



**Republic v Registrar of Societies & another; Kilonzo & 2 others (Exparte) (Suing on his Own Behalf and on Behalf of New Life Prayer Centre & Church) (Judicial Review Application E117 of 2023) [2024] KEHC 3755 (KLR) (Judicial Review) (19 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3755 (KLR)

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

**JUDICIAL REVIEW APPLICATION E117 OF 2023**

**J NGAAH, J**

**APRIL 19, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

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

**AND**

**FRANKLINE KILONZO ..... EXPARTE**

**ALICE NAFULA WANYAMA ..... EXPARTE**

**EZEKIEL OMBOK ODERO ..... EXPARTE**

**SUING ON HIS OWN BEHALF AND ON BEHALF OF NEW LIFE PRAYER  
CENTRE & CHURCH**

**JUDGMENT**

1. Newlife Prayer Center and Church (which I will henceforth refer to as “the Church”) is a society duly registered under section 10 of the *Societies Act*, cap 108. It was registered as such on 11 September 2012 and a certificate of registration, no. 38277 issued to that effect by the Registrar of Societies (hereinafter referred to simply as “the Registrar”) who is named in these proceedings as the 1<sup>st</sup> respondent.
2. By a letter dated 18 May 2023, addressed to the secretary of the Church by the Registrar, the latter notified the former that she had cancelled the Church’s certificate of registration. The cancellation was stated in the notification to be in accordance with section 12(1) (e) and (i) of the *Societies Act* and it



was on the ground that the Church had failed to file its annual returns as required by section 30(1) of the Act.

3. The cancellation was subsequently gazetted in the gazette notice no. 11016 on the same date of 18 May 2023 when the notification of the cancellation was issued. The gazette notice, however, indicated the cancellation to have been on 19 May 2023.
4. Aggrieved by the Registrar's decision, the applicants have now moved this Honourable Court by way of a motion dated 26 August 2023 seeking orders to the effect that:

“

- “ 1. Judgment that a Certiorari order does issue quashing the 1<sup>st</sup> Respondent's illegal decision to cancel the registration of the Applicants church, New Life Prayer Centre & Church, which registration was purportedly cancelled on the 19<sup>th</sup> of May 2023 and announced vide a Gazette Notice dated the 3<sup>rd</sup> of August 2023 but published on the 18<sup>th</sup> of August 2023.
2. That a Mandamus order does issue compelling the 1<sup>st</sup> Respondent to expeditiously and without undue delay, accept and act on the annual returns of the Applicants' church for the years 2012-2023.
3. That a Prohibition order does issue restraining the 1<sup>st</sup> Respondent by itself, its agents or anyone else under its instructions from engaging in any manner of disruption or obstruction of the operations of New Life Prayer Centre & Church, under the guise of effecting the enforcement of the deregistration published in the Gazette Notice.

Application dated 26 August 2023”.

The applicants have also asked for the costs of the application.

5. The application is expressed to be brought under Sections 8 and 9 of the *Law Reform Act*, cap. 26 and Order 53 Rule 3(1) of the Civil Procedure Rules, 2010. It is based on a statement of facts dated 21 August 2023 and an affidavit sworn on even date by Mr. Ezekiel Omok Odero verifying the facts relied upon. The applicants have also relied on a further affidavit sworn by Mr. Odero on 21 August 2023.
6. Mr. Odero has sworn that he is the chairman of the Church and that on 11 April 2023, he requested from the Registrar the file in respect of the registration of the Church for purposes of filing the annual returns of the Church. Vide a letter dated 13 April 2023, the Registrar informed Mr. Odero's advocates to file the Church's annual returns for the years 2012 to 2022 to enable her process the request for the file. But it is Mr. Odero's contention that the Registrar confiscated the file and that prior to this confiscation, the Church had filed its annual returns as and when they were due.
7. On 28 April 2023, Mr. Odero was arraigned before the magistrates' court at Shanzu in Miscellaneous Application No. E075 of 2023. In this application, the state sought to detain Mr. Odero for thirty days so that he could be investigated for, among other crimes, murder, aiding suicide, abduction and radicalization. Other crimes for which he was to be investigated were genocide, crimes against humanity, child cruelty, fraud, money laundering and being an accessory before or after the commission of the foregoing crimes.
8. While Mr. Odero was in police custody, the Coast Regional Commander, one Mrs. Rhoda Onyancha, held a press briefing at the Church premises informing the public that the Church had been closed indefinitely. Later, Mr. Odero received a letter dated the 27 April 2023 from Mr. Ezra Chiloba,



- the Director General and Chief Executive Officer of the Communication Authority of Kenya, communicating the Authority's decision to temporarily suspend the air frequencies of the World Evangelism Television which Mr. Odero owns.
9. According to Mr. Odero, the allegations against him were baseless and only tailored towards the cancellation of the registration of the Church and interference with its operations contrary to his, and the Church's congregants' right to freedom of worship enshrined in Article 32 of *the Constitution*.
  10. As far as the cancellation of the certificate of registration of the Church is concerned, Mr. Odero learned of the cancellation through the media on 25 May 2023. On the same date, he learnt of a letter from the Registrar dated 27 April 2023 communicating her intention to deregister the Church on the grounds that the Church's annual returns had not been filed. He immediately responded to the letter stating the difficulties and the frustrations he had encountered in his attempts to file the annual returns.
  11. Although the Registrar's letter of 27 April 2023 issued a twenty-one-day notice to Mr. Odero to show cause why the registration of the Church should not be cancelled, he only learned of the notice on 25 May 2023 when the notice had lapsed on 17 May 2023.
  12. Mr. Odero has also sworn that he seeks to be exempted from the obligation of exhausting other remedies available to resolve his dispute with the Registrar "in the ultimate interest of justice as there is the need for the intervention of this honorable court in the interest of justice". In any event, the cancellation of the Church's certificate of registration was only made known to the applicants on the date of the publication of the gazette notice, being the 18 August 2023 by which time the timeline for appeal had lapsed.
  13. Ms. Mary Goretti Nyariki, who is the Registrar of Societies, swore a replying affidavit opposing the applicants' application. She admitted that the Church was registered as a Society in accordance with the *Societies Act* as sworn in Mr. Odero's affidavit verifying the facts relied upon. The *Societies Act* which governs registration and regulation of societies such as the Church, requires that all societies comply with various requirements upon registration, including the filing of annual returns in accordance with Section 30 (1) of the Act. The Church, it is alleged, has never filed its returns since registration.
  14. Section 12 of the Act sets out various grounds for cancellation of registration of a society for non-compliance with the provisions of the Act. And, according to Section 12 (1) (i) of the Act, if, in the opinion of the Registrar, a society should be cancelled or suspended for non-compliance with section 30(1), a written notice is issued to the non-compliant society requiring it to show cause within the period prescribed in the notice, why its registration should not be cancelled or suspended. Section 12 (1) (i) further provides that where the society fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration of the society.
  15. Rule 8(a) of the Societies Rules is in similar terms and also requires the Registrar to issue a notice of intended cancellation of registration to a society before issuing the cancellation of registration. In the instant case, the Church was notified of the intended notification of cancellation through its last known postal address as per the Notification of Postal Address (otherwise known as "FORM B") filed by on registration of the Church. The Church was required to show cause why its registration should not be cancelled within twenty-one days from the date of the notice of the intended cancellation.
  16. The Church did not respond to the notification of the intended cancellation within the prescribed timeline or at all. Subsequently, the Registrar issued a notification of cancellation of registration to the Society on 18 May 2023. The Registrar then commenced the process of gazette of the cancellation of the registration in accordance with rule 14(d) of the Societies Rules. On 18 August 2023, the



Registrar published, in the Kenya Gazette, the cancellation of registration of the Society under Gazette Notice No. 11016 of 2023.

17. Prior to the cancellation of registration, the Church had on 11 April 2023 written to the Registrar through the Church's advocates, requesting the Church to furnish the Registrar with a list of office bearers of the Society. In response to the letter, the Registrar's office informed the Church to file its annual returns for the year 2012 to 2022 before their request could be processed. The Church failed to comply with the directive and did not file the annual returns.
18. It is the Registrar's position that, in these circumstances, the Registrar's decision to cancel the Church's registration was legal, reasonable and in accordance with the procedure laid down in the [Societies Act](#) and the rules made thereunder.
19. Mr Odero disputed the Registrar's depositions by way of a further affidavit and reiterated that by the time the Church received the notice to show cause, the twenty-one-day period had expired and, for this reason, the Church requested that time within which it ought to have responded to start running from 25 May 2023 when the notice was brought to the attention of the Church.
20. He also swore that a suit that was initially filed seeking to quash the notice but was withdrawn on the understanding that the Church would be allowed to file its returns. However, the Church's file was never availed and, therefore, the Church could not file its returns. Although the Registrar cancelled the registration of the Church, the latter was always willing to comply and file the returns.
21. Only the applicants' submissions were filed. The Case Tracking System portal shows that the respondents' submissions were filed but they are not downloadable.

Before considering the applicants' submissions my attention has been drawn to paragraphs 7 and 8 of the verifying affidavit of Mr. Odero in which he has sworn as follows:

“7. THAT I seek this court to exempt the applicants from the obligation of exhausting other remedies available in the ultimate interest of justice as there is the need for the intervention of this honorable court in the interest of justice.

8. That the cancellation dated 25<sup>th</sup> May 2023 became known to the us on the date of publication of the gazette notice being the 18<sup>th</sup> August 2023; and as such the timeline for appeal as per the Rules closes the doors of justice to the Applicants; which ailment this court can cure.”

22. Nothing more has been said of this bid for exemption and, as far as I can gather from the submissions filed on the applicants' behalf, the question of exemption from exhausting the appellate mechanisms before seeking to invoke the judicial review jurisdiction of this Honourable Court has not been addressed.
23. Be that as it may, in seeking exemption, the applicants must have been invoking section 9 (4) of the Fair Administrative Act. This section provides that while it is mandatory, under section 9(2) and (3) of the Act for a party to exhaust internal mechanisms for appeal or review before invoking this Honourable Court's judicial review jurisdiction, the party may be exempted from these processes in exceptional circumstances and where justice of the case so demands. The entire section 9 reads as follows:

9. Procedure for judicial review.

(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any



administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.

- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
- (5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal. (Emphasis added).

24. The understanding here is that a party may at some stage seek for judicial review once the internal appeal or review mechanisms have been exhausted. But in exceptional circumstances and on the application of an applicant, the latter may be exempted from exhausting those mechanisms and allowed to file judicial review proceedings if the court considers such an exemption to be in the interest of justice.

25. At the very outset, I must state that apart from what Mr. Odero has stated in paragraphs 7 and 8 of his affidavit, there is no specific prayer for exemption in the motion under consideration. It follows that without much debate, the applicants have failed in one crucial step in their quest for exemption because even if they were to convince the court that there are exceptional circumstances that warrant exempting them from exhausting internal appeal and review mechanisms, they have not applied to be so exempted. Section 9(4) is clear that it is only “in exceptional circumstances and on application by the applicant” that one may be exempted. Failure by the applicants to make a specific prayer for exemption would render their application defective and incompetent and, would, on that account alone, fail.

26. But even if the applicants had specifically applied for exemption in their application, that prayer would still be inconsequential for the reason that section 15 of the *Societies Act* provides for an appeal to this court, and not an application for judicial review, against the decision of the Cabinet Secretary who ought, in the first place, to have heard the appeal against the Registrar’s decision to cancel the registration of the Church. This section reads as follows:

15. Appeal from order of refusal, cancellation or suspension

- (1) Any society aggrieved by the Registrar’s refusal to register it, or by the cancellation or suspension of its registration under section 12 may—
  - (a) in the case of a political party, appeal to the High Court within thirty days of such refusal, cancellation or suspension; or
  - (a) in the case of any other society, appeal to the Cabinet Secretary within thirty days of such refusal, cancellation or suspension and the Cabinet Secretary shall consider,



determine and communicate his decision on the appeal within ninety days of the appeal.

- (2) A society aggrieved by the decision of the Cabinet Secretary under subsection (1)(b) may appeal to the High Court within thirty days of the decision.
  - (3) Notwithstanding the provisions of subsection (1) of section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the proviso to section 4(1), lodges an appeal under subsection (1) of this section, such society shall not, pending the decision on the appeal, be an unlawful society.
27. It is apparent from section 15 (2) that if the applicants had exhausted the internal appellate review mechanisms, the only available route to this Honourable Court would have been an appeal and not an application for judicial review, assuming they were dissatisfied with the decision of the Cabinet Secretary. The judicial review route would not be available to them and for this reason, the option of applying for exemption under section 9 (4) of the *Fair Administrative Action Act* would not also be available to them.
28. There should be little debate that an appeal is not synonymous with judicial review and that the court cannot assume appellate jurisdiction in exercise of its judicial review jurisdiction. In exercise of its appellate jurisdiction, the court would, for instance, evaluate the evidence afresh and come to its own conclusion. In a recent case where a similar issue arose in High Court Judicial Review Application No. E129 of 2023; Nelson Andayi Havi versus Kenya Revenue Authority, I noted that one of the hallmarks of appellate jurisdiction is that the appellate court is entitled to substitute its own decision for that of the subordinate court or tribunal. Not so for judicial review where the court would be concerned more about the process rather than the merits of the decision.
29. It has been held that it is not part of the purpose for judicial review to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question (see Lord Hailsham in *Chief Constable of the North Wales Police versus Evans* (1982) 1 WLR 1155 at 1160F). similar sentiments were expressed in *R versus Entry Clearance Officer, Bombay ex p Amin* (1983) 818 at 829 (B-C) (per Lord Fraser) where it was held that judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and it is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.
30. The same point was emphasised in *Chief Constable of North Wales Police versus Evans* (supra) where Lord Brightman said at page 1173F and 1174G that:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”(Emphasis added).

Lord Hailsham stated in the same case that:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.” (At page 1161A).



On his part Lord Roskill said in R versus Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Businesses Ltd 1982(AC) 617 at 633C that:

“The court must not cross that boundary between administration whether good or bad which is lawful and what is unlawful performance of a statutory duty”.

31. These authorities remind us that an appeal is different from a judicial review and, therefore, the word “appeal” is not employed in section 15 (2) of the *Societies Act* in vain; it is used in its technical sense as to be contrasted with judicial review. It follows that even if the applicants were to persuade the court that there are exceptional circumstances compelling them to move to court before exhaustion of the appellate mechanisms under the *Societies Act*, or that it is in the interest of justice that they be so exempted, the procedure which they seek to invoke to address their grievances against the Registrar is not available to them.
32. As matter of fact, now that the applicants are restricted to filing an appeal rather than a judicial review application and cannot, therefore, invoke section 9 (4) of the *Fair Administrative Action Act*, the question whether there are exceptional circumstances warranting their exemption from exhausting the internal appellate mechanisms does not even arise.
33. As I stated in the Nelson Andayi Havi (supra) case, purporting to exempt persons such as the applicants in an application under section 9(4) of the *Fair Administrative Action Act* would be an exercise in futility since it would be contrary to law to grant the applicant leave to seek judicial review reliefs when the Act provides that the only means by which he may approach this Honourable Court is by way of an appeal.
34. If I have to reiterate, the window to apply for exemption under section 9(4) of the Fair Administrative Action is on the understanding that it is an application for judicial review that would be filed, if the court grants the exemption. It is in the same breath that the exemption will not be granted to file an application for judicial review when the Act expressly provides for a different procedure to approach the court.
35. It follows that, to the extent that the applicants are restricted to filing an appeal rather than application for judicial review, they had no alternative but to exhaust the appellate mechanism prescribed by section 15 of the *Societies Act*. To the extent that they seek this Honourable Court’s judicial review jurisdiction, their application is misconceived and an abuse of the due process of the court. It is hereby struck out. Parties will bear their respective costs. It is so ordered.

**SIGNED, DATED AND DELIVERED ON 19 APRIL 2024**

**NGAAH JAIRUS**

**JUDGE**

