



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JR. MISCELLANEOUS APPLICATION NO. 78 OF 2011

IN THE MATTER OF AN APPLICATION BY MAULED JASHO, EBRAHIM ATHUMANI AND JUMA ALI BOY THE FORMER OFFICIALS OF THE PANGANI MOSQUES SHAURI MOYO SOCIETY FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF REGISTRAR OF SOCIETIES UNDER THE SOCIETIES ACT CAP 108 OF THE LAWS OF KENYA

**MAULED JASHO
EBRAHIM ATHUMANI
JUMA ALI**

BOYAPPLICANTS

AND

THE REGISTRAR OF

**SOCIETIESRESPONDENT
ACC RAM JASHO1ST INTERESTED
PARTY
ALLY OMAR KAMIRA.....2ND INTERESTED
PARTY
ABDULAZIZ MUMALI.....3RD INTERESTED
PARTY**

RULING

On 6th April, 2011 the Ex Parte Applicant was granted leave to apply for, *inter alia*, an order of Certiorari to bring into this court the decision contained in a letter dated 16th March, 2011 confirming the

registration of the Interested Parties as the bona fide officials of Pangani Mosque Shauri Moyo Society. Although the applicants had also prayed that such leave do act as a stay of the decision complained of, the court directed that the said issue be argued inter partes on 12th April, 2011.

The main grounds upon which these proceedings were brought are that the respondent had by a letter dated 16th March, 2011 confirmed the Interested Parties as the bona fide officials of the Pangani Mosque Shauri Moyo Society, hereinafter referred to as “**the society**”. Prior to registering the Interested Parties as the officials of the society, the respondent ignored a complaint by the applicants through their advocates informing him that one of the Interested Parties, Omar Kamira is not a bona fide member of the society. As a result of the registration of the Interested Parties as the officials of the society, the said officials served a notice on the applicants requiring them to handover the affairs and management of the society to them.

The applicants further contended that the respondent also ignored a complaint by the applicants through the Supreme Council of the Kenya Muslims Organization dated 3rd March, 2011 regarding the legality of the meeting held on 27th February, 2011 by the Interested Parties. By proceeding to confirm the Interested Parties as the bona fide officials of the society, the respondent had acted in breach of the rule of natural justice by ignoring the aforesaid complaints, the applicants stated. The applicants further contended that the respondent denied them fair hearing and acted in bad faith.

In their replying affidavit sworn by **Accrram Jasho**, the Interested Parties stated that they had been members of the society for more than ten (10) years. They accused the applicants, being former officials of the society, of failing to maintain proper records of the registered members. He further stated that for a period in excess of fifteen (15) years, the applicants had failed to carry elections of officials of the society and thus breached the provisions of the Society’s Constitution. As a result the Interested Parties sought the assistance of the Registrar of Societies, the respondent.

On 26th November, 2010 the respondent wrote a letter to the applicants informing them of numerous complaints that had been raised by the Interested Parties regarding the running of the society. The Registrar informed them that a perusal of the society’s file revealed that no elections or proper elections of the society had been held since 1989. The applicants were directed to hold an annual general meeting and hold elections.

That notwithstanding the applicants failed to convene a proper general meeting hence necessitating the actions of the respondent in his letter of 1st February, 2011. In that letter Mr. Ali Omar Kamira, the 2nd Interested Party was directed to make arrangements to issue a notice of not less than twenty one (21) days for a general meeting at which elections would be held.

A notice was issued and a special general meeting was held and attended by 134 members. During the said meeting elections were conducted and new officials of the society chosen. A list of members present and the officials who were elected is contained in the minutes of the special general meeting annexed to the replying affidavit.

In an application of this nature the court cannot go into a detailed analysis of the issues raised by parties and the applicable law as that may prejudice a fair hearing of the substantive motion. In deciding whether the leave granted ought to operate as a stay of the impugned decision, the court has to consider the loss, damage and/or prejudice that may be occasioned by grant or refusal of the orders sought before the

substantive motion is heard and determined.

The respondent's letter dated 26th November, 2010 shows that the society has not held any elections or proper elections since 1989. By so stating the respondent meant that if any elections had purportedly been held during the said period, the same did not conform with the requirements of the Societies Act. That was the reason why he directed that the society's annual general meeting be held within a specified period of time, 45 days so that election of the society's officials could be carried out. From the minutes of the meeting held on 27th February, 2011 there is *prima facie* evidence that elections were held on the same day and the names of the elected officials were duly forwarded to the respondent.

Although it was alleged that the Interested Parties are not paid up members of the society, no evidence was adduced by the applicants in support thereof. The burden of proof is on he who alleges. When the applicant's advocates wrote to the respondent, they alleged that the 2nd Interested Party was not a member of the society but did not make any reference to the other two Interested Parties and even in respect of the 2nd Interested Party there was no evidence to support the allegation made.

In view of the foregoing, while the court cannot conclusively state that the meeting of 27th February, 2011 was properly called and elections conducted as that is an issue for determination after full hearing of the substantive motion, there is no basis of staying the decision of the respondent contained in his letter of 16th March, 2011. Consequently, prayer 6 of the applicant's application dated 5th April, 2011 is dismissed. The costs of the application shall be in the main cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF APRIL, 2011.

D. MUSINGA

JUDGE

In the presence of

Nazi – court clerk

Mr. Njenga holding brief for Mr. Wanyonga for the Interested Parties

Mr. Omwanza holding brief for Mr. Kigen for the applicants