



**Kaigi & 4 others v Registrar of Societies; Mugo & 3 others (Interested Parties)
(Judicial Review E006 of 2024) [2025] KEHC 10765 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
JUDICIAL REVIEW E006 OF 2024
AK NDUNG’U, J
JULY 23, 2025**

BETWEEN

**PETER MWANGI KAIGI 1ST APPLICANT
LILIAN MUKETHA 2ND APPLICANT
JAMES MUKIRA 3RD APPLICANT
JAPHETH MURANGIRI 4TH APPLICANT
HILDA GAKII 5TH APPLICANT**

AND

REGISTRAR OF SOCIETIES RESPONDENT

AND

**PATRICK MUGO INTERESTED PARTY
DAVID KARIUKI INTERESTED PARTY
CECILIA NYOKABI INTERESTED PARTY
EUNICE WANJA INTERESTED PARTY**

JUDGMENT

1. Pursuant to leave of this court, the applicants moved this court vide a Notice of Motion dated 03/01/2025 brought under Order 53 Rule 3 of the Civil Procedure Rules seeking for the following orders;
 - i. An order of certiorari to bring into this hounorable court and quash the decision of the Respondent to revert the office bearers of Mount Kenya West Nanyuki Community Forest



Association (herein referred as association) to Patrick Kariuki Mugo, David Kariuki, James Mukira Mugo, Patricia Mumbi and Cecilia Nyokabi Mwangi.

- ii. An order of mandamus directed to the registrar of societies to register the Applicants as the office bearers of Mount Kenya West Nanyuki Community Forest Association.
 - iii. That costs be provided for.
2. The application is based on the grounds on the face thereof and supported by an affidavit of Peter Mwangi Kaigi. Mwangi deposed that on 20/04/2024, the 3rd Applicant, secretary of the association issued a notice for annual general meeting and one of the agendas was election. Members of the association had complained about the association's leadership and on 20/05/2024, the committee together with the Assistant County commissioner, the area chief and forest manager held a meeting to discuss how the election was to be held. The applicants sought votes from the members of the association and on 21/05/2024, they were elected as office bearers and same was communicated to the Respondent. The association filled the notification of change of officers under the Society Rules and filed but the former chairperson wrote to the Respondent stating that the elections held were illegal since elections were to be done after five years and not one year hence they were to be held in 2027.
 3. The Respondent through the State counsel stated that the elections held on 21/05/2024 were legal hence the Applicants were legitimate office bearers and on 04/06/2024, the deputy registrar of the societies wrote a letter confirming the Applicants as the officials. The registrar of societies was aware of the elections. That the association constitution provides that office bearers are to be elected at the annual general meeting held each year specifically Article 4 a(c) states that one of the agendas of annual general meeting shall be elections of office bearers and committee members. That the Respondent used the provisions meant for elections for executive committee instead of the provisions meant for elections of office bearers of the association. The Respondent gave two contradicting decisions in that on 04/06/2024, the Respondent stated that the elections of the office bearers were to be held annually and on 19/12/2024, it stated that the elections were to be held after five years hence its actions of 19/12/2024 was an abuse of office.
 4. He further deposed that one Patricia Mumbi was never elected into the office by the members as she stated in her letter and that there were no elections in the year 2022 and the notice of change filed was fraudulently filed by the former chairperson. It was noted in the meeting held on 21/11/2024 that only one election was held in 2013 and notice of change of officers has been done twice. That the Respondent was consulted on the elections held on 21/05/2024 and recommended that elections be held after special general meeting hence the Respondent erred by making the decision of 19/12/2024.
 5. In opposing the application, the Respondent filed grounds of opposition dated 30/01/2025 and averred that the issue in contention is the interpretation of the society's constitution in regard to the term of office of the officers of the society, which, on one hand, provides that the elections of the society shall be held annually and on the other hand that officers of the society shall hold office for a term of five years. That the Respondent has powers to resolve dispute on the ambiguity of the society's constitution under Section 19(2) of the Societies Act which gives the Respondent powers to order any society to amend its constitution to be compliant with the Societies Act. That the Applicant's suit offends the doctrine of exhaustion hence the suit is premature and an abuse of the court process.
 6. The Interested Parties did not file a replying affidavit to the Applicants notice of motion.
 7. In response to the Respondent's grounds of opposition, the Applicants filed a supplementary affidavit dated 24/02/2025. It was averred that before the elections were held, a committee was held to discuss how the elections would be conducted and the chairperson, David Kariuki was in attendance and after



the elections, David Kariuki congratulated him for winning the seat. That in April, 2018 a Taskforce Report on Forest Resources Management and Logging activities recommended that saw millers should cease from being members of CFA to avoid conflict of interest and the main reasons the elections of 21/05/2024 were held was to cure the conflict arising from the chairperson being a saw miller. That the 1st Interested Party has used his position to acquire more land from the forest to harvest trees. That some of the office bearers were not elected and have used their position to withdraw and deposit funds from the association bank account. That on 20/11/2024, they were issued with a letter by the Respondent informing the manager cooperative bank that the association has changed the office bearers. It is urged that the decision of 19/12/2024 was acquired unprocedurally and the same cannot be cured by section 19 of the [Societies Act](#).

8. The application was canvassed by way of written submissions. The Applicants' counsel submitted that the Respondent's decision of 31/05/2024 was never challenged in court which meant that the decision remained in force until 19/12/2024. That changing the decision was an abuse of the office and the Respondent's action were ultra vires. That the Respondent having made a decision that the election held on 31/05/2024 were conducted within the scope of the association's constitution and the [Societies Act](#), it was bound by the provisions of Section 7(1) of the [Fair Administrative Action Act](#). There were no judicial proceedings that directed the Respondent to alter its decision made on 31/05/2024 hence it had no power to alter the said decision of 31/05/2024 and the only time they could alter their decision was after an order of mandamus was issued against them. They could only alter their decision after being served with a court order, hence the Respondent acted beyond their powers and their decision was therefore tainted with illegality.
9. It is submitted that it was clear that the Respondent was satisfied with the identity of the Applicants as office bearers since the deputy registrar issued an order directing the manager cooperative bank to change the details of the bank account of the association. It is the Applicant's position that anyone aggrieved by the decision of the Respondent had to seek judicial review. That changing the previous decision without following the proper procedure was therefore unreasonable, irrational and tainted with illegality. That the Respondent took it upon themselves to review their own decision by issuing a different decision which was contrary to Section 7(1) of the [fair Administrative Action Act](#) which allows anyone aggrieved by an administrative action to apply for review in court. The respondent hence reviewed their own decision, a power that is fully reserved for the courts. The Respondent had already exercised their power on 31/05/2024 as provided under Section 18 of the [Societies Act](#) therefore they had no power to change their decision.
10. In his submissions Counsel for the Respondent maintained that the Applicants have not exhausted the available mechanisms for resolving the subsisting dispute regarding the term of office of the office bearers. That it was uncontroverted that there exists an ambiguity in [the constitution](#) of the society in respect to the terms of the office of office bearers as clause 4(b) of [the constitution](#) stated that the election shall be conducted annually while clause 2(a) stated that an office bearer shall hold the office for 5 years. That the Respondent has powers to resolve the dispute under Section 19(2) of the [Societies Act](#) which gives the Respondent powers to order any registered society to amend its constitution. That the Respondent has supervisory powers over registered societies as was held in Rev. David Mulei Mbuvi & 21 others (HC Msc. Application No. 155 of 2006) hence, the Applicants have not exhausted the available mechanisms for resolving the dispute by failing to move the Respondent to invoke Section 19(2) of the [Societies Act](#) and this offends the doctrine of exhaustion as provided under Section 9(2) of the [Fair Administrative Action Act](#).
11. The Interested Parties' counsel submitted that the Respondent was only moved once vide a letter dated 14/11/2024 after the decision of the lower court where the court stated that the Interested



Parties ought to have moved the Respondent instead of the court. That the letter dated 08/05/2024 by the Interested Parties was received by the Respondent but no action was taken by the Respondent until 31/05/2024 when the Respondent wrote a letter to the 1st Interested Party affirming elections of the Applicants without according him an opportunity to be heard. That at the time of writing the letter of 08/05/2024, elections had not been conducted to warrant challenge before the Respondent. Therefore, it is misleading for the Applicants to submit that the Respondent was properly moved through a letter dated 08/05/2024 and held a consultative meeting between the aggrieved parties and came up with a decision vide a letter dated 31/05/2024.

12. He submitted that after the elections of 21/05/2024, the Respondent was moved vide a letter dated 18/11/2024 and held a consultative meeting on 25/11/2024 where both parties were represented and after hearing both parties, the Respondent quashed the Applicants' election. That the Applicants being aggrieved by the Respondent's decision should have been guided by provisions under Section 18(3) and Section 15 of the Societies Act therefore they have failed to exhaust the redress provided under the Act and moved the court improperly hence their suit should be dismissed.
13. I have had occasion to consider the application, the supporting grounds and affidavit on the one hand and the grounds of opposition by the Respondent on the other hand. I have had due regard to the learned submissions by respective counsel and case law cited. I have put into account the applicable law.
14. Of determination is whether the applicants have established the legal threshold for the grant of the writs of certiorari and mandamus sought.
15. The Applicants' claim is that the Respondent had no right to change their earlier decision confirming the Applicants as the rightful office bearers. That by changing their earlier decision, the Respondent acted ultra vires and any party who was aggrieved by the decision of 31/05/2024 ought to have filed for judicial review. The Respondent's action amounted to reviewing their own decision.
16. The Respondent's case on the other hand is that there is an issue with the association's constitution since it provides that the election of the association shall be held annually and on the other hand, it states that the office bearers shall hold office for a period of five years. That it is upon the Respondent to resolve such issues pertaining to the association's constitution hence the Applicants have not yet exhausted the mechanisms in place for resolving the dispute.
17. The Interested parties' case is that upon the elections that were held on 21/05/2024, the Interested Parties moved the lower court vide MCELC Case No. E046 of 2024- Patrick Mugo vs The Registrar of Societies & others but the trial magistrate referred the matter to the registrar of societies after hearing an objection that was raised by the Applicants. Consequently, the Interested Parties moved the Respondent vide a letter dated 18/11/2024 and after hearing both parties, the Respondent made a decision on 19/12/2024 quashing the Applicants' elections. Counsel also submitted that the Applicants have not exhausted mechanisms provided under the Act for dispute resolution.
18. The Respondent's and the Interested Parties' position is that the Applicants have not yet exhausted the avenue put place to resolve the dispute of this nature. Courts have in many occasions reiterated the position that where there are alternative avenues legally provided for dispute resolution, there should be postponement of judicial consideration of such disputes until after the available avenues are fully adhered to or unless it is adequately demonstrated that the matter under consideration falls within the exception to the doctrine of exhaustion.
19. The doctrine of exhaustion was comprehensively dealt with in Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 William



Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR where the court held as follows:

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in R v Independent Electoral and Boundaries Commission (I E B C) ex parte National Super Alliance (NASA) Kenya and 6 others [2017] eKLR, where the Court opined thus:

This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in Speaker of National Assembly v Karume [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

20. In addressing the dispute now before the court, it is opportune at the earliest to put the dispute in proper perspective. The common ground is that by the Respondent's letter dated 31/5/24, the respondent made a determination that the Applicants were the rightfully elected office bearers of the subject society. Aggrieved by that decision, the Interested Parties approached the Magistrates Court which court following an objection to the suit found it had no jurisdiction in the matter the same being the repose of the Respondent.
21. This triggered the impugned proceedings before the Respondent which culminated with the Respondent making a finding vide a letter dated 19/12/24 that the Interested Parties were the bona fide officials of the Society.
22. It follows then that the Applicant had no dispute to place before the Respondent have been deemed duly elected and they impugn the Respondent's action to review its earlier decision. The doctrine of exhaustion thus loses traction and is not applicable to the applicants.
23. The pertinent question is whether this action by the respondent of confirming the interested parties as the office bearers of the Society met legal muster. The legal muster envisaged here is not on the merit of the decision since that is outside the powers of this court in judicial review.
24. So, what is the scope of judicial review? The words of Lord Diplock in the case of Council of Civil Service Unions -v- Minister for Civil Service 1984 3 all er 935 [1985 A.C 374] are a useful guide in navigating this area of law. He stated;

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question



to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of state is exercisable. By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury unreasonableness"... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice." (Emphasis mine).

25. That is the scope of judicial review applications which the Courts in this country have continued to be guided by. (See also CORTEC MINING KENYA LTD -V- CABINET SECRETARY MINISTRY OF MINING & 9 OTHERS 2017 eKLR and also the case of REPUBLIC -V- THE CHAIRMAN AMAGORO LAND DISPUTES TRIBUNAL 2014 eKLR) .
26. The role of a Court considering such an application was summed up by the Court of Appeal in the case of Municipal Council of Mombasa -v- r & Umoja consultants Ltd C.A. CIVIL APPEAL NO 185 of 2001 [2002 eKLR] thus:

“... judicial review is concerned with the decision -making process, not with the merits of the decision itself ... The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters? These are the kind of questions a Court hearing a matter by way of judicial review is concerned with, and such Court is not entitled to act as a Court of appeal over the decider; acting as an appeal Court over the decider would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.”
27. In the Respondent's main ground of opposition (ground 3), the Respondents maintains that the issue in contention is the interpretation of the Society's Constitution in regard to the terms of office of the office bearers of the society. It is stated that *the Constitution* provides that the elections of the Society shall be held annually and on the other hand that officers of the society shall hold office for a term of 5 years. It is urged that the Respondent has powers to resolve that ambiguity under Section 19(2) of the *Societies Act*.
28. In my view, this contention sidesteps the real issue in controversy. While it is correct that the Respondent has power to resolve the ambiguity in the Society's Constitution, firstly, it is not clear why that parameter was not applied in the Respondent's decision of 31/5/24 confirming the Applicants as the office bearers. Secondly, what is good for the goose is good for the gander. The ambiguity affects both the Applicants and the Interested Parties and therefore legally there was no basis upon which the Interested Parties would be found to be the rightful office holders in the environment of an ambiguous Constitution if at all.



29. Which leads me to what is a clear procedural and legal flow in the decision of the Respondent of 19/12/24. The Respondent made a decision on the office holders of the Society vide its letter of 31/5/24. Having reached that decision, the matter was not within the purview of the Respondent to sit over the dispute twice. The Respondent was thus moved un-procedurally by the Interested Parties.

30. Moreover, Section 18 of the Act provides as follows;

18. Disputes as to officers

(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.

31. There is no demonstration at all that the Registrar invoked this provision if he was of the opinion that a dispute had occurred among the members or officers of the subject society as a result of which he was not satisfied as to the identity of the persons who had been properly constituted as officers of the society.

32. To the contrary, the Respondent as can be gleaned from the response to the instant application, purported to invoke Section 19 of the Act to have the Society amend its constitution but in doing so ended assuming jurisdiction to review his own decision on who were the rightful officials of the Society a jurisdiction not conferred by the Act or any other law.

33. This action was precipitated by the dismissal of the Interested Parties suit filed at the Magistrates court whereby on a preliminary objection, the matter was found to have been irregularly filed at the court.

34. Section 19 provides as follows;

19. Contents of constitution or rules

(1). *The constitution* or rules of every registered society or exempted society, formed after the commencement of this Act shall provide, to the satisfaction of the Registrar, for all the matters specified in the Schedule to this Act and shall not be amended so that it ceases so to provide.

(2). The Registrar may, if he thinks fit, by order in writing, require any society which, at the commencement of this Act, is registered to amend its constitution or rules within three months after the date of the order to provide for all or any of the matters specified in the Schedule to this Act, and, notwithstanding its constitution or rules, the society, for the purpose of complying with the order, shall convene a meeting of the same kind as is required by its constitution or rules for amending its constitution or rules, or



if *the constitution* or rules make no provision for such amendment the society shall convene a general meeting of members for the purpose.

- (3). If a registered society contravenes an order given under subsection (2) of this section, the society and every officer thereof shall each be guilty of an offence, and the society shall be liable to a fine not exceeding ten thousand shillings, and every officer shall be liable to the like fine or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment:

Provided that an officer shall not be convicted of the offence under this subsection if he establishes to the satisfaction of the court that he exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his control.

35. As earlier noted, the dispute is that the registrar confirmed the Applicants as the duly elected office bearers of the association but later changed the earlier decision and reverted back the office to the Interested Parties. In the impugned decision, the registrar noted that there were two conflicting clauses as to the term of office of the office bearers (clause 2(a) and 4(c)) in the association's constitution. The registrar however found that the term of office of office bearers was five years as provided under clause 2(a) whereas 4(c) provided that elections would be held annually translating to a term of one year. This, no doubt, is an anomaly that requires immediate resolution through the invocation of Section 19 of the Act by the Respondent.
36. My view that Section 18 of the Act above does not give the Respondent the right to revoke elections as it did in this case. It only permits the Respondent to cancel registration where the members of an organization persist in wrangles within the organization and fail to satisfy the Respondent that they have resolved the wrangles. Section 18(1) requires the registrar to order the parties to submit evidence that the dispute had been resolved. The Respondent therefore took a step not anticipated and not permitted under the Act by ordering for revocation of election held on 21/05/2024.
37. The action by the Respondent was in the circumstances tainted with illegality and procedural impropriety and is one amenable to judicial review.
38. With the results that the application herein has merit and is allowed. I make the following orders;
 1. An order of certiorari be and is hereby issued to bring into this court and quash the decision of the Respondent to revert the office bearers of Mount Kenya West Nanyuki Community Forest Association to Patrick Kariuki Mugo, David Kariuki, James Mukira Mugo, Patricia Mumbi and Cecilia Nyokabi Mwangi.
 2. An order of mandamus be and is hereby issued directed to the registrar of societies to register the Applicants as the office bearers of Mount Kenya West Nanyuki Community Forest Association.
 3. The Respondent to within 90 days invoke the provision of Section 19 of the *Societies Act* to cause amendment to *the Constitution* of Mount Kenya West Nanyuki Community Forest Association to cure the ambiguity in clauses 2(a) and 4(c) of the Society's Constitution.
 4. Each Party to bear its own costs.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JULY 2025.

A.K. NDUNG'U

JUDGE

