



Kilonzi & 2 others v Director Social Development & 3 others (Constitutional Petition E004 of 2023) [2024] KEHC 4957 (KLR) (9 May 2024) (Judgment)

Neutral citation: [2024] KEHC 4957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CONSTITUTIONAL PETITION E004 OF 2023**

**RK LIMO, J
MAY 9, 2024**

BETWEEN

**BENJAMIN MBAKU KILONZI 1ST PETITIONER
NGUNGI ONE VOICE SELF HELP GROUP 2ND PETITIONER
KINUI WELFARE SELF HELP GROUP 3RD PETITIONER**

AND

**DIRECTOR SOCIAL DEVELOPMENT 1ST RESPONDENT
P.M. MAINA, SOCIAL DEVELOPMENT OFFICER MWINGI EAST /
CENTRAL 2ND RESPONDENT
CABINET SECRETARY MINISTRY OF LABOUR & SOCIAL
PROTECTION 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT**

JUDGMENT

1. Benjamin Mbaku Kilonzi, Ngungi one voice Self Help Group and Kinui Welfare Self Help Group, the Petitioners herein have lodged this Constitutional Petition seeking the following reliefs namely;
 - a. A declaration that the respondents have violated Articles 10,20,22,27,36,47,50 and 232 of *the Constitution*.
 - b. A declaration that the respondents have violated the petitioner's rights under articles 27,36,47 and 232 of *the Constitution*.
 - c. A declaration that the 2nd Respondent has contravened Chapter Six of *the Constitution* by acting in a glaring and clear unlawful and illegal manner on account of extraneous considerations.



- d. A permanent injunction to restrain the respondents, their agents and/or servants from cancelling or withdrawing the registration of the 2nd and 3rd Petitioners community group or in any manner interfering with their registration as a community group.
 - e. A judicial review order of mandamus directed at the 2nd Respondents to endorse the change of office bearers in respect of the 2nd and 3rd Petitioners and communicate the same to M/S Equity Bank Mwingi Branch or any other relevant office.
 - f. A mandatory injunction directed at the 2nd Respondent to return to the 2nd and 3rd Petitioners the original certificate of registration.
 - g. An order of certiorari to quash and set aside the decision of the Respondents contained in their letter dated 9th May 2023.
 - h. An order of permanent injunction to restrain the respondents from suspending the 2nd and 3rd Petitioners activities and or operations.
 - i. Costs of the Petition.
2. The petitioners describe themselves as a Self-Help Group operating from Mwingi Sub County and have accused the Respondents herein for acting ultra vires and listed the following acts as constituting violations of the constitution that the respondents;
- a. Suspended the activities and affairs of the 2nd and 3rd Petitioners
 - b. Failed to register the change of office bearers of the 2nd and 3rd Petitioners
 - c. Advised M/S Equity Bank Mwingi Branch not to allow the Petitioners operate their bank account.
 - d. Failed to endorse the mandate of the office bearers to run the affairs of the 2nd and 3rd Petitioners
 - e. Confiscated the original registration certificate of the 2nd and 3rd Petitioners.
 - f. The 2nd Respondent acted in an irregular, unlawful and corrupt manner
 - g. Failed to give reasons for their decisions
 - h. Failed to grant the Petitioners a hearing and hence condemned the Petitioners unheard.
 - i. Applied the law selectively
 - j. Failed to resolve the issue within a reasonable period
 - k. Failed to act on the Petitioner’s complaints.
3. The Respondents on their part have denied the accusations levelled against them by the petitioners and have defended the actions taken stating that they only stepped in with a view to resolving the wrangles among the members of the Self-Help Group and protect the interests of all the members.

The Petitioner’s Case

4. The Petitioners state that the 3rd Petitioner was registered as a Self-Help Group under the Ministry of Gender Children and Social Development and that part of the objectives of the community group is to organize, plan and fund burial expenses of their deceased members and kin.
5. They aver that they held their elections on 14th February 2022 where the following persons were elected;



- i. Angeline Kalii Malusi – Chairperson
 - ii. James Musyoka Kimanzi – Secretary
 - iii. Mary Nduni Muli – Treasurer
6. They further aver that on or about 20th April 2022 they resolved to change their name from Kinui Welfare Self Help Group to Ngungi One Voice Self Help Group to accommodate members from a wider geographical area.
 7. They claim that they presented the minutes of the resolutions to the 2nd Respondent together with an application for registration and that on 18th May 2022 the 2nd Petitioner was duly registered as a Community Group under the Act.
 8. It is stated that on 7th July 2022, the petitioners visited the office of the 2nd Respondent and presented to it the minutes in respect to change of name and office bearers. They aver that they requested the 2nd Respondent for endorsement to facilitate them to operate a bank account held at Equity Bank – Mwingi Branch.
 9. They aver that the 2nd Respondent advised them to await for a decision without offering an explanation and later through a letter dated 9th May 2023 the 2nd Respondent made a drastic decision suspending all their activities and operations of the group and directed them to submit the original Registration Certificate for he it termed as “non compliance”.
 10. They aver that when they visited the 2nd Respondent with the original Registration Certificate, the 2nd Respondent forcefully snatched the certificate from the chairperson and confiscated the same telling them to go and await further communication.
 11. The Petitioners aver that their attempts to protest the 2nd Respondent’s action and demands for adherence to the law were ignored pointing out their letter dated 16th June 2023 was ignored and that their bank operations at the bank were stopped as a result.
 12. The fault the 2nd Respondent’s action terming it unlawful and a violation of Articles 3(1), 10, 20, 22, 27, 35, 36, 40, 47, 50 and 232 of *the Constitution*. They have also cited violation of Section 4 of the Fair Administration Act and Sections 3, 4, 6, 12, 14, 15, 20, 25 and 26 of the Community Group Registration Act.
 13. The Petitioner’s position is that it is the 1st Respondent who has the mandate to cancel or suspend Registration of Community groups and fault the 2nd Respondent for overstepping its mandate.
 14. They deny ever receiving an invite for a meeting at 2nd Respondent’s office stating that the exhibited letter dated 3rd March 2023 did not reach them. They aver that they submitted all the requisite documents pertaining to election to office of new office bearers.
 15. They aver that the nature of dispute they have with the respondents cannot be resolved through internal dispute resolution mechanism.
 16. In their written submissions through their learned counsel E.K. Mutua & Co. Advocates, the petitioners have made the following submissions;
 - i. Locus Standi. It is submitted that the Petitioners have capacity to institute this petition as they provided evidence that they are registered associations acting in the interest of their members.



- ii. Principle of exhaustion. The Petitioners submit that the present dispute is not one between two community groups and as such, the Section 26 of the Community Groups Registration Act does not apply. They submit that there is no clear mechanism of resolving the present dispute under any provisions in the Act. They further submit that even with the absence of a clear internal dispute resolution mechanism, the Petitioners sought clarification from the 1st and 2nd Respondents on whether the dispute had been placed before the Social Development Committee of the Kitui County Coordinator of Social Development but did not receive a response. They have referred to the case of *NGO Co-ordination Board vs EG & 4 Others: Katiba Institute (Amicus Curiae) (2023) KESC 17 (KLR)* where the Supreme Court held that a statute must clearly provide for an internal dispute mechanism before an aggrieved party can be bound by such a mechanism.
 - iii. The Petitioners also maintain that the present dispute is not a civil in nature, that it is their constitutional rights that have been breached and that the remedies sought are pegged on constitutional questions raised. They have cited the case of *KKB vs SCB & 5 Others (2022) KEHC 289 (KLR)* where the court held on that on the basis of the doctrine of avoidance, a court can decline to determine a constitutional issue when a matter may be properly decided on another form.
 - iv. On violation of their rights, specifically on suspension of the group's activities, the Petitioners submit that their right to equal protection provided for under Article 27 of *the Constitution* was violated. Further, that the 2nd Respondent does not possess powers to suspend activities of a community group or association. They also submit that their right to fair administrative action under article 47 of *the Constitution* was violated as the decision to suspend their group activities was made without them being given an opportunity to be heard. They submit that this was also a breach of Section 15 (2) of the Community Groups Registration Act and they have cited the case of *JMK vs MWM & Anor (2015) eKLR* on the right to be heard. The Petitioners also submit that their right to associate provided for under article 36 of *the Constitution* was violated by the 2nd Respondent confiscating their registration certificate. They also submit that the 2nd Respondent's conduct was in violation of values and principles of public service provided for under article 232 of *the Constitution*.
17. The petitioners submit that the law does not grant the Respondent powers to act alone but through consultations with Social Development Committee and that having acted alone in the impugned action, he acted contrary to the Law.
 18. They further add that under Section 6 of the Act, the functions of Social Development Committee does not include supervision of activities of a community group or cancellation of its registration. They submit that their right to the benefit and protection of the law was violated to that extent.
 19. They contend that the respondents actions violated their right to fair administration action citing the provisions of Section 15 (2) of the Act, Section 4(3) of Fair Administrative Act and Article 47 of *the Constitution*. They submit that even if there was a dispute which they contest, they submit that under Section 26 (2) of the Act the Sub County Social Development Committee ought to have heard the dispute and resolve it adding that the respondent have not stated that they referred any dispute to such a committee.
 20. They further claim that their right to associate as stipulated under Article 36 of *the Constitution* was violated.



21. It is also submitted that the 2nd Respondent's action flies in the face of the values and principles of public service as stipulated under Article 232 pointing out that the action was neither accountable nor transparent.

The Respondents' Case

22. In response Respondents opposed the Petition vide Relying Affidavit sworn by the 2nd Respondent on 18th July 2023. The Respondent aver that an application for registration of the 2nd Petitioner as a self-help group was lodged with the 1st Respondent on 18th May 2022. That thereafter on 7th July 2022, minutes of a meeting that had been held by the 3rd Petitioner were lodged with the Respondents indicating that the 3rd Petitioner had elected new office bearers. That on 12th July 2022, the 2nd Respondent's office received a letter/complaint dated 7th July 2022 alleging that the 3rd Petitioner had conducted illegal elections without the consent of all members and elected new office bearers. It is averred that the complaint was lodged by Jedidah Kathoka Mwinzi, Robert Makali Kithome, Morris Musyoka Nzuki and Lena Musyoka who were allegedly signatories of the 3rd Petitioner. That vide another complaint dated 1st November 2022, the complainants indicted that the 2nd Petitioner was illegally holding the 3rd Petitioner's properties. That this was followed by another complaint of similar nature dated 14th December 2022. It is averred that the 1st Respondent planned and held discussions with the complainants and the area chief with a view of resolving the complaints and a resolution was reached for a meeting to be held between the complainants and the newly elected office bearers of the 2nd Petitioner. It is averred that the meeting did not take place because the 2nd Petitioner did not show up. That other invitation dated 3rd March 2023 and 23rd March 2023 for a dispute resolution meeting that were scheduled for 13th March 2023 and 3rd April 2023 respectively were sent to the 2nd Petitioner's office bearers. That on 3rd April 2023, the chairman of the 2nd Petitioner turned up for the meeting but allegedly failed to bring documents that had been requested for by the Respondents and he was asked to bring the group's registration certificate on 4th April 2023 but failed to do so. It is averred that the Petitioners did not present an application for a change of name but rather presented an application for registration of the 3rd Petitioner as a self-help group. It is also averred that the chairman of the 3rd Petitioner handed over its registration certificate and that the same was not confiscated as alleged. It is also averred that the Petitioners were accorded sufficient time to resolve the dispute. The 2nd respondent avers that the Petitioners lack locus standi to institute these proceedings, that they did not exhaust all dispute resolution mechanisms before instituting this petition, that they have not demonstrated any breach of their constitutional rights and that they have not met the threshold for issuance of the orders sought.
23. They claim that their attempt to have the matter resolved through the office of the Assistant Chief on 30th January 2023 was frustrated by the Petitioners failure to turn up for the meeting.
24. The Respondents submit that the 2nd Petitioner was registered as a self-help group on 18th May 2022 and that the registration was not for a change of name. That following the lodging of complaints by some members of the 3rd Petitioner, the Respondents forwarded the dispute to the area chief for resolution but the same did not happen. That when efforts to have the dispute resolved vide the Chief's office failed, the 1st Respondent again through the office of the chief invited the chairperson of the 2nd Petitioner for another meeting dispute resolution meeting that was to be held on 13th March 2022 but the same did not happen as the 2nd Petitioner failed to turn up. The Respondents have referred to Section 15 of the Community Groups Registration Act and submit that the 2nd Respondent did not cancel the 2nd Petitioner's registration but rather suspended its activities. They submit that the Petitioners were accorded an opportunity to be heard but failed to comply which resulted in the



suspension. They have cited the cases of Mathew Lucy Cherusa vs Poverelle Sisters of Belgamo (2013) eKLR and – David Njeka vs Lavage Dry Cleaners Limited (2013) eKLR where adverse decision was made against claimants who failed to attend disciplinary proceedings.

25. The Respondents have denied violation of the Petitioners' constitutional rights and submit that the Petitioners have failed to demonstrate the manner in which they were discriminated.
26. This court has laid out both the Petitioners case and response by the respondents. The main issues cropping up in this case are;
 - i. Whether the Petitioners rights were violated
 - ii. Whether the action taken by the respondent suspending the operations and activities of the Petitioners' was contrary to the law.

i. Whether the Constitutional rights of the Petitioners were violated

The Petitioners position is that the 3rd Petitioner was registered as a self-help group on 2nd August 2010 and thereafter changed its name to the 2nd Petitioner and was duly registered on 18th May 2022 following an election where a resolution for the change of name and election of new office bearers. The changes in their view followed a meeting held on 14th February 2022. The Respondents position is that the 2nd Petitioner was a new self-help group registered on its own right and that it was not formerly running as the 3rd Petitioner.

27. The Petitioners annexed minutes of a meeting that was held on 20th April 2022 where the members vide Min 01/20/04/22 change of the name of the group resolved as follows;

“The members changed the name of the group from Kinui S.H.G to Ngungi One Voice S.H.G since we have gone from village level to sub-location level”.
28. Going by the minutes of the meeting, 61 members were present in the meeting (the minutes exhibited by the Petitioners herein have not been contested or challenged). The Respondents aver that the 2nd Petitioner was registered as a new Self Help Group on the strength of a complete application Form, but the same there is no denying the fact that there was a change of name.
29. From the word go therefore, it does appear that the change of name alleged by the petitioners was presented in the form of an application to register a new outfit and that perhaps is the main reason it faced some headwinds.
30. There is no denying that the 2nd Respondent is an offshoot of the 3rd Respondent. The members of Kinui Self Help Group as observed resolved to change or transform to Ngungi One Voice Self Help Group and this is seen from the minutes exhibited and the fact that the officials elected from the two groups are the same people as per the affidavit of Paul M. Maina (the 2nd Respondent) sworn on 18th July 2023 and exhibits thereof. The intention of the petitioner was clear and there was nothing improper, irregular or unlawful about.
31. The problem in my considered view is the manner in which the changes or transition was carried out and on this both the petitioners and the Respondents factored.
32. In the first place, the 1st Respondent admits to registering a new Self-Help Group (Ngungi Self Help Group the 2nd Petitioner) with a list of members of another Self-Help Group (Kinui Self Help Group the 3rd Respondent). He cannot turn around and say the 2nd Respondent was being registered as a



completely new outfit with the connection or relation to the former registered Self-Help Group (the 3rd Respondent).

33. Secondly the respondents claim that they acted to stop the operations of the 2nd Respondent on the strength of a complaint received through a letter dated 7th July 2022 but a cursory look at the said letter shows that the letter is unsigned.
34. Thirdly the 1st Respondent registered a new outfit (read the 2nd respondent) with a resolution of election of new officials elected from the old outfit (read the 3rd Respondent).
35. The petitioner's position is that they did not register a new group but rather changed their name from the 3rd Petitioner to the 2nd Petitioner but they have not provided any evidence of this application. The only thing they have provided the court are minutes of the meeting of 20th April 2022 where a resolution was passed on the change of name. The certificate of registration they exhibited dated 18th May 2022 does not indicate that the same was for a change of name. The same looks like a registration certificate of a new group. They have not provided evidence of application for change of name.
36. The Community Group Registration Act does not specifically provide for the procedure of change of name by a community group. It provides for merger and amalgamation of community groups but not for change of name. At Section 20 however, the Act provides for changes in the register as follows;

Director may make changes in register;

- i. The Director may, upon reasonable notice given by a community group, make changes or corrections relating to any entry in the register with respect to the community group.
 - ii. A notice issued under this section shall be accompanied by;
 - a. a resolution passed by a majority of the members of the community group approving the proposed changes; and
 - b. a list of members who were present at the meeting at which the resolution was passed”.
37. One can argue that a change of name constitutes changes in the register. However, other than the provision above, there is no specified procedure for change of name and the requirements stated by the Respondents at paragraph 12 of the Replying Affidavit sworn on 18th July 2023 are not supported by statute.
 38. It is therefore apparent that the 2nd Respondent was faced with a legitimate problem brought about by the lack of express provision in the law providing for change of name. However, in my considered view, the Respondents could have done better because there is nothing stopping the 1st Respondent, going by the provisions of Section 20 of the Act, from approving a merger of 2 or more community groups so long as such merger is in good faith and is supported by minutes showing that majority of the members are for such mergers. Their basis for this is the constitutional dictates on the freedom of association clearly stipulated under Article 36 of *the Constitution* which provides;

Freedom of Association

- “(1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
- (2) A person shall not be compelled to join an association of any kind.



- (3) Any legislation that requires registration of an association of any kind shall provide that—
 - (a) registration may not be withheld or withdrawn unreasonably; and
 - (b) there shall be a right to have a fair hearing before a registration is cancelled....”

39. The Respondents have defended their action and faults the petitioners for rushing to court before exhausting internal disputes resolutions mechanism, I have looked at the provisions of Section 26 of the Community Groups Registration Act No. 30 of 22 (herein after to be referred to as the Act) and the same provides as follows;

Section 26 (1) & (2)

- “(1) Each community group shall, in its constitution, prescribe mechanisms for the resolution of disputes between one member of the community group and another.
- (2) If a dispute occurs between one community group and another community group, parties shall refer the dispute to the sub-county social development committee which shall hear and determine the dispute expeditiously”.

Subsection one above deals with disputes occurring within a community group and each group is required to provide in their constitution an internal mechanism of resolving disputes. The Respondent is required to ensure of the same mechanism before approving registration of a community group. It is not clear if the same done in this instance. What is apparently clear is that the 2nd Respondent did not handle the problem well if at all I say so because the 2nd respondent’s averment that there was a complaint or dispute lodged is not only contested but as have observed above, the letter dated 7th July 2022 exhibited by the 2nd respondent as proof of a complaint/dispute is not signed therefore its authenticity could not be ascertained.

40. Secondly and more importantly it is clear from the provisions of Section 3 & 4 of the Act that the 1st Respondent has a bigger role in facilitation of resolution of disputes by establishment of forums for the same section 3(2) of the Act states;

The Director shall be responsible for—

- (a) mobilising communities to form groups to undertake community projects;
- (b) the registration of community groups;
- (c) the supervision, monitoring and evaluation of community projects by community groups and, on the request of an interested party, the investigation of community group activities;
- (d) the establishment and maintenance of a community development management information system;
- (e) the establishment of capacity-building and training programmes for community groups;



- (f) enhancing partnerships, collaboration and linkages with other persons, groups or organisations for the benefit of the community;

“Despite the generality of subsection (2), the county co-ordinator of social development shall be responsible for—

- (a) the establishment and supervision of social development committees in the county; 6 [Rev. 2022] Community Groups Registration CAP. 108A
- (b) the nomination of representatives of civil society organisations and social development partners to social development committees; and.....”.

41. A further reading of Section 6 (i) clearly spells out that part of the constitutions of Social Development Committee is to resolve disputes that may arise in community groups. The 1st & 2nd respondent therefore was required by the law to oversee settlement of disputes within community groups if and whenever problems or disputes arise. In doing this the 1st Respondent or any public body or officer for that matter, must strictly adhere to the values and principles spelt out under Article 232 of the constitution that state as follows;

Values and principles of public service

1) “The values and principles of public service include—

- (a) high standards of professional ethics;
 - a. efficient, effective and economic use of resources
 - b. responsive, prompt, effective, impartial and equitable provision of services;
 - c. involvement of the people in the process of policy making;
 - d. accountability for administrative acts;
 - e. transparency and provision to the public of timely, accurate information”

42. Now let us examine the impugned actions taken by the 2nd respondent in this case. The 2nd respondent states that it duly registered the 2nd Respondent after presenting an application for registration and that upon registration it received a complaint on 12th July 2022 that the groups’ constitution had been violated. He further avers that it received another complaint vide a letter dated 1st November 2022 that the properties of the 3rd petitioner were being taken over by the new group or the 2nd petitioners.

43. The two letters exhibited by the 2nd Respondent are not signed but for the sake of this decision, let us suppose that the letters were signed and authentic what or how could the 1st and 2nd respondent required in law to do visa viz what they actually did?



44. The provision of Section 4(3) (a) presupposes that there is in place an establishment of Social Development Committees in every sub-county in the County of Kitui to carry out functions spelt out in Section 6 of the article for clarity the provisions state as follows;

“Functions of social development committees

A social development committee shall—

- (a) act as a link between the national government and community groups, communities and other development partners;
- (b) support community mobilisation, and the formation and registration of community groups;
- (c) support capacity building for its members and members of community groups;
- (d) support mobilisation of, and awareness-creation on, social development programmes and emerging issues in the community; (e) participate in setting priorities on the types of social development programmes and projects to be implemented by community groups;
- (f) provide information on current and emerging social and community development needs;
- (g) make recommendations for community groups for material, capacity building and financial support;
- (h) support the Director in the monitoring, evaluation and research on community development programmes at the sub-county level; 7 CAP. 108A Community Groups Registration [Rev. 2022]
- (i) support dispute resolution and management of community groups;
- (j) support social impact assessment and social risk assessment processes at sub-county level; and
- (k) perform such other functions as may be assigned by the Director”.

45. In light of the above provision all that the 2nd Respondent was required to do upon receipt of a genuine or legitimate complaint from a legitimate member was simply to refer the dispute to the Social Development Committee pursuant to the provisions of Section 6(i) as cited above.

46. In this instance the respondents have not demonstrated that there is existence of such a committee in the first place or that they did refer the complaint or dispute to such a body and in the absence of the same, the respondents cannot hide behind the doctrine of exhaustion on the issues raised by the petitioners.

47. The Petitioners have faulted the 2nd Respondent for failure to endorse the change of name and office bearers without offering any explanation.

48. The 2nd Respondent in response to this petition has stated that he declined to endorse the changes requested by the petitioners because of the complaint lodged but there is no demonstration that he promptly notified the petitioners about the lodging of a complaint. The request for endorsement was presented to him on or about 7th July 2022. In his own affidavit, the 2nd respondent avers that he



received the application for endorsement and a complaint on 12th July 2022 but in his own admission it took him almost 8 months to respond through a letter dated 3rd March 2023. The Petitioners dispute receiving the letter and the Respondent have not demonstrated how the service on the petitioners of the letter was effected. The values enunciated under article 232 of the constitution includes transparency and accountability.

49. This court finds that the actions taken by the 2nd Respondent falls short of those constitutional requirements. The 2nd Respondent ought to have demonstrated clearly that he invited the petitioners through a letter properly served upon the petitioners for a meeting for dispute resolution. He also failed the accountability principle by one failing to offer any explanation on his failure to endorse the petitioner's application for change of names of officials and turn for taking far too long to convene a meeting to resolve the dispute. Taking over eight months to act without offering reasons for delay is not acting within the confines of accountability principle in the constitution.
50. What is however more glaring, is the drastic actions taken by the 2nd Respondent which was the drastic action of "suspending all the activities and operations of the group" vide a letter dated 9th May 2023 and exhibited by the petitioners as exhibit 9A.
51. The action in my view was not only unilateral but unlawful as well for a number of reasons.

(i) Section 15 of the Community Groups Registration Act provides as follows on cancellation of registration;

1. "The Director may cancel the registration of a community group if;
 - a. the community group fails to comply with this Act
 - b. the members of the community group fail to comply with the community group's constitution
 - c. the community group fails to submit information required under this Act or requested by the Director in accordance with this Act; or
 - d. the community group was fraudulently registered.
2. Before the Director cancels the registration of a community group, the Director shall;
 - a. give the office bearers of the community group at least fourteen days' notice of the intention to cancel the group's registration; and
 - b. give the office bearers and members of the community group the opportunity to make representations to the Director as to why the group's registration should not be cancelled".

The 2nd Respondent could only advise the 1st Respondent to take the proper action. The 2nd Respondent had no power donated to him by law to suspend activities of the petitioners.

- ii. Furthermore, the provision above provides for cancellation not suspension of community groups. This power is also accorded to the Director for Social Development who has to meet certain requirements before he can proceed with cancellation of a community group. The 2nd Respondent referred to himself as the Sub-County Social Development Officer in-charge of Mwingi Central and East Sub-counties. He is not the director for social development and could not purport to suspend the 2nd Petitioner's activities and in the process threaten the 2nd Petitioner with de-registration like he did in his letter of 9th May 2023.



iii. The Act at Section 40 (2) (c) provides that;

Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations prescribing;

(c) procedures, requirements and guidelines on registration, suspension, cancellation and reinstatement of registration of any community group including a special interest group;

52. The regulations are yet to be put in place by the relevant Ministry and the Respondents could not purport to take such a drastic step without any legal backing.

53. Secondly and more importantly is that the impugned action taken by the 2nd Respondent was an administrative action adverse to the operations of the 2nd Respondent. Section 4 of Fair Administrative Action No. 4 of 2015 provides as follows;

“Administrative action to be taken expeditiously, efficiently, lawfully etc.

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. (2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;.....”

54. It is quite apparent that the 1st and 2nd Respondent did not adhere to the above provisions prior to taking the drastic impugned action. By doing so the 2nd Respondent infringed on the rights of the Petitioners stipulated under Article 47 of *the Constitution*. The provision provides;

Fair administrative action

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) 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.....”

The actions by the 2nd respondent in the face of the above provision is clearly unconstitutional and unlawful.

55. The Respondents cannot fault the petitioners for lodging this petition before exhausting internal mechanism when they have not demonstrated that they had established such a forum as stipulated by the law.



56. The Respondent cannot also fault the petitioners for failing to follow a procedure as averred in his paragraph 12 of the replying affidavit without specifically stating the section or any regulation that the petitioners violated.
57. The 2nd Respondents' action to confiscate the Registration certificate of the 2nd Petitioner by snatching it from the official of the group was not only crude and unnecessary but unlawful. In this age and era, all the 2nd Respondents was required to do is to convene for a meeting of officials and any complainant for a meeting and explain them the procedures required for them to achieve their objectives which are for all intents and purposes are noble and lawful.
58. The 2nd Respondent may have had good intentions/reasons for not endorsing the change of names or officials but the modus operandi adopted was wrong, improper and unlawful as demonstrated above. He should have facilitated the 2nd Respondent having duly registered it to resolve any legitimate issue promptly and if the majority of the members favoured the merger or the registration of a new group then he should have gone ahead to endorse the new officials provided that the election of the new officials was done properly/ transparently and properly minuted. The main objective and the underlying reason is to facilitate rather than stopping operations of a community group for unreasonably long period without a justifiable cause.

In the end, this court for the aforementioned reasons finds merit in this petition and finds good reasons to intervene by granting the following reliefs;

- a. A declaration is hereby made that the 1st and 2nd Respondents in the action taken vide a letter dated 9.5.2023, violated Articles 36, 47 & 232 of *the Constitution*.
- b. Judicial Review order of Mandamus is hereby issued directed to the 1st & 2nd Respondent to endorse change of office of bearers of the 2nd and 3rd Petitioners upon all the requisite documents being availed. The Respondents are given 45 days from today to ensure that the same is done.
- c. A mandatory injunction is hereby issued directed at the 2nd Respondent to return to the 2nd and 3rd Respondent the original certificates confiscated.
- d. An order of certiorari is hereby issued to quash and set aside the decision contained in the letter dated 9th May 2023 authored by the 2nd Respondent.
- e. The petitioners shall have costs of this petition.

DATED, SIGNED AND DELIVERED AT KITUI THIS 9TH DAY OF MAY, 2024

Hon. Justice R. K. Limo

JUDGE

