant would be obliged to show was that the notice was in fact sent by registered post and that the same was not returned to it through the post.”* In my view, the 1st respondent proved, on the balance of probabilities, that it served the letters on the 1st petitioner and its advocate. The same process was used to send the letter of cancellation dated 27th May 2013. The list of packets posted shows the said letter was sent by registered post on 31st May 2013 annexed as **JLO- 6** which shows the letter as #71. The 1st petitioner does not deny that it received the said letter through the same process.
 18. Since the 1st respondent demonstrated that the letter were sent by registered post, the burden of proof shifted to the petitioners to show that the letters were not received or were received late. For

example, at paragraph 12 of the Supporting Affidavit the 2nd petitioner depones that the letter dated 30th January 2014 was received on 12th March 2013 long after the 21 day period had expired. He refers to the date on the postage stamp which was unfortunately not annexed to the affidavit. I however note that in Malindi Miscellaneous, the 2nd petitioner in the verifying affidavit deponed that the petitioners' advocate's letter dated 27th March 2013 was received by the advocate on 6th June 2013 after the cancellation of registration had been effected. The document is date stamped by the advocate as having been received on that date. The petitioner also states that the letter did not have enclosures.

19. I am prepared to give the petitioners the benefit of doubt that the 1st petitioner did not receive the 4th respondent's letter of complaint enclosed in the letter dated 12th April 2013. This letter would probably have assisted them in understanding the charges facing them and which they had to respond. The petitioner's advocates may have received the letter late denied them the opportunity to respond to the complaint before the Registrar of Societies.

20. Before I make the final orders, I would like to comment on two issues. First it was unnecessary to join the 2nd respondent to these proceedings. Public officers who perform statutory duties in good faith are immune from civil action. There is no evidence that the 2nd respondent acted in bad faith, with malice or in any way inconsistent with his public duty. Such allegations are therefore dismissed.

21. Second, there is no violation of the freedom of conscience, religion, belief and opinion guaranteed under **Article 32** of the Constitution by the Registrar of Societies exercising lawful powers under the **Societies Act** in the circumstances of this case. The right and freedom to worship is not absolute and when it is exercised through an association registered under the law then the association must comply with the law enacted for that purpose unless the law itself is impugned.

22. Having reached the conclusion, it is the duty of the Court, under **Article 23** of the Constitution, is to frame an appropriate remedy to vindicate the right violated. I therefore make the following orders;

- a. **The cancellation of the registration of Jesus Care Centre Ministry International (Soc/58949) effected under section 12 of the Societies Act and notified by the letter dated 27th May 2013 be and is hereby quashed.**
- b. **The 1st petitioner shall file its response to the Notice to Show Cause issued by the Registrar of Societies dated 30th January 2013 within 14 days from the date hereof.**
- c. **The Registrar is directed to determine the complaint by the 4th respondent expeditiously within a period of 45 days from the date hereof.**
- d. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 30th day of May 2014.

D.S. MAJANJA

JUDGE

Dr Khaminwa with him Ms Aoko instructed by Khaminwa and Khaminwa Advocates for the petitioners.

Ms Lutta, State Counsel, instructed by the State Law Office, for the respondents.

Ms Barasa instructed by Violet Barasa and Company Advocates for the interested party.