



**Ngirici v Wamuchomba & 3 others (Constitutional Petition E215 of 2020)  
[2023] KEHC 22386 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22386 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E215 OF 2020**

**AC MRIMA, J**

**SEPTEMBER 21, 2023**

**BETWEEN**

**HON PURITY NGIRICI ..... PETITIONER**

**AND**

**HON GATHONI WAMUCHOMBA ..... 1<sup>ST</sup> RESPONDENT**

**HON ROZA BUYU ..... 2<sup>ND</sup> RESPONDENT**

**HON MISHI MBOKO ..... 3<sup>RD</sup> RESPONDENT**

**REGISTRAR OF SOCIETIES ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Background:**

1. Until 7<sup>th</sup> May 2020, Hon. Purity Ngirici, the Petitioner herein, was the Chairperson of Kenya Women Parliamentary Association (hereinafter KEWOPA or ‘the Association’), a cross party caucus bringing on board all women parliamentarians from both the National Assembly and the Senate to promote and protect democracy and advocate for women’s rights.
2. The Petitioner’s ouster was occasioned by a resolution by members of the Association removing and replacing her with Hon. Gathoni Wamuchomba, the 1<sup>st</sup> Respondent herein.
3. Prior to 7<sup>th</sup> May 2020, the Petitioner was the Chairperson from the period beginning 13<sup>th</sup> January 2018, when she was duly elected.
4. The Petitioner was aggrieved by her removal, hence, the dispute herein.
5. The Respondents vehemently opposed the Petition



### **The Petition:**

6. Through the Petition dated 17<sup>th</sup> July 2020 supported by the Affidavit and supplementary Affidavit of Purity Ngirici deposed to on 17<sup>th</sup> July 2020 and 20<sup>th</sup> August 2020, the Petitioner sought to vindicate violation of her constitutional rights.
7. She averred that on 7<sup>th</sup> July 2020, some members of the society who lacked authority and requisite quorum purported to pass an unlawful resolution that made Hon. Gathoni Wamuchomba the Chairperson of the Association.
8. The Petitioner claimed that the resolution was made in flagrant disregard of the provision of KEWOPA's Constitution including the failure to comply with Rule 9(d) that requires, in mandatory terms, that a Special General Meeting (hereinafter referred to as 'SGM') to be requisitioned for a specific purpose by order in writing to the Secretary signed by not less than one-third of the members.
9. The Petitioner submitted that despite writing to the Registrar of Societies, 4<sup>th</sup> Respondent herein, protesting about her illegal removal, she received no response.
10. It was her case that she did not receive any communication, in writing or verbally as to the grounds for her removal as the Chairperson in violation of Article 50 of *the Constitution*.
11. The Petitioner faulted her removal for various reasons. She averred that it could only be effected by the Secretariat which ought to have been invited to take minutes but for her case, it was not.
12. It also was her case that the meeting was improperly convened citing lack of quorum of two-thirds of the registered members of the Association as required under Rule 9(e) of the Association's Constitution.
13. Based on the foregoing, the Petitioner asserted that her purported removal was illegal, unprocedural, malicious, fraudulent and contrary to the Association's Constitution.
14. She posited that the decision to suspend a member is required to be in writing, signed by at least two-thirds of the all-executive committee members.
15. She averred that her removal was, therefore, null and void for violating her constitutional right to fair hearing and fair administrative action guaranteed under Articles 50 and 47 of *the Constitution* respectively.
16. It was her case that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were bound by *the Constitution* and the 4<sup>th</sup> Respondent was under an obligation to observe respect, protect and fulfil the rights and fundamental freedoms in the Bill of Rights.
17. The Petitioner further claimed that by failing to give her notice of the meeting held on 7<sup>th</sup> July 2020, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents denied her the opportunity to participate in the activities and affairs of the Association, a derogation of Article 36 of *the Constitution* which allows every person the freedom to associate.
18. The Petitioner further claimed that the Respondents' failure to give her notice in writing and the right to present her case denied her equal protection and benefit of the law, a constitutional imperative under Article 27.
19. The Petitioner averred further that the conduct of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents violated her right to dignity protected under Article 28 of *the Constitution*.



20. In the Supplementary Affidavit, she deposed that the 4<sup>th</sup> Respondent's Replying Affidavit was misleading. It was her position that the Association was duly registered in 25<sup>th</sup> October 2007.
21. It was her case that the amendments made to the 2006 KEPOWA Constitution was an expanded committee which took over the mandate of running the Association.
22. It, therefore, was her deposition that *the Constitution* attached by the 4<sup>th</sup> Respondent has never been in existence as to the Association's Constitution and only meant to mislead the Court.
23. The Petitioner reiterated that despite writing a letter of complaint, the 4<sup>th</sup> Respondent did not respond, neither did it investigate the complaints as to accord her substantive fairness before registering the 1<sup>st</sup> Respondent as the Chairperson of the Association.
24. In casting doubt as to whether the 4<sup>th</sup> Respondent received her letter of complaint, she deposed that she received a letter dated 15<sup>th</sup> July 2020 by the 4<sup>th</sup> Respondent addressed to the 3<sup>rd</sup> Respondent, the Secretary of KEWOPA, regarding the purported changes.
25. The Petitioner deposed that the 4<sup>th</sup> Respondent was not able to assert that the notice of the meeting dated 22<sup>nd</sup> June 2020 was served upon her merely because the Secretary attached a copy of a notice allegedly served upon me.
26. To further demonstrate that no motion was moved for her removal, she drew Court's attention to the inconsistency in annexure marked MGN2 where at page 7 and 9 it titled "Petition to remove KEWOPA Chairperson- June 2020" whereas page 11 of the same annexure is titled, "Motion for removal of Kirinyaga County Women Representative, Hon Purity Wangui Kuria-Ngirici from Kenya Women Parliamentary Association (KEWOPA) yet it purports to be a continuation of the signatures acquired for her removal as KEWOPA Chairperson.
27. She deposed further that contrary Section 17(1) of the *Societies Act* that requires Notice of change of officers to be signed by at least three officers, only one officer, the 1<sup>st</sup> Respondent herein signed the notice and as such was incurably ultra-vires the *Societies Act*.
28. On the foregoing factual and legal basis, the Petitioner prayed for the following reliefs: -
  1. An Order of Certiorari do issue quashing the proceedings, minutes and consequential resolutions made in the meeting held on 7<sup>th</sup> July 2020.
  2. An Order for prohibition do issue restraining the 4<sup>th</sup> Respondent from altering changing or interfering with records of KEWOPA as regards its Chairpersonship or in any other way adopting or effecting the resolutions of the meeting held on 7<sup>th</sup> day of July 2020.
  3. An Order of prohibition restraining the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents form interfering or preventing the Petitioner from discharging her duties as the Chairperson of KEWOPA.
  4. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the Petitioner's constitutional right to fair hearing and fair administrative action/process.
  5. A declaration that the proceedings of the meeting held on 7<sup>th</sup> July 2020 and convened by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents at KEWOPA have been conducted in clear breach of the *Fair Administrative Action Act* and are therefore null and void.



30. Further to the foregoing, the Petitioner prayed for the following Orders: -
- a. General damages against the respondents for infringement of her constitutional rights.
  - b. Costs consequent upon this Petition be borne by the Respondents in any event on indemnity basis.
  - c. The Honourable Court do make any such other further order as it may deem just and expedient in the circumstances in enforcing violation of fundamental rights of the Petitioner.

**The Submissions:**

31. The Petitioner filed written submissions dated 22<sup>nd</sup> March 2022. She embellished violation of her right to fair hearing by submitting that the Respondents did not inform the Petitioner of the SGM despite having worked closely with them and communicated through multiple means including phone calls, WhatsApp messages, emails and letters.
32. The Petitioner submitted that Rule 9(c) of the KEWOPA Constitution provides that notices of SGMs, such as the impugned meeting that purported to oust the Chairperson, shall be sent where practicable by Press advertisement.
33. It was her case that a matter as serious as the removal of the Chairperson of the Association, the Respondents were obligated to ensure that the Petitioner was sufficiently notified.
34. In respect to violation of her right to fair administrative action, she deposed that the failure by the Respondents to inform her was in contravention of Article 47(2) of *the Constitution*. to that end, she relied on Michael Ouma Odero v Kenya Nutritionists & Dieticians Institute [2020] eKLR where it was observed: -
60. The impugned decision did not conform to the requirements of Article 47 of *the Constitution* and Fair Administrative Actions Act. At a minimum, to meet the constitutional and statutory threshold, the Respondent had to: -
- i. Ensure that the Notice to show cause was, in addition to its contents, accompanied with all the necessary information, materials and evidence to be relied upon in making the decision or taking the administrative action.
  - ii. Inform the Petitioner the procedure to be used during the proceedings.
  - iii. Inform the Petitioner of his right to attend the proceedings, in person or in the company of an expert of his choice.
  - iv. Inform the Petitioner of his right to be heard and to make representations in that regard.
  - v. Inform the Petitioner of the right to cross-examine the witnesses.
  - vi. Inform the Petitioner of his right to legal representation.
  - vii. Inform the Petitioner of his right to where necessary to request for an adjournment of the proceedings.



- viii. Include in the notice the Petitioner's right to a review or internal appeal against an administrative decision.
  - ix. Send the link to the Petitioner notwithstanding the Petitioner's response to the Notice to show cause.
  - x. Send to the Petitioner a statement of reasons pursuant to Section 6 of the [Fair Administrative Action Act](#).
  - xi. Notify the Petitioner of its decision
35. Further to the foregoing, the Petitioner submitted that no Petition or motion for her removal was provided by the Respondents rather just a list of signatures.
36. It was her submission that the foregoing was contrary to Rule 9(d) as read with 5(f) and Rule 3(c) of KEWOPA Constitution which require that there be a recommendation of the KEWOPA Committee on the grounds that a member's conduct has adversely affected the reputation or dignity of the society, or that it has contravened any of the provisions of [the Constitution](#) of the Society which members can then support.
37. It was the Petitioner's submission that the reasons advanced for her removal as evidenced in Minute 3.2 of error of omission to unite the women members of parliament and error of omission in spearheading the women agenda for example in the Building Bridges Initiative and the Common Women Initiative did not in any way affect the reputation or dignity of KEWOPA nor were they contraventions of [the Constitution](#) of KEWOPA by the Petitioner.
38. On a different line of argument, the Petitioner submitted that she was a stranger to [the Constitution](#) provided by the 4<sup>th</sup> Respondent and marked as MGN3 in the Replying Affidavit sworn by Maria Nyariki.
39. It was her position that the correct Constitution was hers, marked PN-1a. To that end, she submitted that the decision they made was moot as the Respondents relied on a non-existent Constitution.
40. She asserted that based on [the Constitution](#) relied upon by the Respondents, KEWOPA was improperly constituted since Rule 8(a) provides that the Committee is made up of 15 members comprising of the persons elected as office bearers and as such, the Committee listed at Page 9 of annexure RB to the 2nd Respondent's Replying Affidavit, in the minutes of the meeting held on 18th June 2020 that purported to recommend the removal of the Petitioner is improperly constituted and any decisions taken by it are null, void and of no consequence.
41. In conclusion, the Petitioner submitted that she had illustrated the actions of the Respondents were illegal, ultra-vires and as such was entitled to the prayers sought in the Petition.

**The 1<sup>st</sup> Respondent's case:**

42. Gathoni Wamuchomba challenged the Petition through her Replying Affidavit deposed to on 22<sup>nd</sup> July 2020.
43. In reference to the minutes of the meeting of 7<sup>th</sup> July 2020, she deposed that she received the Petition and Notice of SGM where KEWOPA's agenda was discussed alongside signing of the Petition.
44. It was her case that the Petitioner ought to be estopped from denying knowledge of the events leading up to her removal since she confronted her in Parliament on her removal.



45. She deposed that the Petitioner's removal was procedurally fair as per KEWOPA's Constitution which was grounded on her non-performance since assuming office on 13<sup>th</sup> January 2018.
46. In reference to the meeting, she was engaged of public nature including attending and participation in convening and chairing a meeting of Women Leaders on proposed Constitutional Amendments, she deposed that it was in the interest of the public that she remains the validly elected Chairperson.
47. In the end, in praying that the Petition be dismissed, she deposed that public interest outweighs the individual interest of the Petitioner.

**The 2<sup>nd</sup> Respondent's case:**

48. Rozah Buyu, the Deputy Chairperson of KEWOPA opposed the Petition through her Replying Affidavit deposed to on 23<sup>rd</sup> July 2020.
49. She deposed that, KEWOPA comprised of 97 members and was managed by an Executive Committee which is mandated to inter alia give the office bearers direction on disbursements of all monies and the manner in which they perform their duties.
50. She deposed that on various dates in May and June 2020, 65 out of 97 members of KEWOPA signed a Petition to change its top leadership for lack of competence and absenteeism.
51. To that, she deposed that on 8<sup>th</sup> June 2020, she wrote a letter to the Secretary, Hon. Mishi Mboko, informing her of the said Petition and calling for a SGM to deliberate on the same.
52. She deposed, in absence of the Chairperson, she chaired the meeting pursuant to paragraph 10 of the KEWOPA Constitution.
53. It was her case that the Executive Committee was informed that the reasons for seeking the Petitioner's removal was among others being silent on Gender Based Violence including femicide, FGM and teenage Pregnancies and failing to lead the fight in implementation of two-thirds gender rule.
54. She deposed that upon being satisfied that *the Constitution* was followed and the required signatures collected, they agreed to have SGM as requested on 7<sup>th</sup> July 2020.
55. She deposed that being empowered by the Executive Committee, she and the 3<sup>rd</sup> Respondent issued a Notice of intended SGM to all the members and copied the Petitioner herein.
56. It was her deposition that the Petition and the Notice for the Petitioner's removal was served on all the 97 Members of KEWOPA on 22<sup>nd</sup> June 2020 through Parliamentary pigeon holes as the norm and partly due to Covid-19 pandemic.
57. She deposed that in 7<sup>th</sup> July 2020 the SGM was held and in attendance was 35 out of 97 members, thus making the requisite quorum of not less than one-third of the registered members as per paragraph 9(c) of the KEWOPA Constitution.
58. She stated further that the SGM was held as scheduled, within 21 days of the requisition made on 22<sup>nd</sup> June 2020 in accordance to paragraph (b) of KEWOPA Constitution.
59. It was her deposition that the motion for her removal was moved by Hon. Sabina Chege and was seconded by Senator Zawadi Gona.
60. She deposed that, members deliberated and the Petitioner was removed by acclamation and consensus.



61. It was her case that members then proposed their desired candidates among them, Hon. Gathoni Wamuchomba who was eventually elected by acclamation and consensus in accordance to section 6(f) of KEWOPA Constitution.
62. She deposed that on 8<sup>th</sup> July 2020 the 3<sup>rd</sup> Respondent wrote to the Registrar of Societies notifying of the change.
63. It was her case that upon filing returns for the year 2018 and 2019, the 4<sup>th</sup> Respondent effected the change of name of Chairperson of KEWOPA.
64. In conclusion, the 2<sup>nd</sup> Respondent deposed that Petitioners removal was procedural and there were ground for her removal. She urged the Court to dismiss the Petition.

**The 3<sup>rd</sup> Respondent's case:**

65. Hon. Mishi Mboko, the Secretary KEWOPA challenged the Petition through her Replying affidavit deposed to on 28<sup>th</sup> July 2020.
66. She fully adopted the depositions of the 2<sup>nd</sup> Respondent and in urging that the Petition is dismissed, she affirmed the position that the Petitioner's removal was procedurally fair and was grounded on her non-performance.

**The Submissions:**

67. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed joint written submissions dated 17<sup>th</sup> September 2021.
68. The Respondents asserted that the removal of the Petitioner was in accord to Paragraph 6(f) of the KEWOPA Constitution which provided for removal of office bearers the same way as members may be expelled in rule 5(e) for gross misconduct for contravening constitution.
69. The Respondents elaborated that there was failure by the Petitioner to organize and invite members of KEWOPA for annual general meetings, failure to audit the accounts, failure to unite women and to take her leadership role as per the objects of KEWOPA Constitution contrary to the provisions of paragraph 7(a), 9(b) and 12(a).
70. The Respondents relied on the case of Jerry ole Kina -vs- Tom Mboya Odege & Another (2021) eKLR where it was observed: -

If the Petitioner failed to defend himself, it is not because he chose not to do so as he was aware of the meeting in which his conduct was dismissed. I find that there were valid grounds for suspension of the Petitioners, that the National Executive Board had Authority to suspend him and the National executive Board complied with the procedure within Article 12 of the Union Constitution.

71. The Respondents further fortified its position that the removal was procedurally fair by relying on George Onyango Oloo -vs- Kisumu County Assembly Service Baird & Another; Elisha Jack Oraro & 2 Others (interested Parties) (2019) eKLR where it was observed: -

The petitioner bears the primary onus of proving on a balance of probabilities that he was blocked from attending the plenary session to defend himself it being clear that he had been served with the Notice of motion to impeach him the day before and he was aware that the hearing of the motion would take place on 18/9/201 as 2.30p.m.



72. On the foregoing, the Respondent reiterated that the Petitioner was duly notified, had sufficient prior notice of the Petition to remove her from office on 22<sup>nd</sup> June 2020, which was 14 days prior to the date of the scheduled meeting for deliberation on her removal.
73. The Respondents pointed out the fact that the Petitioner had not rebutted or denied service of notice of SGM via parliamentary pigeon holes.
74. In view of section 18 of the Societies Act, which empowers the Registrar to intervene by settling disputes including proper appointment of the lawful officers of the society, the Respondents submitted that the Petitioner was caught up by exhaustion doctrine since she was at liberty to invoke the said section which would allow the Registrar to act accordingly.
75. The Respondents drew the Court's attention to *Monica Kaguri Nturu & 2 others -vs- Registrar of Societies Kenya & 2 Others; John Mbaabu M'murimi & Another (Interested Parties) (2020) eKLR* where it was observed: -
- Section 18 mandates the registrar of societies to take measures to resolve disputes relating to the officials of the society or members. these proceedings revolve around the leadership of the Society and by order of the Court the Registrar was mandated to resolve the issue of officials of the society through elections.
76. As regards the applicable KEPOWA Constitution, the Respondents submitted that there was no conflict as alleged by the Petitioner.
77. In conclusion, the Respondents maintained that the Petitioner's removal was legal and procedurally fair and the Petition ought to be dismissed with costs.

**The 4<sup>th</sup> Respondent's case:**

78. The Registrar of Societies opposed the Petition through the Replying Affidavit of Maria Goreti Nyariki, the Acting Registrar and Principal State Counsel in-charge of Societies deposed to on 22<sup>nd</sup> July 2020.
79. It was her case that upon receiving documentation for change of office bearers on 9<sup>th</sup> July 2020 from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the 4<sup>th</sup> Respondent advised them to first file pending Annual returns for the years 2018 and 2019.
80. It was her case, however, that on 9<sup>th</sup> July 2020 and 10<sup>th</sup> July 2020 the 4<sup>th</sup> Respondent received complaint letters dated 8<sup>th</sup> July 2020 and 9<sup>th</sup> July 2020 from the Petitioner of the changes in the office which it forwarded to the Secretary of KEWOPA requesting for response.
81. She deposed that she received the letter dated 14<sup>th</sup> July 2020 from the Secretary of KEWOPA explaining the actions taken during and after SGM and that it (the 4<sup>th</sup> Respondent) was satisfied from the response from the 3<sup>rd</sup> Respondent and accordingly proceeded to accept the documents regarding the meeting held on 7<sup>th</sup> July 2020 for the change of office bearers.
82. It was the 4<sup>th</sup> Respondent's case that its actions are in good faith and is guided by Sections 9 and 17 of the Societies Act and the Constitution when vetting change of leadership of Societies.
83. In the end, it urged that the Petition be dismissed with costs.
84. The 4<sup>th</sup> Respondent did not file written submissions.



**Analysis:**

85. Having carefully considered this matter, there seems to be one principal issue for determination. It is whether the removal of the Petitioner from the Chairperson of KEWOPA contravened Articles 47 and 50 of *the Constitution*.
86. In such a scenario, a consideration of Article 47 of *the Constitution* must be ventured into.
87. Article 47 of *the Constitution* states as follows: -
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.
  3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
    - a. provide for the review of administrative action by a Court or, if appropriate, an independent and impartial tribunal; and
    - b. promote efficient administration.
88. The legislation that was contemplated under Article 47(3) is the Fair Administrative Actions Act. Section 4(3) and (4) thereof provides that: -
- (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;
    - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
    - (d) a statement of reasons pursuant to section 6;
    - (e) notice of the right to legal representation, where applicable;
    - (f) notice of the right to cross-examine or where applicable; or
    - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
  - (4) The administrator shall accord the person against whom administrative action is taken an opportunity to—
    - (a) attend proceedings, in person or in the company of an expert of his choice;
    - (b) be heard;
    - (c) cross-examine persons who give adverse evidence against him; and



- (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

89. Section 2 of the Fair Administrative Act defines an ‘administrative action’ and an ‘administrator’ as follows: -

‘administrative action’ includes -

- i. The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- ii. Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

‘administrator’ means ‘a person who takes an administrative action or who makes an administrative decision’.

90. Addressing itself to these provisions, the Court of Appeal in Civil Appeal 52 of 2014 Judicial Service Commission vs. Mbalu Mutava & Another (2015) eKLR held that: -

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

91. The South African Constitutional Court in *President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others CCT16/98* 2000 (1) SA 1 ring-fenced the importance of fair administrative action as a constitutional right. The Court while referring to Section 33 of the South African Constitution which is similar to Article 47 of the Kenyan Constitution stated as follows: -

Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...

92. The High Court in *Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoiti* [2018] eKLR had the following to say: -

25. In *John Wachiuri T/A Githakwa Graceland & Wandumbi Bar & 50 Others vs The County Government of Nyeri & Ano*[39] the Court emphasized that



there are three categories of public law wrongs which are commonly used in cases of this nature.

These are: -

- a. Illegality- Decision makers must understand the law that regulates them. If they fail to follow the law properly, their decision, action or failure to act will be "illegal". Thus, an action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond its powers.
- b. Fairness- Fairness demands that a public body should never act so unfairly that it amounts to abuse of power. This means that if there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them and it must not be in breach of the rules of natural justice. The body must act impartially, there must be fair hearing before a decision is reached.
- c. Irrationality and proportionality- The Courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute 'irrationality' or 'perversity' on the part of the decision maker. The benchmark decision on this principle of judicial review was made as long ago as 1948 in the celebrated decision of Lord Green in *Associated Provincial Picture Houses Ltd vs Wednesbury Corporation*: -

If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere...but to prove a case of that kind would require something overwhelming...

93. From the foregoing discussion, there is no doubt that the impugned directive is an administrative action. In sum, it is an administrative action because it affected the legal rights and interests of the Petitioner. As such the action had to pass the constitutional and statutory tests of lawfulness, reasonableness and procedural fairness.
94. The Petitioner averred that she was never informed of the alleged SGM which was held on 7<sup>th</sup> July, 2020 that resulted in her ouster.
95. To the contrary, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents deposed on how the Petitioner was served for the SGM. It was averred that as their norm and partly due to the then prevailing Covid-19 restrictions, service on all 97 members of KEWOPA was effected through the parliamentary pigeon holes on 22<sup>nd</sup> June 2020.
96. There was a further disposition by the 1<sup>st</sup> Respondent that the Petitioner ought not deny knowledge of the SGM since the Petitioner even confronted her in Parliament over her impending ouster motion.
97. The Petitioner did not deny that the members of KEWOPA were ordinarily served through the parliamentary pigeon holes. She also did not deny the averments by the 1<sup>st</sup> Respondent on the confrontation the two had in Parliament over the issue of the Petitioner's removal from office.
98. It was further deposed by the 2<sup>nd</sup> Respondent that 35 out of 97 members of KEWOPA, who were all served in the same manner as the Petitioner herein, turned up for the meeting thereby making the



requisite quorum of not less than one-third of the registered members as per paragraph 9(c) of the KEWOPA Constitution.

99. On the basis of the above, this Court is satisfied, and hereby hold, that the Petitioner was properly notified of the SGM and was, thereby, accorded an opportunity to attend and participate on the motion regarding her ouster.
100. Regarding the allegation by the Petitioner that the 4<sup>th</sup> Respondent produced a different copy of the Association's Constitution with a view to mislead this Court, the Court finds that the Petition, unfortunately, did not challenge the copy of *the Constitution* produced by the 4<sup>th</sup> Respondent as to accord the 4<sup>th</sup> Respondent an opportunity to make representations on such a serious allegation.
101. On the contention that the procedures undertaken towards the removal of the Petitioner did not conform to *the Constitution* of the Association, this Court affirms that it has carefully considered *the Constitution* produced by the 4<sup>th</sup> Respondent, being the official one held by the Registrar of Societies alongside the correspondences between the parties including the complaint laid by the Petitioner.
102. Just like the 4<sup>th</sup> Respondent, this Court finds no reason to impugn the process. The Respondents acted within the four corners of the Association's Constitution and the SGM was validly convened, the Petitioner duly notified and the meeting properly held. Therefore, the resolutions of the SGM held on 7<sup>th</sup> July, 2020 meeting can only be fortified.
103. Having said as much, this Court now finds and hold that the Petitioner's rights under Articles 47 and 50 of *the Constitution* and or as otherwise alleged were not contravened by the Respondents either as alleged or otherwise.

**Disposition:**

104. As the main issue has been answered in the negative, the Petition is not sustainable. It is hereby dismissed with costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

Mr. Muge, Learned Counsel for the Petitioner.

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Regina/Chemutai – Court Assistants.

