



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO 451 OF 2013

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF SOCIETIESRESPONDENT

EX-PARTE

JOSEPH KARUTI M'BATARU (suing on behalf of and as Secretary of
East African Pentecostal Church of Kenya)

JUDGEMENT

These proceedings have been commenced by Joseph Karuti M'bataru in his capacity as the Secretary of the ex-parte Applicant, the East African Pentecostal Church of Kenya. The Registrar of Societies is the Respondent.

The ex-parte Applicant's case is that it is a church duly registered under the Societies Act, Cap 108 ("the Act"). It was registered by the Respondent vide Certificate of Registration No. 33871 of 9th March, 2011. At the moment it has over 600 members and twelve branches.

Through the Respondent's letter dated 18th November, 2013 addressed to one Samuel Muguna Henry of the East African Pentecostal Churches and copied to the ex-parte Applicant, the ex-parte Applicant was ordered to change its name within 30 days or face deregistration. The letter was allegedly served on the ex-parte Applicant on 9th December, 2013 a few days to the deadline for changing the name.

According to the statutory statement dated 18th December, 2013 the ex-parte Applicant challenges the decision of the Respondent on the following grounds:

- i. **The Applicant is legally and validly registered as a society under the Societies Act Cap 108 as Society No. 6689, Registration No. 33871 having been registered on 9th March 2011.**
- ii. **The Deputy Registrar of Societies, Joseph Onyango, wrote a letter dated 18th November 2013 to the Applicant, instructing the Applicant church to change its name or be deregistered.**
- iii. **The Deputy Registrar of Societies did not give the Applicant notice of the charge against it**

- and also did not give the Applicant a hearing or chance to defend itself before reaching the decision to order the Applicant to change its name.
- iv. **There is no legitimate reason to deregister the Applicant or to require it to change its name as it has complied with all relevant provisions of law from pre-registration period to date.**
 - v. **The Deputy Registrar of Societies as per the letter dated 18th November 2013 relies on a wrong provision of the law in his threat to deregister the Applicant as only Section 12 of the Societies Act Cap 108 provides for the grounds for deregistration of a society and not Section 11.**
 - vi. **The Registrar of Societies should be stopped by law from denying the validity of the Applicant's name as the Registrar itself registered the Applicant and the Applicant has relied on that registration for three years.**
 - vii. **The change of name and/or deregistration of the Applicant is bound to cause irreparable damage to the Applicant as the Applicant has a large congregation of over 600 members who will be deprived of their freedom of association and worship. The Applicant has also entered into agreements and acquired several properties including land and five schools under its current name hence the urgency of this matter.**

The ex-parte Applicant's case is supported by the said statutory statement and the verifying and supporting affidavits sworn by Joseph Karuti Mbataru on 18th December, 2013.

Through the notice of motion dated 23rd January, 2014, the ex-parte Applicant therefore prays for orders as follows:-

1. **An order of certiorari to remove into the High Court for the purpose of its being quashed a decision made by the Deputy Registrar of Societies whereby it was decided on the 18th day of November 2013 that the Applicant church registered as East African Pentecostal Church of Kenya, do change its name within 30 days of the said date and if such change is not effected as stipulated, the Registrar will have no alternative but to deregister the same.**
2. **An order of prohibition prohibiting the Registrar of Societies from proceeding with the hearing and determination of the continued validity of the use of the name East Africa Pentecostal Church of Kenya**
3. **Damages arising from the matters herein and interest thereon.**
4. **An order for costs.**
5. **Such further and other relief be granted to the applicant as this court deems fit.**

The ex-parte Applicant's case is that the decision made by the Respondent was made without its input. It was not given an opportunity to show cause why it should not be deregistered. It is the ex-parte Applicant's case that the Respondent's action violated its right to fair administrative action as stipulated by Article 47 of the Constitution.

Further, the ex-parte Applicant contends that it had reasonable and legitimate expectation that upon being registered as a society, it would be entitled to enjoy the said registration within the law, and should there arise any reason for its deregistration, it would be accorded a fair administrative process as outlined in Section 12 of the Act.

Lastly, the ex-parte Applicant submitted that the Respondent is estopped from deregistering it as it is the Respondent who duly registered it after being satisfied that it had complied with all the legal requirements for registration. It is the ex-parte Applicant's case that acting on its registration it has gathered over 600 members and acquired property in its name and the Respondent is therefore stopped from denying the ex-parte Applicant its legitimacy and legal status.

Sections 11 and 12 of the Act are crucial in the determination of this matter and I have taken the liberty to reproduce them. Section 11 which deals with refusal of registration states:

“11. (1) The Registrar may refuse to register a society where—

(a) he is satisfied that such society is a branch of, or is affiliated to or connected with, any organization or association of a political nature established outside Kenya; or

(b) any of the proposed officers has been at any time an officer of a society which has been refused registration or which has had its registration cancelled under section 12 of this Act.

(2) The Registrar shall refuse to register a society where—

(a) he has reasonable cause to believe that the society has among its objects, or is likely to pursue or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya, or that the interests of peace, welfare of good order in Kenya would otherwise be likely to suffer prejudice by reason of the registration of the society; or

(b) the Minister has, under paragraph (ii) of the proviso to section 4(1) of this Act, declared it to be a society dangerous to the good government of the Republic; or

(c) the terms of the constitution or the rules of the society are in any respect repugnant to or inconsistent with any law; or

(d) he is satisfied that the application does not comply with the Act or any rules made thereunder; or

(e) he is satisfied that the society does not exist; or

(f) the name under which the society is to be registered—

(i) is identical to that of any other society which either is existing or has existed, or of any society whose application for registration has been refused under this section; or

(ii) so nearly resembles the name of any other society as, to be likely to deceive the public or the members of either society as to its nature or identity; or

(iii) is, repugnant to or inconsistent with any law or is otherwise undesirable. [Act No. 10 of 1997, Sch.].”

On the other hand Section 12 which provides for cancellation or suspension of registration at sub-section (1) states:

“12. (1) Where, in respect of any registered society, the Registrar where he has reasonable cause to believe that the registration of a society should be cancelled or suspended on the ground that—

(a) the society has where he has reasonable cause to believe among its objects, or is, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya; or

(b) the interests of peace, welfare, or good order in Kenya would, where he has reasonable cause to believe, be likely to be prejudiced by the continued registration of the society; or

(c) the terms of the constitution or of the rules of the society are, in his opinion, in any respect repugnant to or inconsistent with any law; or

(d) the society has wilfully, and after notice from the Registrar, contravened any of the provisions of its constitution or of its rules, or has contravened section 20 of this Act; or

(e) the society has failed to comply, within the time allowed for compliance, with an order made under section 31(1) of this Act; or

(f) the society has dissolved itself; or

(g) the executive of the society is constituted otherwise than in conformity with its constitution and rules; or

(h) a person has become an officer of the society who has been for some time an officer of a society which has been refused registration under this Act or which has had its registration cancelled under this section, and the Registrar has given written notice to the society in the prescribed form that such officer must be removed within a period (not being less than seven days from the date of the notice) specified in the notice, and the officer has not been removed within that period; or

(i) the society has failed to furnish, within the time allowed, one of the documents required by section 30(1) of this Act; or

(j) the society is, or has without duly notifying the Registrar in the prescribed form become, a branch of or affiliated to, or connected with, any organization or group of a political nature established outside Kenya,

the Registrar shall, give written notice in the prescribed form to the society calling upon the society to show cause, within such period as is specified in the notice, why its registration should not be cancelled or, as the case may be, suspended; and, if the society fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration of the society.

(2.).....”

It is very clear that Section 11 deals with refusal of registration. The ex-parte Applicant was already registered and the Respondent’s reliance on Section 11(2)(f)(ii) to direct the ex-parte Applicant to change its name was therefore erroneous. As submitted by the Applicant, the provision which the Respondent ought to have invoked was Section 12 which provides for cancellation or suspension of registration.

Before a society’s registration can be cancelled or suspended, the Respondent must give written notice calling upon the society to show cause why its registration should not be cancelled or suspended-**Section 12(1) of the Act.**

This provision is in tandem with the requirement on fair administrative action found in Article 47 of the Constitution which provides:

“47. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) 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.

(3).....”

The Respondent’s letter dated 18th November, 2013 did not give an opportunity to the ex-parte Applicant to state why it should not change its name. The pertinent paragraph of that letter states:

“By copy of this letter to the latter registered church this office now instructs that the said name be changed and evidence of such change be made available within the next 30 days. Note that if such change is not effected as stipulated, the Registrar will have no alternative but to deregister the same.”

Looking at the names of the ex-parte Applicant and that of the recipient of the letter namely East African Pentecostal Churches, one can say that the ex-parte Applicant ought not to have been registered in the

first instance. The decision of the Respondent may have been merited.

However, the right to fair administrative action before an adverse decision is taken is a right that is now protected by the Constitution. It cannot be overlooked. The Applicant was entitled to an opportunity to say something before the Respondent could take action. The Applicant was not accorded such an opportunity. This right is pertinent especially when adverse action is being taken against a person.

Without saying more, I find that the application before this Court has merit. An order of certiorari is therefore issued removing into this Court and quashing the Respondent's decision directing the ex-parte Applicant to change its name within 30 days or face deregistration.

The ex-parte Applicant also prayed for an order of prohibition prohibiting the Respondent from proceeding with the hearing and determination of the continued validity of the use of the name East African Pentecostal Church of Kenya. This prayer cannot issue as the same would amount to curtailing the powers donated to the Respondent by statute. The Respondent cannot be stopped from discharging the mandate given to that office by Parliament. The fact that the ex-parte Applicant was registered does not mean that the Respondent cannot exercise the powers donated by Section 12 of the Act to have the ex-parte Applicant deregistered. This particular prayer is therefore dismissed.

The ex-parte Applicant also prayed for the award of damages and interest thereon. This claim was not proved and in any case damages are not available in a claim for judicial review. This prayer also fails and the same is dismissed.

As the application was not opposed, the prayer for an order of certiorari is allowed with no orders as to costs.

Dated, signed and delivered at Nairobi this 25th day of June, 2014

W. KORIR,

JUDGE OF THE HIGH COURT