



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Civil Application 261 of 2008

IN THE MATTER OF AN APPLICATION SEEKING JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF MWATIKHO TORTURE SURVIVORS ORGANIZATION

BETWEEN

REPUBLIC.....APPLICANT

~VERSUS~

- 1. THE PERMANENT SECRETARY MINISTRY OF GENDER, CHILDREN’S AFFAIRS AND SOCIAL DEVELOPMENT.....1ST RESPONDENT**
- 2. THE DISTRICT GENDER &SOCIAL DEVELOPMENT OFFICER BUNGOMA DISTRICT.....2ND RESPONDENT**
- 3. THE ATTORNEY GENERAL.....3RD RESPONDENT**
- 1. SAMUEL NGETI**
- 2. GEORGE WALUKHU**
- 3. FRANCIS NAMYENGO**
- 4. TAIGA WAYANJA.....EX-PARTE APPLICANTS**

RULING

On 28/7/92 Mwatikho Torture Survivors Organization (the *ex-parte* Applicant) was issued with a certificate by the Ministry of Gender, Sports, culture and Social Services at Bungoma as a Community Based Organization. According to the Constitution of the organization, its aims and objectives included

advocacy against torture and human rights violations in Kenya, fighting for compensation of the torture survivors and their families, ensuring rehabilitation and reparation of survivors both socially and economically, and so on. It is not in dispute that on 7/7/2008 the District Gender and Social Development Officer of Bungoma Districts (the 2nd Respondent) wrote to the coordinator of the organization to say that it held a registration certificate that was not valid. The coordinator was asked to hand over the certificate in 7 days, failing which the organization would be deemed to be acting illegally. On 7/8/2008 the 2nd Respondent wrote another letter informing the organization that its registration had been cancelled forthwith. On 25/9/2008 the *ex-parte* Applicants came to court and obtained leave to apply to bring into the court and quash the decision by the 2nd Respondent to cancel the registration. Leave was also granted to apply for an order of *Mandamus* to direct the Respondents to reinstate the organization and an order of *Prohibition* to prohibit the Respondents from deregistering the organization.

A substantive motion was brought to which the 2nd Respondent Rodgers W. Waliama responded by filing a replying affidavit. The response was basically that an organization which in 1992 began as Mwatikho Women Group had subsequently changed into the present organization which had on 6/9/2001 resolved to register itself as a non-Governmental organization and obtained registration on 20/12/2001 (“*RWW iv*”). The registration was by the non-Governmental Organizations Board under the non-Governmental Organizations Act. The *ex-parte* Applicants wrote to the 2nd Respondent to inform him of their changed status.

It is clear that the *ex-parte* Applicants did not disclose in the application about their changed status as a non-Governmental organization. It is not in dispute that the organization resolved in its executive meeting held on 6/9/2001 (“*RWW III*”) that

“members felt that after operating as a community based organization the scope of Mwatikho had tremendously expanded hence the bigger need to have it registered as a non-governmental organization to cater for the entire country.”

Following the resolution it successfully applied for registration as a non-Governmental organization. The *ex-parte* Applicants do not say that with this registration they could still operate as a community based organization under the licence that had been issued by the 2nd Respondent.

Nonetheless, the correspondences annexed by the 2nd Respondent show that subsequent to the registration of the *ex-parte* Applicants as an NGO it continued to be registered every year as a community based organization. This registration followed application every year. What, then this means is that if the 2nd Respondent intended to cancel any such registration he was required to inform the *ex-parte* Applicants of the intention and the reasons why such cancellation was intended. The *ex-parte* Applicants were required to be heard before a decision to cancel the registration was arrived at. The court has judicial review power of *Certiorari* to quash any decision for excess or lack of jurisdiction, error of law on the face of the record, or breach of the rules of natural justice, or where the determination has been procured by fraud, collusion or perjury (**Timotheo Makenge v. Manunga Ngochi, Civil Appeal no.25 of 1978**).

The *ex-parte* Applicants claimed that, among other things, the 2nd Respondent did not hear them before he made the decision to cancel the registration. The facts of the case support the claim. The decision to cancel the registration was null and void. The consequence is that the decision is called into this court by the order of *Certiorari* and quashed. By order of *Mandamus* the Respondents are compelled to lift the cancellation.

It should be clear that the result of the above orders is that the *ex-parte* Applicants’ organization shall continue to operate. When, however, the registration is due for renewal they will make the usual application and the Respondents shall be at liberty to deal with it in accordance with the law. The *ex-parte* Applicants’ licence may be cancelled immediately, but after due process.

Costs of this application shall be borne by the Respondents.

Dated, signed and delivered at Bungoma this 24th day of October, 2012.

A. O. MUCHELULE
JUDGE