



Republic v Registrar of Society & another; Barasa & 12 others (Exparte Applicants) (Judicial Review Application 6 of 2024) [2024] KEHC 15240 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION 6 OF 2024**

HM NYAGA, J

DECEMBER 2, 2024

IN THE MATTER OF AN APPLICATION BY GEOFFREY BARASA, JEREMIAH ZABLON, BENJAMIN ATELA JOHN ORUPIA PAPA, JOSEAH KIMETO, JOHANA KAMAU, MOSES IKWARA, JANET IMAI, VIVIAN EMILY, DORIKA OMUSE, DEDEN OKIROR, ZIPPORAH BARASA & EMMY KABEYA FOR JUDICIAL REVIEW PROCEEDINGS IN THE NATURE OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, THE SOCIETY ACT

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF SOCIETY 1ST RESPONDENT

KENYA CHURCH OF CHRIST 2ND RESPONDENT

AND

GEOFFREY BARASA EXPARTE APPLICANT

JEREMIAH ZABLON EXPARTE APPLICANT

BENJAMIN ATELA EXPARTE APPLICANT

JOHN ORUPIA PAPA EXPARTE APPLICANT

JOSEAH KIMETO EXPARTE APPLICANT

JOHANA KAMAU EXPARTE APPLICANT

MOSES IKWARA EXPARTE APPLICANT

JANET IMAI EXPARTE APPLICANT

VIVIAN EMILY EXPARTE APPLICANT



DORIKA OMUSE EXPARTE APPLICANT
DEDAN OKIROR EXPARTE APPLICANT
ZIPPORAH BARASA EXPARTE APPLICANT
EMMY KABEYA EXPARTE APPLICANT

RULING

1. On 11th April,2024 the Ex- parte Applicants filed the instant Notice of Motion dated 5th April,2024 pursuant to Section 53 of the Civil Procedure Rules seeking the following orders: -
 - i. That an order of certiorari quashing the decision made by the Registrar of Societies Nairobi registering the interested party as the sole trustee of the 2nd Respondent.
 - ii. That an order of prohibition do issue restraining the interested party from solely running the affairs of the 2nd Respondent.
 - iii. That costs of the Application be provided for.
2. The Application is premised on grounds on its face and supported by an affidavit of the 1st Ex parte Applicant, Geoffrey Barasa sworn on the even date.
3. It is the ex- parte Applicants' case that the interested party has illegally short changed them by removing them as the local trustees of the 2nd Respondent and by amending the constitution of the 2nd Respondent unlawfully and un-procedurally so as to allow only the interested party to be trustees of the church.
4. The ex parte applicants avers that the interested party has also locked them out of church which they built from scratch with the help from friends.
5. In opposition to the application, the Interested Party and the 2nd Respondent raised a preliminary objection dated 18th April,2024 premised on grounds that: -
 - a. The Court lacks jurisdiction to hear and determine this matter pursuant to Section 18 of the Societies Act.
 - b. The Plaintiff/ Applicant has not exhausted the Dispute Resolution Mechanisms provided for in the Church.
 - c. In any case, the suit is bad in law, vexatious and an abuse of the Court Process.
6. On 24th April,2024, this court directed that the Preliminary Objection (P.O) be dispensed with first via written submissions. Both parties duly filed their submissions.

2nd Respondent & Interested Party's Submissions

7. On whether this Court has jurisdiction to hear and determine this matter, the 2nd Respondent and the Interested party submitted that a perusal of the pleadings shows that the dispute is on the leadership of the church and that considering Kenya Church of Christ is undisputably a society registered under Societies Act then pursuant to Section 18 of the Societies Act this matter ought to be addressed through internal disputes resolution, and as such this court is bereft of jurisdiction to hear this matter.
8. In support of their submissions, the parties herein referred this court to the following cases: -



- a. Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1, for the submission that without jurisdiction the Court has no power to proceed with this matter further.
- b. In the Matter of Interim Independent Electoral Commission [2011] eKLR, where the Supreme Court held that jurisdiction of courts in Kenya is regulated by the Constitution, statute, and principles laid out in judicial precedent.
- c. Ibrahim Juma & 2 others (Chairman, Organizing Secretary and Chief Executive Officer of the Kenya National Federation of Sugarcane Farmers, a Society) v Jeckonia Oyoo & 2 others [2021] eKLR for the proposition that Section 18 of the Societies Act provides for resolution of disputes as to officers of the society.
- d. Republic v Registrar of Societies & 7 others Ex-parte Njuri Ncheke Supreme Council of Ameru Elders [2015] eKLR where the court declared a suit premature for failing to exhaust the dispute resolution mechanism provided under the Act.
- e. Tarak Khawaja & 5 others V Registrar of Societies & 9 others [2017] in which the High Court upheld the requirement to exhaust local dispute resolution mechanism before approaching the court.

Ex- parte Applicants' Submissions

9. Relying on the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696 quoted in the case William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others [2016] eKLR, the Ex- parte applicants submitted that preliminary objection must be raised on a pure point of law and cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
10. They argued that a cursory look at the P.O reveals that the same is premised on Section 18 of the Societies Act. According to the ex-parte Applicants Section 18 of the Societies Act does not in any manner require them to first refer the dispute herein to the Registrar of Societies.
11. The Ex-parte Applicants contended that it is well settled that striking out of pleadings is a draconian act and should be resorted to as a tool of last resort. In this regard, reliance was placed on the cases of The Co-Operative Merchant Bank Ltd. vs. George Fredrick Wekesa Civil Appeal No. 54 of 1999, D.T Dobie & Company (Kenya) Limited vs. Joseph Mbaria Muchina & another [1980] eKLR & Bahari Transport Company vs. A.P.A. Insurance Co. Ltd [2007] eKLR.
12. The Ex-parte Applicants urged this court to be persuaded by the above authorities and submitted that in the event the court finds the matter ought to have been referred first to the Registrar of Societies this court do exercise its inherent powers and order stay of these proceedings pending the outcome thereof.
13. On costs, the Ex-parte Applicants prayed for the same pursuant to Section 27 of the Civil Procedure Act or in the alternative this court to order each party to bear their own costs.

Analysis & Determination

14. Having considered the Application, the affidavit in support, the Preliminary Objection and submissions on record, it is my considered view that the pertinent issue for determination is whether this court has jurisdiction to determine this matter.



15. Jurisdiction is everything and without it the Court has no mandate to take any further step. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The locus classicus on jurisdiction is the celebrated case of Owners of Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd[supra] where Justice Nyarangi held as follows:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

16. It is without doubt that by dint of the provisions of Article 165(3) of *the Constitution* the High Court, has an unlimited jurisdiction to determine criminal and civil disputes.

17. The Respondent and interested parties contend that the Petitioners have not exhausted the dispute resolution mechanisms specifically provided for under Section 18 of the *Societies Act* Cap 108.

18. Article 159 (2) (c) of *the Constitution* enjoins this Court to promote alternative forms of dispute resolution involving even dispute resolution mechanisms.

19. Under Section 9 of the *Fair Administrative Action Act*, the provisions of Article 159 (2) of *the Constitution* is emphasized and thus enjoining the courts to promote alternative forms of dispute resolution including reconciliation; mediation; arbitration and traditional disputes resolution mechanisms.

20. In the case of Council County Governors vs Lake Basin Development Authority & 6 others (2017) eKLR Hon. Justice Mativo in a Constitutional Petition held thus: -

“I have no doubt that alternative dispute resolution processes are complementary to the judicial process and by virtue of Article 159(2) (c) of *the Constitution*, the court is obligated to promote these modes of alternative dispute resolution. A court is entitled to either stay the proceedings until such a time as the alternative remedy has been pursued or bring an end to the proceedings before the court and leave the parties to pursue the alternative remedy.”

21. Further in the case of Jennifer Shamalla vs. Law Society of Kenya & 15 Others (2017) eKLR it was held: -

“It has been said time without number that whenever an Act of Parliament provides for a clear procedure or mechanisms or redress, the same ought to be strictly followed.”

22. The Supreme Court of India has also held that ordinary remedies available under common law and statutes must be pursued in the ordinary manner or as provided under statute. For instance, in Re Application by Bahadur[1986] LRC (Const) the Court expressed itself as follows at page 307;

“The Courts have said time and again that where infringements of rights are alleged which can be founded in a claim under substantive law, the proper course is to bring the claim under such law and not under *the Constitution*. This case highlights the un-wisdom of ignoring that advice.... *The Constitution* sets out to declare in general terms the fundamental concepts of justice and right that should guide and inform the law and the actions of men. While an infringement of *the Constitution* might in certain cases give rise to the redress provided



for at section 14, yet, as has been proclaimed by the highest Court in the land, it is not, “a general substitute for the normal procedures for invoking judicial control of administrative action.” (See *Harrikissoon v A-G* [1979] 3 WLR 62).

23. It was further observed in the case of *Minister of Home Affairs vs Bickle & Others* (1985) LRC Const(per (Georges C.J));

“Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a Court will usually decline to determine whether there has been in addition a breach of the Declaration of Rights.” (emphasis)

24. In view of the above precedents, it is crystal clear that where there exist sufficient and adequate mechanisms or fora to deal with a specific issue or dispute by other designated constitutional organs or under a statute, the jurisdiction of the High Court under Article 165(3) (b) of *the Constitution* should not be invoked until such mechanisms have been exhausted.

25. From the facts of this case, it is apparent that the dispute herein revolves around the procedure deployed for the removal of the Applicants as the trustees of the 2nd Respondent and amending the 2nd Respondent’s constitution by the Interested party.

26. Section 18 of the *Societies Act* provides as below: -

“18. Disputes as to officers

(1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may by order in writing, require the Society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of *the constitution* of proceeding for the settlement of such dispute.

(2) If an order subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.

(3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.”

27. It is the court’s view that the above section is clear that before the Registrar can take a decision under the provision, he/she must hear the parties involved.

28. In *Tarak Khawaja & 5 others vs Registrar of Societies & 9 others*(Supra) the court held that under Section 18 of the said Act, once the Registrar is satisfied that there is a dispute between members or officers of a Society so that he cannot tell the identity of the legitimate office bearers, he is required to serve a written order upon the Society requiring it to produce, within a month either evidence of settlement of the dispute, or of the properly appointed officers or evidence that proceedings have been initiated to resolve the dispute. Where the society fails to comply with the notice, the Registrar has power to order cancellation of the society’s registration.

29. The ex parte Applicant’s case is that they were unlawfully removed as trustees of the 2nd Respondent by the 1st respondent, that the interested party unlawfully and un-procedurally amended the 2nd



Respondent's constitution and locked them from attending the church without adhering to the laid down procedure of the 2nd respondent's constitution.

30. It is my view that whenever a dispute as to who are the officials of a society arises, the Registrar is the person/office mandated to take the first measures to resolve the dispute relating to the officials of the society and its affairs.
31. However, in the instant case, it is apparent that the Registrar has already taken the necessary action as required under the Act, by allegedly removing the ex parte applicants' names as trustees. The applicants cannot be expected to go back to the same registrar to review the same decision complained of. That duty now falls upon this court to determine whether the impugned decision to remove them was proper or not.
32. For the above reasons, while I agree with the 2nd respondent and interested party on the powers of the Registrar under the *Societies Act*, the matter has already been there and the alleged decision made. Thus the applicants cannot be asked to go back there.
33. In the premises, I find that this court is clothed with the necessary jurisdiction to examine the decision of the Registrar in question.
34. Consequently, I hereby dismiss the preliminary objection with costs to the ex parte applicants.
35. The parties should now proceed to present their respective arguments on the substantive application.
36. Orders accordingly.

SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 2ND OF DECEMBER, 2024.

H. M. NYAGA

JUDGE

