



Republic v Registrar of Societies; Mugane (Exparte Applicant) (Judicial Review E117 of 2024) [2024] KEHC 15423 (KLR) (Judicial Review) (4 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E117 OF 2024
JM CHIGITI, J
DECEMBER 4, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF SOCIETIES RESPONDENT

AND

CHARLES MUGANE EXPARTE APPLICANT

JUDGMENT

1. The Application before this Court is the Applicant’s Notice of Motion application dated 25th June, 2024 brought Pursuant to *The Constitution* of Kenya, Section 3A of the *Civil Procedure Act* (Cap 21 Laws of Kenya, Section 9 of the *Law Reform Act*; Order 53 & des 3 of The Civil Procedure Rules, The Fair Administrative Actions Act and all other enabling provisions of the Law.
2. The application seeks the following orders;
 1. That the Honourable Court be pleased to and hereby issues a declaration that the decision of the Respondent contained in its letters dated 14th April 2023 and 13th October 2023 respectively to indefinitely suspend the Annual General Meeting of Parklands Baptist Church is illegal, null and void for want of due process and contradicting the express terms of Article 47 of *the Constitution* of Kenya 2010.
 2. That the Honourable Court be pleased to and hereby issues a declaration that the decision of the Respondent contained in its letters dated 14th April 2023 and 13th October 2023 respectively to indefinitely and irregularly extend expired terms of the Church Officials and



Trustees of Parklands Baptist Church is illegal, null and void for want of due process and contradicting the express terms of Article 47 of *the Constitution* of Kenya 2010.

3. That the Honourable Court be pleased to and hereby grants the judicial review order of Certiorari to remove into this Honourable Court and quash the decision of the Respondent contained in its letters dated 14th April 2023 and 13th October 2023 respectively indefinitely suspending the Annual General Meeting of Parklands Baptist Church.
 4. That the Honourable Court be pleased to and hereby orders the Secretary of Parklands Baptist Church to issue a Statutory Notice calling for an Annual General Meeting in the express terms of its Constitution within 45 days.
 5. That the Honourable Court be pleased to and hereby orders Parklands Baptist Church to hold its Annual General Meeting in the express terms of its Constitution within 45 days.
 6. That the Honourable Court be pleased to and hereby orders that the expired terms of all the Church Officials and Trustees by the meaning of the relevant provisions of the Parklands Baptist Church Constitution shall fall vacant within 45 days.
 7. That the Honourable Court be pleased to and hereby declares that all successive/subsequent/consequent and/ or resultant decisions made and/or taken after 45 days by church Officials and Trustees with expired terms shall be illegal, null and void.
 8. That this Honourable Court do issue any such other and further relief as it may deem just and fair in the circumstances of this case.
3. The application is anchored on the grounds that are on the face of it and supported by a statutory statement and a Verifying Affidavit Charles Mugane sworn on 3rd June, 2024.
 4. It is the Applicant's case that he is a member of good standing of the Parklands Baptist Church, a Society registered under the *Societies Act*, Cap 108 of the Laws of Kenya, under Certificate of Registration Number 10680 since the year 2012. As such, I have also previously served in senior leadership positions among other as the Church Secretary between the years of 2017 – 2021.
 5. He posits that the Secretary of the Church circulated to its members the Notice calling for the Annual General Meeting (hereinafter "the AG11") specifically outlining the intended agenda to be held on the 22nd April 2023 and on 14th April 2023 the Respondent wrote a letter indefinitely suspending the intended AGM citing a complaint by one William Kasina through a letter dated 12th April 2023 supported by a total of fifty six members out of whom forty five had purportedly appended their signatures, ten had been signed for and one had not appended her signature thereon.
 6. It is his case that the impugned decisions are contested due to the fact that;
 - i. The subject complaint was received by the Respondent on 12th April 2023, the same was promptly considered and the impugned decision "to indefinitely suspend" was made in a record 2 days through its letter dated 14th April 2023;
 - ii. The complaint dated 12th April 2023 was initiated and supported by persons who did not properly identify themselves using their identities of membership which questions how the Respondent verified their locus standi thereof as against the Membership Register prior to reaching the impugned decision;



- iii. The allegations of forgery of the signatures of some of the purported supporters of the complaint dated 12th April 2023 contrary to Section 349 of the Penal Code Cap 63 of the Laws of Kenya, matters which you, as a creature of Statute continue to blatantly ignore.
 - iv. The Respondent failed to, at a preliminary stage, call for the authority to sign in the prescribed manner, on behalf of the ten purported supporters of the complainant signed for, before delving further into the merits of the complaint, which obligation the Respondent ignored and/or failed to perform, calling into question its decision-making process.
 - v. The Respondent hastily, hurriedly, unilaterally and without according the Church an opportunity to be heard in the same fashion and promptness as the complainant, decided to indefinitely suspend the Annual General Meeting of the Church intended to be held on 22nd April 2023, contrary to the basic principles of Article 47, 48 and 50 of The Constitution of the Constitution of Kenya 2010, and section 4 of The Fair Administrative Action Act (the "FAA Act").
7. The Applicant argued that the Respondent hurriedly designed a meeting dated 13th September 2023 purporting to accord the Applicant an opportunity to be heard in which meeting the Respondent "read" the decision to indefinitely suspend the AGM of the Church without any justifiable reason.
 8. He further argues that as a result of the impugned decision by the Respondent, the Church is now in a constitutional crisis hence;
 - i. The terms of the office holders of the Church lapsed by effluxion of time effective 24th July 2023 rendering their continued stay in office illegal, null and void
 - ii. The decisions reached by the office holders of the Church are illegal, null and void the officers undertaking their mandates ultra vires;
 - iii. The Respondent has illegally accorded itself and its proxies illegally serving as office holders the constitutional powers vested with the membership of the Church as contemplated by the law and best practice across the globe.
 9. The Applicant contends that the Respondent has always been very prompt and active in aiding and abetting the commission of illegalities by the illegitimate office holders and that notwithstanding, the Respondent through a letter dated 13th October 2023, unlawfully, unreasonably and illegally suspended the Church's AGM thereby indefinitely extending terms of the office holders indefinitely.
 10. He invokes Article 47 of the Constitution which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Further, 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.
 11. He also invokes Article 20 of the Constitution which provides that the Bill of Rights applies to all and binds all State organs and all persons. Further, that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right and fundamental freedom and Article 260 of the Constitution on Interpretation provides that the word "person" includes a company, association or other body of persons whether incorporated or unincorporated.
 12. It is the Applicant's case that Respondent's decision offends his rights under Article 47 of the Constitution of Kenya as read with the provisions of the Fair Administrative Action Act, 2015. The Applicant filed his written submissions dated 28th October, 2024.



13. It is his submission that the decision of the Respondent to indefinitely suspend the 2023 Annual General Meeting of the Parklands Baptist Church was illegal.
14. He places reliance in the case of Apex Finance International Limited and Another v Kenya Anti-Corruption Commission NKU HC JR No. 64 of 2011 [2012] eKLR, the court cited a decision of the Supreme Court of Nigeria, Goodwill and Trust Investment Ltd and Another v. Witt and Bush Ltd Nigerian SC 266/2005 which captured the fundamental nature of the issue of capacity. The court observed that:

“It is trite law that to be competent and have jurisdiction over a matter, proper parties must be identified before the action can succeed, the parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court, the court lacks jurisdiction to hear the suit, and, “where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.”
15. He contends that the Respondent ought to but failed to authenticate the legal capacity of the complainant and his purported supporters prior to entertaining the complaint as a preliminary issue when seized of the matter. This renders the decision to suspend the AGM by the Respondent hasty and therefore unreasonable in the circumstances.
16. The Applicant also places reliance in the case of [*Kaniki Karisa Kaniki Vs. Commercial Bank Ltd & 2 others \[2016\] eKLR Commercial Cause 37 of 2015*](#), where the Court held thus;

“I am guided by J.M Khamoni, J (as he then was) in Republic Vs. Chairman, Lands Disputes Tribunal Kirinyaga District & Another Ex-parte Peter Maru Kariuki [2005] eKLR where he adopted Lord Denning’s finding in Macfoy Vs. United Africa Ltd (1961) 3 ALL E.R.1169

“If an act is void, then it is in law a nullity and not a mere irregularity. 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 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”.
17. The Applicant argues that some of the purported supporters in the complaint namely 37, 38, 39, 43, 48,49, 51, 52, 53 and 55 were all signed on behalf of by the appearance of “for” against each similar signature. The donation of power by one to another ought to have been proved through an express authority by the “donors” to the “donee” through a letter or an affidavit, which express authority prominently was absent.
18. He submits that the Respondent received the complaint on 12th April 2023 and wrote to the Church communicating the decision to “suspend” on 14th April 2023, a record two (2) days but failed to accord the Church with the same promptness and swiftness a right of reply before rendering the impugned decision there was a total of eight (8) days before the intended AGM.
19. It is also his submission that the decision to indefinitely suspend the Annual General Meeting of the Church without having accorded it an opportunity to be heard goes against the basic principles of Article 47 of [*the Constitution*](#) of Kenya 2010, that every person has a right to an administrative action



that is expeditious, efficient, lawful, reasonable and procedurally fair and cites the case of Republic v Firearms Licensing Board & another Ex parte Boniface Mwaura [2019] eKLR which held thus;

“A procedural legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance of a decision being taken”.

20. The Applicant argues that the decision to superintend the continued operation of the Church for more than 2 years now without the contribution of its members is unfair to the very members constituting its ownership thereof is violated various sections of the FAA and more specifically, Sections 4(2) and 4(3)(a).
21. It is his case that for the Respondent to issue an indefinite suspension of the AGM of the Church is illegal is unreasonable and illegal having proceeded without irregularly. The Ex-Parte Applicant together with other members of the Church had legitimate expectation that the Respondent would accord proceed to determine the matter fairly and legally in the circumstances.
22. The Applicant posits that this Honourable court by dint of Section 7(2)(k) of the Fair Administrative Actions Act (FAA Act) has jurisdiction to review the Respondent's decision(s) for their unreasonableness and relies on the case of Republic -Vs.- Public Procurement Administrative Review Board & 2 Others Ex-Parte Pelt Security Services Limited [2018] eKLR, which held as follows:

“Reasonableness, as a ground for the review of an administrative action is dealt with in Section 7 (2) (k) of the *Fair Administrative Action Act*. A court or tribunal has the power to review an administrative action if the exercise of the power or the performance of the function authorized by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.”
23. The Applicant urges this court to set aside the impugned decision through an order of Certiorari to remove and bring to this Honourable Court for purpose of quashing the Respondent's letters dated 14th April 2023, 3rd October 2023 and 13th October 2023 respectively plus award him costs.

Analysis and determination

24. Upon perusing the pleadings and the submissions alongside the authorities cited, this court finds that the issue for determination is whether or not the Applicant is entitled to the orders sought.
25. The citadel of the power to determine disputes through the exercise of judicial authority is based on the concept or principle of justiciability, the doctrines of ripeness, avoidance and mootness.
26. The doctrine of justiciability encompasses such principles as the refusal of the court to make declarations, to assume jurisdiction over matters which are allocated to such other branches of the government as the legislature or the executive, refusal to decide issues which are not ripe for hearing or determination.
27. By justiciability it is meant a matter “proper to be examined in courts of justice” or “a question as may properly come before a tribunal for decision”: Black's Law Dictionary 9th. It further goes on to define a ‘justiciable controversy’ as “a controversy in which a claim or right is asserted against one who has an interest in contesting it.” The other definition given of a justiciable controversy is “a question as may properly come before a tribunal for decision”. In other words, courts should only decide matters that require to be decided.



28. In the case of *Ashwander –v- Tennessee Valley Authority* [1936] 297 U.S 288, the US Supreme Court stated that courts should only decide cases which invite “a real earnest and vital controversy”.
29. Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases. The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through a factual matrix, for determination.
30. Conversely, the court is also prevented from determining an issue when it is too late. When an issue no longer presents an existing or live controversy, then it is said to be moot and not worthy of taking the much sought judicial time. The exception it must be noted exists where the court is allowed by law to offer advisory opinions.
31. The justiciability dogma and all principles under it are part of our Constitutional law and jurisprudence.
32. The court in *John Harun Mwau & 3 Others –v- AG & 2 others* HCCP No. 65 of 2011 (unreported) stated as follows:

“We also agree with the submissions of Prof. Ghai that this Court should not deal with hypothetical and academic issues. In our view, it is correct to state that the jurisdiction to interpret *the constitution* conferred under Article 165(3) (d) does not exist in a vacuum and it is not exercised independently in the absence of a real dispute. It is exercised in the context of a dispute or controversy.”

33. In Hon. *Martin Nyaga Wambora –v- Speaker of County Assembly of Embu and 5 Others* HCCP No. 3 of 2014, the court observed as follows:

“It is clear from the above definition that whether a matter before a Court is justiciable or not depends on the facts and circumstances of each particular case but the Court must first satisfy itself that it has jurisdiction to entertain the matter before it can resolve the issue of justiciability.’

34. In *Coalition for Reform and Democracy (CORD) & 2 Others -v- Republic of Kenya & Another* HCCP 628 of 2014 [2015] eKLR, the court cited the case of *Patrick Ouma Onyango & 12 Others –v- AG & 2 Others* Misc. Appl No. 677 of 2005 wherein the court had endorsed the doctrine of justiciability as stated by Lawrence H. Tribe in his treatise *American Constitutional Law*, 2nd Ed. as follows:

‘In order for a claim to be justiciable as an article III matter, it must “present a real and substantial controversy which unequivocally calls for adjudication of the rights asserted.” In part, the extent to which there is a ‘real and substantial controversy is determined under the doctrine of standing’ by an examination of the sufficiency of the stake of the person making the claim, to ensure the litigant has suffered an actual injury which is fairly traceable to challenged action and likely to be redressed by the judicial relief requested. The substantiality of the controversy is also in part a feature of the controversy itself-an aspect of ‘the appropriateness of the issues for judicial decision...and the actual hardship of denying litigants the relief sought. Examination of the contours of the controversy is regarded as necessary to ensure that courts do not overstep their constitutional authority by issuing advisory opinions. The ban on advisory opinion is further articulated and reinforced by judicial consideration of two supplementary doctrines: that of ‘ripeness’ which requires



that the factual claims underlying the litigation be concretely presented and not based on speculative future contingencies and of 'mootness' which reflects the complementary concern of ensuring that the passage of time or succession of events has not destroyed the previously live nature of the controversy. Finally, related to the nature of the controversy is the 'political question' doctrine, barring decision of certain disputes best suited to resolution by other governmental actors'.

35. In *Jesse Kamau & 25 Others V. Attorney General* [2010] EKL.R the court stated as follows:

“To us therefore the doctrines of justiciability, ripeness, mootness, collusive suits and the political question cannot be determined on their own. They are aids to, or matters to be considered in the interpretation and determination of a particular constitutional issue, if any, before the court. If any of the above grounds are present in an application, whether by way of reference from a subordinate or a lower court, or directly by Petition to the High Court, the court may uphold or strike out the application on those or other grounds.

Even without those doctrines, the constitutional position in Kenya is very clear. The High Court has a sextuple jurisdiction. Firstly it has original and unlimited jurisdiction in civil and criminal matters. Secondly it has supervisory jurisdiction over the subordinate courts under section 65(2) of *the Constitution* in all matters in which subordinate courts have jurisdiction. Thirdly it has jurisdiction to interpret any provision of *the Constitution* under section 67 (references, appeals and interpretation of *the Constitution*).

Fourthly section 84 (2) of *the Constitution* confers upon the High Court original jurisdiction to determine any question of alleged contravention of fundamental rights and freedoms of the individual and the discretion to grant relief to an aggrieved person by making such orders, issuing such writs and giving such directions as it may consider appropriate for the purpose of enforcement of any of the provisions of sections 70 to 83 (inclusive) that is, Chapter V (fundamental rights and freedoms of the individual) of *the Constitution*.”

36. In *Trusted Society of Human Rights Alliance vs Attorney General & Others* Petition No.229/2012. The Court in that case differentiated a justifiable controversy (which is amenable to judicial review) and a policy decision by the political branches of government (which is a “political question” inappropriate for judicial review). The court stated thus;

“The justiciability doctrine expresses fundamental limits on judicial power in order to ensure that courts do not intrude into areas committed to the other branches of government. The arguments on this issue are based on the foundational doctrine of separation of powers and its application to the case at hand.”

37. In the instant suit, the Registrar of societies through his letter dated 13th October 2023 directed that the dispute that was placed before it and which substantially informs the cause of action herein be referred to mediation before the church elders.

38. The Registrar further directed that a dispute resolution report be filed with him. The Registrar also directed that the dispute resolution be done in a timely manner.

39. The Applicant failed to give this alternative dispute resolution avenue a chance. He does not explain to this court nor demonstrate or give evidence that he made an effort towards prompting the dispute resolution process. The Applicant did not present evidence to demonstrate that the church elders were inaccessible or unwilling to engage in the mediation. The Applicant tendered no evidence to show that no redress would be achievable through the church mediation procedure.



40. Section 9 (3) The *Fair Administrative Action Act* 2015 states that:

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 subsection (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.

41. In the Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425 the court had this to state;

“In our view there is considerable merit.....that where there is clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

42. The Applicant did not exhaust the available alternative dispute resolution mechanism before moving this court. In the instant suit it is this court’s finding that the applicant should have first sought orders to get exempted from following the alternative dispute resolution mechanisms before approaching this court. Article 159 shall be rendered superfluous should this court allow the application in the circumstances.

Disposition;

43. This suit is not ripe nor justiciable. This court is bound by the doctrine of avoidance given that the Registrar of societies is a statutory outfit that has the capacity to deal with disputes like the one that the Applicant brought before this court and I so hold.

44. The Applicant has not made out case for the grant of the orders sought.

45. The registrar of societies directives must be complied with.

Order;

The application is struck out.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF DECEMBER 2024.

J. M. CHIGITI (SC)

JUDGE

