



**Republic v Registrar Societies; Elema & 5 others (Interested Parties); Lafa & another (Exparte Applicants) (Judicial Review Application E131 of 2024) [2025] KEHC 9804 (KLR) (Judicial Review) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9804 (KLR)

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

**JUDICIAL REVIEW APPLICATION E131 OF 2024**

**RE ABURILI, J**

**JULY 7, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE REGISTRAR SOCIETIES ..... RESPONDENT**

**AND**

**ADAN MAMO ELEMA ..... INTERESTED PARTY**

**HUSSEIN FOLFE KUNO ..... INTERESTED PARTY**

**ABDIKADIR DIDO GUYO ..... INTERESTED PARTY**

**MOHAMED ALI WARIO ..... INTERESTED PARTY**

**GEDOW GOLLO GODANA ..... INTERESTED PARTY**

**MOHAMED ABUDURA GUYO ..... INTERESTED PARTY**

**AND**

**HUSSEIN INTALO LAFA ..... EXPARTE APPLICANT**

**ALIO TEPE ABUDO ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Pursuant to leave granted by this Court on 23<sup>rd</sup> July 2024, the Exparte Applicants filed a Notice of Motion application dated 5<sup>th</sup> August 2024 seeking the following orders:



- a. That the Honourable Court be pleased and do hereby issue orders of Certiorari to quash the decision of the Respondent to adopt the proposed change of officials as per the list presented by the interested parties.
  - b. That the Honourable Court be pleased and do hereby issue orders of Mandamus to compel the Respondent to reinstate the applicants as the bona fide officials of the Marsabit Sakuyu Council of Elders.
  - c. That costs of the application be provided for.
2. The application is supported by the affidavit of Alio Tepo Abudo.
  3. A brief background of the instant case as pleaded by the Ex parte Applicants is that sometime on 8<sup>th</sup> August 2023, the Vice Chairman of the Society Mr. Adan Ali Boru convened a meeting of the Society at the behest of the 1<sup>st</sup> Interested Party, without issuing any notice in writing to the members of the Society and that when the 2<sup>nd</sup> Ex parte Applicant raised concerns over the Vice Chairman's power to convene such a meeting, Mr. Adan confirmed that he did not possess such power and as such, the meeting was dispersed and no elections took place.
  4. Subsequently, according to the ex parte applicants, in October 2023, the Interested Parties filed ELCJR NO. E007 of 2023; In the Matter of Marsabit County Sakuye Council of Elders & Others vs. Mining Corporation of Kenya & Others where they purported to be the officials of Marsabit County Sakuye Council of Elders.
  5. That the Ex parte Applicants upon writing to the Respondent seeking confirmation on who the bona fide officials were, received a letter dated 30<sup>th</sup> November 2023 confirming that the officials of the Society were Hassan Intalo Lafa as the Chairman, Alio Tepe Abudo as the Secretary and Hussein Fofle as the Treasurer.
  6. That their counsel in a letter dated 5<sup>th</sup> February 2024 informed the Respondent that there was an intended illegal change of officials and that there was a pending suit at the High Court ELCJR E007 of 2023 where the issue of who were the elected officials was still pending. That notification notwithstanding, the Respondent went ahead to effect the changes.
  7. The Applicants contend that they were never made aware of the planned changes and that neither were they issued with any notice nor were any documents regarding the alleged elections filed with the Respondent, effecting change of officials.

## Responses

8. The Respondent filed a Replying Affidavit sworn on 6<sup>th</sup> May 2025 by Teresia Gathagu a Deputy Solicitor General and the Registrar of Societies at the Office of the Attorney General. In her affidavit, she depones that Marsabit County Sakuye Council of Elders was registered on 13<sup>th</sup> July 2012 vide Certificate Registration Number 37824 and that the Society had never filed Annual Returns breaching Section 30 of the *Societies Act*. That the Society had also never held elections which was in contravention of Section 29 of the *Societies Act* and Clause 4 of the Societies own Constitution.
9. According to the respondent, *the Constitution* annexed as 'ATA-1' by the Ex parte Applicants is not in the Respondent's records since the Society has never filed an amendment of its constitution since its registration. Further, that *the constitution* in the Respondent's custody bears the stamp dated 28<sup>th</sup> June 2012.



10. The Office of the Registrar is said to have received a letter dated 31<sup>st</sup> August 2023 from the firm of Messrs I.N. Nyaribo & Co. Advocates retained by the Society. The letter requested for the regularization of the Society's file and for the Society to be allowed to file Annual Returns for the ten (10) years that had fallen due since the previous leaders had let the community down and efforts to locate them were fruitless.
11. That the Respondent vide a letter dated 25<sup>th</sup> September, 2023 wrote to Messrs I.N.Nyaribo & Co. Advocates and directed their clients to file annual returns for the years ending 2012-2022 within 21 days from the date of the letter. That on 29<sup>th</sup> September, 2023 the Society submitted duly signed annual returns for the years ending 2012-2022 which were consequently approved and paid for vide payment receipt number D 0684638.
12. The said Returns were also accompanied by an affidavit sworn by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants on 25<sup>th</sup> September, 2023 and they also appended their signatures on the Annual Returns further confirming the changes effected pursuant to the meeting held on 8<sup>th</sup> August, 2023
13. The Respondent is said to have on 30<sup>th</sup> November, 2023 received a letter dated 28<sup>th</sup> November, 2023 from Messrs Kinyua Mwaniki & Wainaina Advocates, requesting to be issued with a list of the current officials of Marsabit County Council of Elders for use in a case pending in Milimani Law Courts (ELCJR EO07/2023). The confirmation of officials was issued as per Form A which was filed during the registration of the society.
14. That on 8<sup>th</sup> December, 2023 the Respondent received certified documents (Notice, Extract of Minutes, list of members & an introduction letter) by the firm of Messrs I.N. Nyaribo & Co. Advocates on behalf of the Society to effect changes of officials of the Society for an election that was said to have been held on 8<sup>th</sup> August, 2023.
15. Further to the above documents, the Respondent deposes that she also received a duly filled and signed Form H dated 8<sup>th</sup> August, 2023 that was approved and paid for vide payment receipt bill reference no. LYKEQN. A request to confirm officials was also received vide a letter dated 5<sup>th</sup> December, 2023 which was processed on 8<sup>th</sup> December, 2023.
16. That by the time the firm of Mwaniki & Wainaina Advocates was cautioning the Respondent from approving any changes, the changes had already been effected and the letter had already been overtaken by events.
17. It is deposed that the Respondent acted within her powers as provided for under the *Societies Act* by accepting and approving the Annual Returns and Form and consequently issuing the impugned letter dated 8<sup>th</sup> December, 2023. Further, that the deponent is public officer who is protected under the law in the performance of her lawful functions pursuant to the provisions of section 52 of the *Societies Act* and Article 236 (a) of *the Constitution* of Kenya.
18. The Respondent further contends that the Ex parte Applicants by instituting the instant suit are attempting to forum shop as there is a pending suit High Court at Milimani Law Courts ELCJR E007 of 2023 on the issue of officials.
19. The Interested Parties also filed a Replying Affidavit sworn by Adan Mamo Elema on 25<sup>th</sup> September 2024.
20. It is further deposed in contention that the Society operates pursuant to its Constitution which was duly lodged with the Registrar of Societies at the time of its registration. The said constitution it is urged is annexed to the Applicant's affidavit as 'ATA1' and that the said constitution of the Society



under the part captioned office bearers is said to stipulate that the office bearers shall be the chairman, vice-chairman, secretary, assistant secretary, treasurer, assistant treasurer and organizing secretary all of whom shall be paid up members of the Society and shall be elected at the annual general meeting held in each 5<sup>th</sup> year.

21. That the 1<sup>st</sup> and 2<sup>nd</sup> Applicants were among the office bearers who assumed office of the Society with effect from the date of the registration of the Society on 13<sup>th</sup> July 2012 and therefore their five (5) year term lapsed on 12<sup>th</sup> July 2017 and thus, they ceased to be office bearers with effect from the said date unless they demonstrate that there were elections which were held and they were re-elected for a further term.
22. It is contended that the Ex parte Applicants have perpetuated impunity and have refused to cause elections to be held as stipulated in the constitution of the Society and as required under section 29 of the Societies Act.
23. The Interested Parties too filed a replying affidavit sworn by Adan Mamo Elema on 25<sup>th</sup> September, 2024 contending in deposition that as a result of the Ex parte Applicant's failure to comply with section 30 of the Societies Act, the Respondent wrote to the Society and demanded compliance with the law, failing which the society risked de-registration. However, that notwithstanding the said notice, the Applicants did not take any action to remedy the default.
24. Subsequently, the 1<sup>st</sup> Interested Party together with other members of the Society requisitioned for a special general meeting to among other business, conduct elections of office bearers and the said special general meeting was duly convened on 8<sup>th</sup> August 2023 after due notification of all the members of the Society, during which general meeting, the Society elected new office bearers for a period of 5 years with effect from 8<sup>th</sup> August 2023.
25. It is the Interested Parties' case that the Applicants have not exhausted the available internal dispute resolution mechanisms stipulated under the constitution of the Society and in particular, part of the objective of the Society under clause 2 which is to establish mutual understanding among members, and to resolve and manage conflicts from within and from without.
26. The Interested Party also contend that the Applicants have also not utilized and exhausted the dispute resolution mechanism provided under section 18 of the Societies Act titled "Disputes as to officers" as the Applicants have not requested the Registrar to make an inquiry as to the identity of the persons who have been properly constituted as officers of the society.
27. That the Applicants have not demonstrated that the Registrar made any error in effecting the changes in the record regarding who the office bearers of the society are as they had neither filed annual returns stating the persons who are officers of the Society nor availed any documents to demonstrate when the elections of the Society were conducted in accordance with the Society's constitution.

## Submissions

28. Th application was heard by way of oral submissions on 9<sup>th</sup> June 2025. On behalf of the exparte applicants, counsel submitted that the documents submitted to the Respondent were as a result of a meeting held on 8<sup>th</sup> August 2023 and that the same were presented on 8<sup>th</sup> December 2023 which is 4 months later instead of 14 days as per section 17 of the Societies Act.
29. Counsel for the exparte applicants further submitted that the Notice dated 5<sup>th</sup> July 2023 is signed for Secretary but it does not say on whose instructions it was signed. Further, that the Minutes of the alleged meeting do not bear a list of members who were present in the said meeting.



30. It was also submitted that the Interested Parties have not demonstrated to be bona fide fully paid up members of the Society. According to counsel, the Applicants were denied a right to be heard as required under Section 18 of the Societies Act.
31. On behalf of the interested party, Mr. Opini advocate submitted that according to clause 4(a) of the Constitution held by the Respondent, elections were to be held after one (1) year hence the Applicants' term ended in 2013 following the 2012 elections.
32. He also submitted that Section 29(2) of the Societies Act requires every Society to hold an annual general meeting every year and that it is an offence for any Society to fail to comply with the requirement. Also, that it is illegal for one to be in office from 2012-2023.
33. Mr Opini submitted that there is an elaborate mechanism for dispute resolution under section 18 of the Societies Act and also that section 9 of the Fair Administrative Action Act provides that an Applicant must exhaust the internal mechanisms for resolving disputes. He relied on the case of Saisi & 7 others v Director of Public Prosecutions & 2 others [2023] KESC 6 (KLR) where the Supreme Court is said to have held that judicial review is not a merit review mechanism and as such, the court cannot determine whether or not elections were held or not but whether the administrative action was illegal.

### **Analysis and Determination**

34. I have considered the application, the affidavits, the submissions of counsel and the applicable law. The main issues for determination are whether the Respondent acted unlawfully, unfairly or unreasonably in effecting the change of officials as recorded in the letter dated 8<sup>th</sup> December 2023, and whether the Applicants are entitled to the orders sought.
35. At the onset, the Interested Parties has urged this Court to dismiss the application on grounds of non-exhaustion The Interested Parties cite Section 18 of the Societies Act. The section 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.
36. A plain reading of the above provision clearly shows that it does not create a mandatory dispute resolution forum but confers a discretionary power on the Registrar to act where she is not satisfied with the identity of officials. The Applicants' letters to the Registrar, while referring to pending litigation and a potential dispute, did not clearly or formally request the Registrar to halt or review the filings already submitted.



37. In *Republic vs. Registrar of Society & Another; Barasa & 12 Others (Ex parte Applicants)* [2024] KEHC 15425 (KLR), the High Court affirmed that where the Registrar has already acted such as by effecting a change of officials the aggrieved party cannot be compelled to return to the Registrar for redress. The proper recourse in such circumstances lies in judicial review. Similarly, here, the Respondent adopted the changes to the list of officials on 8<sup>th</sup> December 2023 before an objection was raised by the Ex parte Applicants on 5<sup>th</sup> February 2024, rendering the dispute ripe for this Court’s determination. This Court is therefore properly seized of jurisdiction.
38. The next issue is whether the Respondent acted unlawfully, unfairly or unreasonably in effecting the change of officials. The parameters for judicial review jurisdiction, were stated in the Ugandan case of *Pastoli v Kabale District Local Government Council & Others*, (2008) 2 EA 300 where the court observed thus:
- “In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also, *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).
- “Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality...
- “Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: *Re An Application by Bukoba Gymkhana Club* [1963] EA 478 at page 479 paragraph “E
- “Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehdawi v Secretary of State for the Home Department* [1990] AC 876).”
39. Judicial review is now entrenched as a constitutional remedy pursuant to the provisions of Article 47 of *the Constitution*, which guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. This Article of *the Constitution* was successfully implemented by the enactment of the *Fair Administrative Action Act* whose rules are now operational from October 2024 as developed by the Rules Committee. Under section 7 of the Act, any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision.
40. The Court of Appeal in *Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others*, [2016] eKLR stated that:
- “Article 47 of *the Constitution* as read with the grounds for review provided by section 7 of the *Fair Administrative Action Act* reveals an implicit shift of judicial review to include



aspects of merit review of administrative action, even though the reviewing court has no mandate to substitute its own decision for that of the administrator. Lastly, Article 165(6) of *the Constitution* also provides that this Court has supervisory jurisdiction over any person, body or authority that exercises a quasi-judicial function or a function that is likely to affect a person's rights."

41. In *Republic v National Transport and Safety Authority & 2 others; Kimathi (Exparte)* [2025] KEHC 6608 (KLR) the High Court observed thus:

"It is trite that judicial review remedies are concerned with the decision-making process of administrative or public bodies rather than the merits of the decision itself. The scope of judicial review is thus limited to assessing whether an administrative or public body acted within its legal mandate, observed the rules of natural justice and adhered to statutory and constitutional procedures."

42. The Applicants have not denied that they failed to hold elections or file annual returns since the registration of the Society in 2012. They also do not dispute that their term had lapsed by 2017. While they contest the validity of the meeting held on 8<sup>th</sup> August 2023, the documents relating to that meeting were submitted to the Registrar and approved in accordance with the *Societies Act*.

43. Of particular significance is *the constitution* of the Society held by the Respondent, which provides under clause 4(a) those elections of office bearers shall be conducted during every general meeting of the Society, and that such general meetings are to be held annually. In this regard, it is apparent that the Applicants, having assumed office in 2012, were required under *the constitution* to facilitate annual general meetings and ensure fresh elections were conducted every year. Their continued occupation of office for over a decade without such elections was plainly irregular and in breach of the Society's own constitution.

44. Members of a society have the right to elect and change their officials in accordance with the society's constitution and applicable law. That right is a core aspect of internal democratic governance within societies and is recognised under the *Societies Act*, particularly Sections 29 and 30, which impose obligations for holding elections and filing annual returns.

45. The Court further notes that the Applicants themselves signed the Annual Returns that were filed in September 2023. This conduct undermines their present assertion that they were unaware of or that they were opposed to the changes effected. Having actively participated in the regularization of the records and appended their signatures, they cannot now approbate and reprobate.

46. The above situation notwithstanding, the Applicants have challenged the validity of the Registrar's decision on the basis that the documents supporting the change of officials were submitted more than four months after the meeting allegedly held on 8<sup>th</sup> August 2023, contrary to the 14 days requirement under Section 17 of the *Societies Act*. That section provides that every alteration in officials "shall be notified to the Registrar within fourteen days."

47. The language is mandatory and there is no provision under the Act expressly allowing for extension or validating late filings. The Registrar accepted the documents filed four months after the fact, without explanation or procedural safeguards. In these circumstances, the Registrar acted ultra vires, having exercised a power in breach of clear statutory time limits.

48. This procedural irregularity undermines the legality and fairness of the decision and supports the Applicants' claim for an order of Certiorari to quash the change of officials. By accepting the



documents without affording the Applicants an opportunity to respond or object, the Registrar denied them procedural fairness in a process that directly affected their purported offices.

49. The actions of the Registrar fall squarely within the circumstances contemplated in *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR, where the Court of Appeal held that:

“.....an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

50. Similarly, the Registrar in the present case acted in excess of her statutory mandate by accepting and acting on documents submitted outside the 14 days limit prescribed by Section 17 of the *Societies Act*, without inquiry or procedural fairness. The decision was therefore unlawful and procedurally unfair, warranting an order of certiorari.

51. Further, as held in the same *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others* case, an order of mandamus will issue to compel performance of a statutory duty where a public officer has failed or refused to act. In this instance, the Registrar has a statutory obligation to maintain a proper register of officials in accordance with law and the society’s constitution. Given the invalidation of the previous change, the Court is justified in issuing mandamus to compel her to oversee fresh elections and register officials lawfully elected.

52. In light of the foregoing analysis and findings, this Court is satisfied that the decision of the Respondent to effect the change of officials of the subject society by the letter dated 8<sup>th</sup> December 2023 was made in breach of Section 17 of the *Societies Act*, without compliance with the mandatory 14 days notification requirement, and without affording the Applicants or other affected persons an opportunity to be heard. The failure to comply with a clear statutory condition rendered the Registrar’s action unlawful, unreasonable, and procedurally unfair within the meaning of Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*.

53. Accordingly, an order of Certiorari is hereby issued to bring into this Court and quash the decision of the Registrar of Societies communicated in the letter dated 8<sup>th</sup> December 2023, effecting the change of officials of Marsabit County Sakuye Council of Elders.

54. An order of Mandamus is hereby issued compelling the Registrar of Societies to oversee and facilitate the holding of fresh elections of officials of Marsabit County Sakuye Council of Elders, in strict compliance with the society’s constitution and the *Societies Act* (Cap. 108), and to register the elected officials thereafter in accordance with the law and within the statutory timelines.

55. The Registrar of Societies shall ensure that all eligible members of the society are notified of the fresh elections and that the same is conducted in a transparent and lawful manner within sixty (60) days from the date of this judgment which has been delivered offline on account of the saba saba unrest this 7/7/2025, which made it impossible for the Judge and staff to access the Court House at Milimani Law Courts. The judgment shall therefore be uploaded to the Case Tracking System for access by the parties.

56. Each party shall bear its own costs.

57. This file is closed.

58. It is so ordered.

**DATED, SIGNED AND DELIVERED OFFLINE AT NAIROBI THIS 7<sup>TH</sup> DAY OF JULY 2025**



**R.E. ABURILI**  
**JUDGE**

