



**Republic v Registrar of Societies & another; Muchiri & 2 others (Exparte Applicants) (Suing on Behalf of Kenya National Organisation for Victims of Ethnic Clashes (KNOVEC)) (Judicial Review Miscellaneous Application E268 of 2024) [2025] KEHC 5791 (KLR) (Judicial Review) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5791 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E268 OF 2024**

**JM CHIGITI, J**

**MAY 9, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF SOCIETIES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOSPHAT NYOTA MUCHIRI ..... EXPARTE APPLICANT**

**JOSEPH WAWERU NGETHE ..... EXPARTE APPLICANT**

**WILSON RUHIA MACHARIA ..... EXPARTE APPLICANT**

**SUING ON BEHALF OF KENYA NATIONAL ORGANISATION FOR VICTIMS OF ETHNIC CLASHES (KNOVEC)**

**JUDGMENT**

1. The application before this court for determination is the one dated 25<sup>th</sup> November 2024 wherein the Applicants seek for orders that: -
  - a. The Honourable court do grant an order of Mandamus compelling the 1<sup>st</sup> Respondent to forthwith effect the change of officers of the Exparte Applicants on the Register of Societies.
  - b. That the costs of this application be borne by the Respondent.



2. The Exparte Applicants are registered as a society under the [Societies Act](#) of Kenya and were issued with a certificate of registration number 23919 on the 11<sup>th</sup> of August 2024.
3. On 17<sup>th</sup> April 2024, the Exparte Applicants notified the Respondent of their intention to hold an AGM for the purposes of electing new officials.
4. Subsequently the AGM was held on 8<sup>th</sup> May 2024 wherein new officials were elected that being Josphat Nyota Muchiri as the Secretary, Joseph Waweru Ngethe as the Treasurer and Wilson Ruhia Macharia as the Chairman.
5. The Respondent was given a Notice dated 25<sup>th</sup> May 2024 of the change of officers of the Exparte Applicants officials pursuant to Section 17 of the [Societies Act](#) and Rule 11 of the Societies Rules.
6. The Respondent has refused and/or neglected willfully and unlawfully to effect the change of officers in the Register of Societies.
7. The Exparte Applicants have approached this court seeking a court order to compel the Respondent to undertake the change of officers in the Register of Societies thereby abdicating its statutory duties under section 8 of the [Societies Act](#) which amounts to a violation of the fundamental right to an administrative action that is expeditious, lawful and efficient.
8. The Exparte Applicants argue that they have not been given any written reasons for the failure to exercise its duties or carry out the administrative action.
9. The Exparte Applicants' Advocates request for a review of the Respondent's refusal to effect the change of officials, through a letter dated 16<sup>th</sup> October 2024, which has fallen on deaf ears.
10. The Application is unopposed.

### **Analysis and determination;**

**The issue for determination is whether the Applicants have made a case for the grant of the orders sought.**

11. Section 16 of the [Societies Act](#) stipulates that;
  - (1) Notice in the prescribed form of any change of officers, or of the title of any office, of a registered society shall be given to the Registrar within fourteen days of the change, and the notice shall be signed by three of the officers of the society.
  - (2) Any registered society which fails to give notice as required by subsection (1) of this section of any change of officers or of the title of any office of the society, shall be guilty of an offence.
12. Section 17 of the [Societies Act](#) stipulates that;
  - (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.
  - (2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.



- (3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.
13. Section 2 of the *Fair Administrative Action Act* provides that ‘failure’, in relation to the taking of a decision, includes a refusal to take the decision.
14. Section 4 (1) of the *Fair Administrative Action Act* provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
15. From the evidence tendered by the Applicants, this court is satisfied that the Applicants have made out a case for the grant of the orders sought.
16. Where a person's legitimate expectation is not fulfilled by taking a particular decision, then the decision maker should justify the denial of such expectation by showing some overriding public interest.
17. According to De Smith, Woolf & Jowell, “Judicial Review of Administrative Action” 6<sup>th</sup> Edn. Sweet & Maxwell page 609:
- “A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”
18. The Applicants have complied with Section 16 of the *Societies Act* and they have a legitimate expectation that the Respondent would effect the changes in the register.
19. Section 6 Subject to subsection (5), of the of the *Fair Administrative Action Act* stipulates that if an administrator fails to furnish the Applicants with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.

### **Disposition;**

20. The Applicants have proven that the Respondent has failed to act and or communicate with the Applicants despite reminders from counsel. The court is in the circumstances satisfied that the failure to act on the part of the Respondent creates a presumption that the Respondent is conducting itself without good reason.
21. The inaction translates into a refusal given that the Respondent is not handling any dispute under Section 17 of the *Societies Act*. The Respondent has failed to discharge its statutory mandate.
22. This is flagrant infraction of Article 47 (1) of *the Constitution* which provides ‘every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
23. The foregoing further violates Article 47 (2) of *the Constitution* which provides 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.

### **Order;**

1. An order of Mandamus is hereby issued compelling the 1<sup>st</sup> Respondent to forthwith effect the change of officers of the Exparte Applicants on the Register of Societies.



2. Cost to the Applicants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY 2025.**

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**J. M. CHIGITI (SC)**

**JUDGE**

