



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CIVIL APPL. NO. 14 OF 2015

IN THE MATTER OF APPLICATION BY KAMUSINGA YEARLY MEETING OF FRIENDS CHURCH FOR JUDICIAL REVIEW

AND

IN THE MATTER OF SOCIETIES ACT(CAP 108) LAWS OF KENYA

BETWEEN

REPUBLIC..... APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIESRESPONDENT

AND

ELGON RELIGIOUS SOCIETY OF

FRIENDS CHURCH (QUAKERS).....INTERESTED PARTY

JOHN MAKOKHA & 4 OTHERS.....EXPARTE APPLICANTS

JUDGEMENT

The ex- parte Applicant filed the Notice of motion dated 17th February 2015 pursuant to the provisions of order 53 Rule 3 of the civil procedure Rules 2016. The exparte applicants are seeking for orders;

1. Spent

2. That there be a stay of execution of the decision of the Registrar of Societies contained in the letter dated 6/2/2015 cancelling registration No.45492 in the *KAMUSINGA YEARLY FRIENDS CHURCH(QUAKERS)* pending the hearing and determination of this application.

3. That an order of certiorari be and is hereby issued to remove into this Honorable court and quash the decision of the Registrar of Societies contained in the letter dated 6/2/2015 cancelling registration No.45492 in the name *Kamusinga yearly meeting of friends church(quarkers)*

Grounds of the Application are that;

- i. That exparte applicants were duly issued with a certificate of registration no.45492 in the name *Kamusinga yearly meeting of friends church (quarkers)* on the 11th day of August,2014.
- ii. The Registrar of societies cancelled the registration of the aforesaid society vide a letter dated the 6th February 2015 addressed to the exparte Applicants.
- iii. No form of notice whatsoever was issued to the exparte applicants by the Registrar of societies as required by law or at all prior to the decision to deregister their society.

- iv. The ex parte Applicants were never given an opportunity to be heard by the Registrar of societies as required by law or at all prior to the cancellation.
- v. The action of the registrar of societies amounts to denying the applicants the freedom of worship in a church of their own
- vi. The applicants have never been engaged in any unlawful acts which may be detrimental to peace, welfare of good order or any other act or omission that would warrant their deregistration.

The application is supported by supporting affidavit of John Makokha sworn on the 17th February 2015 the ex parte applicants stated that they were duly registered as a society namely **Kamusinga yearly meeting of friends' church(quarkers)** and issued with certificate No.45492 by the registrar of societies on the 11th August 2014.

On the 6th February,2015, the registrar of societies wrote letter to the ex parte applicants informing them of his decision to cancel their certificate of registration. That before cancelling the certificate, the registrar did not give the ex parte applicants any form of notice or any hearing and it is for this reason that the ex parte applicants have come to court seeking remedy of judicial review.

The Respondent herein filed a Replying affidavit by Joseph Onyango sworn on the 2nd October 2015 he stated the registration of the Kamusinga Yearly Meeting of Friends Church Quakers as a branch church of Elgon Religious Society was received in good faith by the respondent. Kamusinga Yearly Meeting of Friends Church Quakers was then duly registered by the respondent on the 11th August 2014 under certificate of registration number 45492 and soon thereafter the Respondent received a letter from Timothy W. Nasiga and Godfrey C. Nalianya who are members of Elgon Religious Society(Quakers) and in the letter they notified the respondent that the issue of registration of Kamusinga Yearly Meeting of Friends Church Quakers, the ex parte applicant's church was subject of Kitale High Court civil suit number 10 of 2014. The letter had attached a copy of court order issued on 26th August 2014 to restrain both parties from tabling a discussion in annual conference of Elgon Religious Society of Friends or any other meeting. That on the 18th November 2014 the respondent received complaint from Amos Dodo that the respondent had registered the ex parte applicants' church as a branch of Elgon Religious Society of Friends without approval of the presiding Clerk and the same had caused serious conflict in the church. That the letter had attached copy of decree in Kitale High Court Civil Case No. 10 of 2014 wherein parties had recorded consent and court made it final order that the constitution of Elgon Religious Society of Friends Church does not provide for creation of separate yearly meetings and an injunction to bar the defendants from creating any other yearly meeting. He stated that the Respondent undertook action after receiving that complaint letter to cancel the ex-parte applicants' church certificate of registration. He stated that the ex parte applicants were not given notified in accordance with Societies Act before cancellation was done because the issue of creation of a yearly meeting had already been heard and determined by a competent court of law and its action was within the law in compliance of court decree issued on the 11th December 2014.

Elgon religious Society of friends (Quakers) was enjoined as interested party The interested party herein through **Timothy Wanyonyi Nasiga** filed a replying affidavit sworn on the 19th June 2017 stating that in the year 2014 the ex parte applicants in breach of the interested party's constitution purported to create and sought for registration of new yearly meetings from the interested party namely **Kamusinga yearly meeting of friends church-quarkers**. He stated that following registration of the Kamusinga Yearly Meeting of Friends Church Quakers he filed a case being Kitale Civil Suit No.10 of 2014 and sought declaration that the constitution of the interested party did not provide for the creation of separate yearly meeting and the creation of the yearly meetings was resolved by consent. He stated that the Respondent acted right within his mandate in cancelling registration certificate of Kamusinga Yearly Meeting of Friends Church Quakers pursuant to consent order issue in Kitale High Court in which creation of Kamusinga Yearly Meeting of Friends Church Quakers or any other yearly meeting was challenged. stated that the subsequent registration of Kamusinga Yearly Meeting of Friends Church Quakers was contrary to the resolution of the General meeting Representative Board held on the 18th December 2013 and that the decision of the Registrar of Societies is not arbitrary.

By consent the parties argued the application by way of written submissions and the applicant filed his submission through counsel Were. He submitted that the ex parte applicants were duly registered as society namely Kamusinga Yearly Meeting of Friends Church Quakers and that on the 6th February, 2015 the respondent wrote a letter to the ex parte applicants informing hem of his decision to cancel the registration of the society. He submitted that the registrar did not give the ex parte applicants any form of notice or hearing. He submitted that the respondent acted in contravention of Article 47 of the Constitution of Kenya and Fair Administrative Act,2015 under section 4(3) stipulates that where any administrative action is likely to adversely affect the rights of any person the administrator is obliged to give prior notice. He further submitted that the registrar under section 12 of the Societies was obliged to give written notice to the society to show cause why its registration should not be cancelled. He relied on the authority in **Tarak Khawaja & 5 others V Registrar of Societies & 9 others[2017]**.

The interested party filed submissions through learned counsel Ingosi and he submitted that the registrar under the law has a discretion to give written notice to a society calling upon it to show cause and it is not mandatory. He submitted that the registrar was justified in cancelling the registration of the society and if aggrieved ought to have challenged the order in Kitale High Court Suit. No 10 of 2014 and the order of certiorari is not available in this circumstance. He submitted that the registrar did not act in an arbitrary manner and his decision does not in any way curtail the applicants. The respondent herein did not file written submission in respect to the application.

From the pleadings and submissions, the issue for determination is whether the orders of *certiorari* sought herein can be granted in the circumstances of this case and in the manner sought herein. The main issue raised by the applicant is that they were not given an opportunity to be heard or respond as provided under Section 12 of Societies Act.

The applicants are seeking orders of certiorari removing into this Court for purposes of quashing the decision of the Registrar of Societies contained in a letter dated 6th February 2015 cancelling registration No.45492 in the name Kamusinga Yearly Meeting of Friends Church Quakers.

In **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others** it was held that:

“...an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

In the instant case the ex parte applicants contended that the cancellation was contrary to Articles 47 and 50 of the Constitution and section 12(1) of the Act and that the cancellation was done without giving the ex parte applicants notice to cause before the society was deregistered.

Section 12 (1) (b) of the societies Act which is material to this application; -

*(1) Where, in respect of any registered society, the Registrar where he has reasonable cause to believe that the registration of a society should be cancelled or suspended on the ground that (b) the interests of peace, welfare, or good order in Kenya would, where he has reasonable cause to believe, be likely to be prejudiced by the continued registration of the society; the Registrar shall, give written notice in the prescribed form to the society **calling upon the society to show cause, within such period as specified in the notice, why its registration should not be cancelled or, as the case may be, suspended;** and, if the society fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration of the society.*

According to section 12 (1) (b), the Registrar is required to give notice in the **prescribed form** to the society concerned **calling upon** such a society to show cause within a given time why its registration may not be cancelled or suspended. And only after failing to show cause to the satisfaction of the Registrar should the Registrar taken action either to cancel or suspend the society's registration as the case may be. The law leaves no doubt that the Registrar cannot take steps to cancel or suspend registration of a registered society without giving it a hearing. And where notice is given, until the society fails to show cause to the satisfaction of the Registrar, no lawful action can be taken against it. The question that arises is; did the respondent comply with the law before taking the action of cancelling the applicants' registration.

The impugned letter in this case is dated 6th February 2015 and I wish to reproduce it herein for purpose of convenience;

The Recording Clerk

Kamusinga Yearly Meeting of Friends Church-quakers

P.O Box 539

Kimilili.

RE: SOCIETIES ACT (CAP108) & SOC/70554 KAMUSINGA YEARLY MEETING OF FRIENDS CHURCH-QUAKERS

We refer to the above matter.

We acknowledge the registration made at our offices on the 11th day of August,2014 vide Registration No.45492 and note as follows;

That the same was presented for consideration for registration without the knowledge and approval of the mother church ELGON RELIGIOUS SOCIETY OF FRIENDS registered on the 19th day of April,1973 vide Registration No.6418 and hence was presented fraudulently.

That we note further that the constitution of ELGON RELIGIOUS SOCIETY OF FRIENDS “does not provide for creation of separate yearly meeting apart from the one already created in its Constitution” as was order in a court decree in civil suit No.10 of 2014 issued on the 11th day of December,2014 in the High court of Kenya in Kitale.

That further pursuant to section 12(1)(b) of the Societies Act Cap.108 Laws of Kenya the Registrar has resolved that due to the interest of peace, welfare or good order in Kenya likely to be prejudiced by the continued registration of your society, the registration of your society be CANCELLED FORTHWITH.

Yours Sincerely,

Joseph L. Onyango

Deputy Registrar of Societies

It is clear from the letter that parties and the respondent had a civil suit No.10 of 2014 in High Court of Kenya at Kitale. By order dated 11th December 2014 the court issued a decree in respect to the suit and I will reproduce the decree below;

DECREE

CLAIM FOR:-

a) A declaration order that the Constitution of Elgon Religious Society of Friends does not provide for creation of separate yearly meetings apart from the one already created in its constitution.

b) *An injunction barring the defendants or anyone acting for and on their behalf from creating any other yearly meetings.*

c) *Costs of the suit.*

AND UPON READING and recording the consent dated 26/11/2014 it is hereby ordered and decreed as follows;

a) *A declaration order be and is hereby made that the constitution of Elgon Religious Society of Friends Church does not provide for the creation of s creation of separate yearly meetings apart from the one already created in its constitution.*

b) *An injunction be and is hereby made barring the defendants or anyone acting for and on their behalf from creating any other yearly meetings.*

c) *Each party to bear its own costs of this suit.*

Dated at KITALE this 28th day of November 2014

DEPUTY REGISTRAR

HIGH COURT OF KENYA AT KITALE

The respondent and interested party contended that the cancellation was lawful and was done in accordance with the law and the notice was not issued for reasons that the matter had already been determined by high court. According to the respondent, there was no violation of the ex parte applicants' rights either under the constitution or the law.

I have perused the above impugned letter dated 6th February 2015 and it is clear that the respondent as the author. The letter informs the applicants about the cancellation of their certificate of registration and goes ahead to state that this is in accordance with court decree in Civil Suit No.10 of 2014. It is clear from the above letter and court decree that the registrar was implementing a valid court order dated 28th November 2014 that was specifically stated in the letter and reference made to the case number, order of court and the date of issue.

For those reasons, this is my finding that the registrar communicated and implemented a valid court order and therefore I find no merit in this application. The application is hereby dismissed with costs.

Dated and Delivered at Bungoma this 17th day of July 2019.

S.N.RIECHI

JUDGE