



Republic v Social Watch Organization; Kagiri (Exparte Applicant) (Judicial Review E184 of 2023) [2024] KEHC 14674 (KLR) (Judicial Review) (7 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14674 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E184 OF 2023
JM CHIGITI, J
OCTOBER 7, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SOCIAL WATCH ORGANIZATION RESPONDENT

AND

BEATRICE WAIRIMU KAGIRI EXPARTE APPLICANT

RULING

1. The applicant moved this court through its application dated 20th November 2023.
2. The application is supported by the Ex-parte Applicant's Statutory Statement dated 14th November 2023 and Verifying Affidavit deponed by Beatrice Wairimu Kagiri on the same date.
3. In its letter dated 15th May 2023 to various government agencies in Nairobi, the Respondent lodged a complaint on behalf of one Tabitha Wambui Mwangi in regard to an alleged fraudulent changes in regard to the Ex-parte Applicant's company, St. John Junior School Njiru Limited in which she is not only a director but a shareholder.
4. Consequently, vide a letter dated 22nd June 2023 from the Business Registration Service, the Business Registration Service threatened to rectify the Company's register due to the alleged fraudulent changes.
5. This culminated in the institution of Nairobi Hc JR No. E083 of 2023 filed by the Ex-parte Applicant restraining the Business Registration Service from making any rectifications to the Company's register.



6. After the applicant's enquiry, on 6th July 2023, the NGO Co-ordination Board stated inter-alia that the Respondent was only licensed to operate within Mombasa, Kilifi, Malindi, Lamu and Tana River County.
7. It logically follows that the Respondent having only been licensed to operate within Mombasa, Kilifi, Malindi, Lamu and Tana River County could not validly lodge the complaint dated 15th May 2023 in Nairobi on the behalf of one Tabitha Wambui Mwangi.
8. The application seeks inter-alia that:
 - a. An order of CERTIORARI to remove into this Honourable court and quash in its entirety the Respondent's complaint letter dated 15th May 2023.
 - b. An Order of PROHIBITION restraining the Respondent its employees, agents and anyone acting under its authority from lodging any complaint(s) of any nature against Beatrice Wairimu Kagiri and her corporate company St. John Junior School Njiru Limited.
 - c. Costs and other incidentals be borne by the Respondent herein.
 - d. Any such order or relief as the Honourable Court may deem just, fit and appropriate in the circumstances of this matter.
9. The application is unopposed.
10. In the case of Republic v Cabinet Secretary, Ministry of Agricultures, Livestock & Fisheries: Cabinet Secretary, Ministry of Industry, Trade & Co-operatives (Interested Party) Tanners Association of Kenya (Suing through its Chairman Robert Njoka Ex Parte Applicant [2019] eKLR the court in addressing the question of whether the decision made was ultra vires held that;

“The decision-maker must understand correctly the law that regulates his decision-making and must give effect to it. Judicial intervention is posited on the idea that the objective is to ensure that the agency of government functionary remains within the area assigned to it by Parliament. A decision, which falls outside that area, can therefore be described, interchangeably, as a decision to which no reasonable decision-maker could have come; or a decision, which was not reasonably open in the circumstances.”
11. An act is ultra vires when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles renders the decision made laced with illegality.
12. Lord Denning in *Macfo v United Africa Co, Ltd* [1961]3 All E.R. [as quoted by the Court of Appeal in *Onesmus Sintole Saldimu v Sane Ole Saidimu Nkfkoora&5 others* (2021) eKLR) stated that:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad, you cannot put something on nothing and expect it to stay there. It will collapse.”
13. The Respondent having elected to lodge a complaint in Nairobi, the said complaint and action was manifestly ultra-vires the Respondent's operating license and therefore void ab-initio.



Disposition;

14. The Respondent acted ultra-vires the license granted by the NGO Co-ordination Board, its complaint cannot stand as it was void ab-initio.
15. The Notice of Motion application dated 20th November 2023 has merit.

Order:

- a. An order of Certiorari to remove into this Honourable court and quash in its entirety the Respondent's complaint letter dated 15th May 2023 is hereby issued.
- b. An Order of PRohibition restraining the Respondent its employees, agents and anyone acting under its authority from lodging any complaint(s) of any nature against Beatrice Wairimu Kagiri and her corporate company St. John Junior School Njiru Limited is hereby issued.
- c. Costs to the applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2024.

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J. M. CHIGITI (SC)

JUDGE

