



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW AND CONSTITUTIONAL DIVISION

MISC. APPLICATION NO. 277 OF 2015

IN THE MATTER OF APPLICATION BY FRANCIS KIRIMA M’IKUNYUA WAINAINA NDUNG’U AND PETER KIBE MUTIGA (SUING AS THE OFFICIALS OF ZIMMAN SETTLEMENT SCHEME) FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SOCIETIES ACT, CAP 108 OF THE LAWS OF KENYA

AND

FRANCIS KIRIMA M’IKUNYUA

JOHN WAINAINA NDUNG’U

PETER KIBE MUTIGA (SUING ON THEIR

OWN BEHALF & OFFICIALS OF ZIMMAN SETTLEMENT

SCHEME SOCIETY)APPLICANT

VERSUS

THE REGISTRA OF SOCIETIES.....RESPONDENT

AND

JAMES MBURU.....1ST INTERESTED PARTY

DUNCAN GITHIGA MWANG.....2ND INTERESTED PARTY

EDWIN GRAHAM ODALO.....3RD INTERESTED PARTY

PETER MWARAGANIA M.....4TH INTERESTED PARTY

SOPHIA GIKONYO.....5TH INTERESTED PARTY

CHRISTINE MUTHONI.....6TH INTERESTED PARTY

RUFUS IRUNGU.....7TH INTERESTED PARTY

THOMAS IMWENDO.....8TH INTERESTED PARTY

JANEMARY N. GAITHO.....9TH INTERESTED PARTY

RAPHAEL F. NJERU.....10TH INTERESTED PARTY

JUDGEMENT

Introduction

1. By a Notice of Motion dated 2nd October, 2015, the *ex parte* applicants herein, **Francis Kirima M'ikunyua, John Wainaina Ndung'u** and **Peter Kibe Mutiga** (Suing on their own behalf & officials of **Zimman Settlement Scheme Society** (hereinafter referred to as "the Society") seek the following orders:

1. That this Honorable Court be pleased to issue an order of Certiorari to bring before this Court and quash the decision of the Respondent dated 10th March, 2015 purporting to confirm the Interested Parties as the Officials of Zimman Settlement Scheme for the next three years.

2. That this Honorable Court be pleased to issue order of mandamus compelling the Respondent to confirm that the legal officials of the Zimman Settlement Scheme are Francis Kirima M'ikunyua, John Wainaina Ndung'u, Peter Kibe Mutiga, George Oluoch Omondi, Joseph Musyoka Wambua, Kenedy Ochieng Ondoro, Lilian A. Ochieng and Anthony Maina Waihuni pursuant to the elections conducted on the 17th January, 2015.

3. THAT the costs of this Application be provided for.

Applicants' Case

2. According to the applicants, on the 12th November, 2014 this Court in JR.Misc.App No. 318 of 2013 delivered its judgement in which it ordered the Respondent to confirm the Applicants as the legal officials of the Society pending the expiry of the term of the then current officials or the conducting of an all inclusive election by the Society. In the said judgement, it was averred, the Court also quashed the decision of the Respondent dated 2nd September, 2013 in which he had purported to appoint the Interested Parties herein into a committee to manage the affairs of the society.

3. According to the applicants, pursuant the said judgment, the Applicants herein through **Mr. Francis Kirima**, who is the Chairman of the Society, notified the Respondent and other members of the society by way of the Public Notice dated 18th December, 2014 that the Society would be holding its Annual General Meeting on the 31st December, 2014 with the election of the officials of the society being the main item on the agenda of the said meeting. However the Respondent informed the Applicants that the notice they had given was too short and therefore advised them to issue another notice giving their members sufficient time to prepare for the Annual General Meeting. In compliance with the said directive of the Respondent, the Applicants again issued another notice on the 19th December, 2014, in which they now advised the public, its members and the Respondent that the society would be conducting its annual general meeting on the 17th January, 2015 which notice was circulated to all the members of the society

through both the electronic and print media and proceeded to conduct peaceful election on the 17th January, 2015 in which the Applicants were elected as the officials of the Society with the full knowledge of the Respondent. The said meeting, it was contended was also advertised and publicized through Kameme and Coro FM on the 15th and 16th January, 2015 respectively.

4. It was averred by the applicant that they were however shocked to learn that the Respondent had rejected their annual returns on the grounds that a rival group had already filed returns with the Respondent claiming that they had held a parallel election without the knowledge and participation of the Applicants as the legal officials of the Society. Subsequently, on the 22nd January, 2015 the Applicants through their Advocate wrote to the Respondent requesting to be furnished with the all documents that had allegedly been filed by the alleged rival faction but unfortunately the Respondent refused, failed and or declined to release the documents to the Applicants. The Respondent, it was averred, has instead by way of his decision made on the 10th March, 2015 purported to confirm the Interested Parties herein, who for all intents and purposes are strangers to the Applicant, as the officials of the Applicant for the next three years in violation of the Society's Constitution, the said judgement of this Court and the **Societies Act** thus abusing his discretion as a public officer.

5. It was the applicants' case that the decision of the Respondent has shown open bias against the Applicants by refusing to accept the annual return filed by the Applicants in favour of the returns filed by Interested Parties, who were never elected and are therefore not officials of the Society. In its view, the Respondent's decision made on the 10th March, 2015 effectively locked out the officials of the Applicant from the management of the Applicant without giving the said officials an opportunity to be heard, contrary to the provisions of the Constitution of Kenya, 2010 the rules of natural justice and the provisions of the **Societies Act**, Chapter 108 of the laws of Kenya. It was the applicants' case that the decision to confirm the Interested Parties herein as officials of the Society are so unreasonable that no reasonable and right thinking public official would have arrived at the same decision were he to be faced with similar facts and circumstances. Further, the said decision of the Respondent was made in blatant disregard and contempt of the orders of this Court given on the 12th November, 2014.

6. The applicants contended that by confirming the Interested Parties as the officials of the Applicant for the next three years, the Respondent has breached and defied the legitimate expectation of the Applicant to fair administrative action and that the said decision was based on a total misapprehension of the facts of this matter and therefore arrived at the wrong conclusion. The applicants' view was that the said decision is illegal and warrants to be reviewed by this court *ex debito justitiae* because the Respondent is using his powers *ad terrorem* against the Applicant and its officials. In their view, the Respondents actions are otherwise unlawful, irregular and unwarranted and are likely to trample on the Applicants' rights to a fair hearing and fair administrative action.

7. The applicants asserted that the Respondent herein, and particularly **Mr. Joseph Onyango**, being a public servant must exercise the discretion of his office fairly, legally and in accordance with the rules of natural justice. Similarly, the Applicant being a registered society with a constitution, all decisions on its management and appointment of officials must comply with the said constitution and should not be based on the whims and fiat of a bureaucrat.

8. The applicants disclose that Zimmerman Settlement Scheme Society was registered as a society on the 15th December, 2008 to protect and represent the rights and interest of all the squatters living within all those parcels of land known as Land Reference Number Nairobi Block 123/1 – 267 whose ownership has been the subject of several court cases between the Society and its members and a group known as Muigai and Others. On the 24th October, 2013 the said Muigai and Others through one **Josephat Mathia Muigai** by way of an application dated 23rd October, 2013 filed in ELC No. 346 of 2002 sought the eviction of the squatters from the above mentioned parcels of land which suit and application for eviction and or delivery of vacant possession of the said parcel of land by the squatters to Muigai and Others is still pending before the Land and Environmental Court and was scheduled for hearing on the 16th March, 2016.

9. It was averred that upon the release of the respondent's letter dated 10th March 2015, the Interested Parties, including the applicant herein, through one **James Mburu Nuthu**, who is the 1st Interested Party herein, rushed to the offices of the Advocates for Muigai & Others, **Ms Wachakana & Co. Advocates**, and purported to swear an affidavit in which he notified the court that he had been instructed by the Interested Parties herein to withdraw all applications filed by the squatters through the Society seeking to stop their eviction, thereby paving the way for the illegal eviction of the squatters. To the applicants, it is worth noting that the said affidavit is drawn and filed by the same law firm representing Muigai & Others which is seeking the eviction of the squatters.

10. In the applicants' view, the absurdity and the unreasonableness of the decision of Respondent is that he has purported to appoint people who are seeking the eviction of the squatters in court in charge of a society which is registered to represent and protect the interest of the same squatters hence it is clear that the purported letter(s) of the Respondent dated 10th March, 2015 is part of a well choreographed conspiracy between the Interested Parties, the Respondent and Muigai and Others to have the Interested Parties takeover the management of the society, withdraw all pending law suits by the society against Muigai & Others and facilitate the illegal eviction of over 4,000 squatters currently living with their families on the said parcel of land.

11. The applicants asserted that land is an emotive issue and any decision touching on the management of squatters must not just be fair but must be seen to be fair. They averred that the said decision of the Respondent has caused a lot of confusion in the management of the Applicant and could, like previously, degenerate into violence and chaos as the Respondent simply divided the Interested Parties in HC Misc App. No. 318 of 2013 into two groups and put each group to be in charge of the affairs of two rival societies.

1st Respondents' Case

12. The application was opposed by the Respondent.

13. According to the Respondent, Zimman Settlement Scheme Society was registered on 2nd December 2003 as Zimman Resettlement Scheme and issued Certificate of Registration Number 23044. It however later changed its name to Zimman Settlement Scheme Society on 15th December 2008 and issued Certificate of Registration Number 23044. On initial registration the following were officials of the society:

- a) Chairman – Gladys Nyokabi
- b) Secretary – Benedict Hongo Odhiambo
- c) Asst. Secretary – Vitalis Wangowe
- d) Treasurer – David Ogega Moku
- e) Asst. Treasurer – Catherine Njeri

14. It was deposed that the Society's main objectives as provided on its Constitution were to resettle members of the society and to create jobs on the land. The Respondent disclosed that the society has been in compliance with the **Societies Act**, by making Annual Returns every year since registration. The Respondent disclosed that the Society has a large membership of 1,037, and has placed a claim of adverse possession on NAIROBI/BLOCK 123/1-279 situated in Kasarani, Nairobi wherein the livelihood of the members largely depend. However, the Society has numerous court cases affecting it even before its registration mainly involving leadership wrangles within the society and with regard to ownership of parcel of land, being Land Reference Number Nairobi Block 123/1-279 which is the main objective for the registration of this society. That ownership has been contested in a court case, ELC Number 246 of 2002 wherein there was placed an injunction against the Defendants' (who were then officials of the

society) or their agents, servants or employees or whomsoever against committing any acts interfering with the Plaintiff's quite enjoyment of all that the parcel of and comprised in title number Land Reference Number Nairobi Block 123/1-279.

15. The Respondent averred that the society members held Annual General Meetings from time to time wherein they held elections wherein the officials were either changed or retained. However, the Secretary **Edwin Odalo Graham** has been perpetually in office as the Secretary. It was averred that since the Annual General Meeting held on 17th October 2008, there were several other Annual General Meetings at which the then Chairman – **Francis Kirima M'ikunyua** -was elected back to office until 2013 when the society had leadership wrangles. According to the Respondent, on 31st December 2012 the following were officials of the society as filed with the Respondent's office on 2nd January 2013;

- a) Francis Kirima M'ikunyua
- b) Peter Kibe Mutiga
- c) George Oluoch Omondi

16. However following the subsequent leadership wrangles, in 2013, the Respondent then constituted a joint committee on 28th August 2013 with the mandate of making arrangements for an Extra Ordinary General Meeting with a view of resolving the issues affecting the society which attempt was challenged in court, Miscellaneous application number 318 of 2013, wherein it was held against the decision made by the Respondent vide letter dated 2nd September 2013 was *ultra vires* and the Respondent was ordered to confirm the legal officials of the society as follows:

- i) Francis Kirima M'ikunyua
- ii) John Wainaina Ndungu
- iii) Peter Kibe Mutiga
- iv) George Oluoch Omondi
- v) Joseph Musyoka Wambua
- vi) Kennedy Ocheing Ondoro
- vii) Antony Maina Waihuni

17. It was averred that the above listed officials were to remain in office pending the expiry of their term ending on 15th December 2014 and or the conducting of an all inclusive general election by the society.

18. According to the Respondent, it operates by the doctrine of good faith and relies on information made to it by the members of the society and does not interfere with the internal operations of the society, whatsoever. It averred that by virtue of the office confirmed in H.C Nairobi Miscellaneous Application Number 318 of 2013 having expired without the said officials convening Annual General Meeting, the members of the Society held their consultative meeting on 16th December 2014 and agreed to conduct their Annual General Meeting on 7th January 2015, following a requisition by a member in accordance with the Society's Constitution Article 8(c) and the judgment made on 12th November 2015 and it is on this premise that the Respondent accepted the returns made by the members. Following the Annual General Meeting on 7th January 2015, returns were made to the office of the Respondent which information was accepted in good faith and approved the officials and that the following are the officials that were elected on 7th January 2015 and confirmed by the Respondent:

- a. Chairman James Mburu Nuthu
- b. Vice Chairman Dancan Githiga Mwangi
- c. Secretary Edwin Graham Odallo
- d. Asst. Secretary Peter Mwaragania M.
- e. Treasurer Sophia W. Gikonyo
- f. Asst. Treasurer Christian Muthoni
- g. Organizing Secretary Rufus Irungu
- h. Trustees
 - i) Thomas Imweno
 - ii) Janemary N. Gaitho
 - iii) Raphael F. Njeru

19. According to the Respondent, the exparte Applicants' called for Annual General Meeting for 31st December 2014 (sic) through Notice dated 18th December 2015 after knowing about the initiative made by the members of the society on 16th December 2015 and about the Annual General Meeting planned for 7th January 2015. To the Respondent, the society's Constitution provides that Notice period for Annual General Meeting shall be 21 days, yet the ex parte Applicants gave a notice of 11 days before the Annual General Meeting scheduled for 31st December, 2015 after the Respondent had received a notice by a member supported by minutes of members meeting wherein it was decided that they would have their AGM on 7th January 2015. However, the ex parte Applicants even with full knowledge of the planed AGM on 7th January 2013, failed to attend the meeting and called for a meeting on 17th January 2015.

20. In the Respondent's view, only one Annual General Meeting can be legitimate and societies are not allowed to hold more than one Annual General Meeting in a year since any other issue can be discussed in Special General Meeting or Committee Meeting, hence the reason as to why the Respondent declined to approve the returns made by some members of the Society as per meeting held on 17th January 2015 after the Respondent had received returns of meeting held on 7th January 2015.

21. It was the Respondent's case that on several occasions the Respondent and the Ex parte Applicants and or their representatives held several meetings with the attempt to reconcile the different set of returns made to the office of the Respondent, which reconciliation led to the Respondent writing the confirmation letter dated 10th March 2015.

22. It was disclosed that the Ex parte Applicants filed Judicial Review Nairobi Miscellaneous Application Number 81 of 2015 against the Respondent over the same subject matter and later after withdrew the matter on 4th June 2015 even though the Respondent had responded to the issues raised therein. According to the Respondent the Ex parte Applicants are wasting this courts time and abusing this courts' process by making similar applications to this Court frustrating the Court and the Respondent in carrying its administrative duty.

23. To the Respondent, it has not interfered with the operations of the society at any time and the actions of the current chairman **James Mburu Nuthu** should not be construed as though made by the Respondent. It was therefore the Respondent's case that this suit is misplaced since the Respondent is not aware and has never been involved with any affairs of the parcel of land title number Land Reference

Number Nairobi Block 123/1-279 but at all times relied on the information made to its office at all times by the officials and the members of the Association in good faith. It was averred that the Respondent or its representatives were not present at the Annual General Meeting held by the interested parties and the Ex parte Applicants and all the resolution made by the members of the Society were represented to the Respondent by the members and the officials of the Society, which information the Respondent received in good faith and that all due diligence was applied at all times.

24. It was on this basis that the Respondent prayed that this application be dismissed with costs to the Respondent.

Interested Parties' Case

25. The application was similarly opposed by the interested parties.

26. According to them, the applicants are not the officials of Zimman Settlement Scheme Society and therefore cannot legally purport to describe themselves as such officials. To them, the duly registered officials of the Society are as follows:-

1. James Mburu Nuthu - Chairman
2. Dancan Githisa Mwangi - Vice Chairman
3. Edwin Graham Odallo - Secretary
4. Peter Mwaragania M. - Assistant Secretary
5. Sophia W. Gikonyo - Treasurer
6. Christine Muthoni - Assistant Treasurer
7. Rufus Irungu - Organizing Secretary
8. Thomas Imweso
9. Janemary N. Gaitho - Trustees
10. Raphael F. Njeru

27. The interested parties averred that since by their own pleadings the applicants admit that there are already persons registered as officials they cannot again purport to describe themselves as officials of the Society.

28. It was contended that applicants are citing and laying undue emphasis on the judgment delivered on 12th November, 2014 in JR Misc Application No. 318 of 2013 with a sole intention of distorting the truth in the hope that they will misdirect this court to grant them underserving orders. It was averred that the said judgment held as follows:-

1. An order of Certiorari to bring before this court the decision of the respondent dated 2/9/2013 purporting to appoint a committee comprising of the 1st to the 11th Interested Parties to manage the affairs of the Applicant for the purposes of being quashed which decisions is hereby quashed.

2. An order of Mandamus compelling the respondent to confirm that the legal officials of the applicant are Francis Kirima MiKunyua, John Wainaina Ndungu, Peter Kibe Mutiga, George Oluoch Ondoro and Anthony Maina Waihuni pending the expiry of the term of the current officials and or the conducting of all-inclusive general election by Zimman Settlement

Scheme Society.

3. That the respondent will bear the applicant's costs of these proceedings.

29. In the interested parties' understanding, the Court required that the registrar either does one of the two (2) things namely:-

- a. That legal officials of the applicant serve their un-expired period in office.
- b. The conducting of an all-inclusive general election by Zimman Settlement Scheme Society.

30. It was the interested parties' case that the registrar did not breach any of the above orders and similarly, the interested parties did not conduct themselves in any way which contravened the said orders of the Court for the following reasons.

- a. As at the time when the court issued its orders on 12th November, 2014, the period within which the applicants were to remain in office was to last until 15th December, 2014.
- b. The registrar was either required to let the applicants serve their un-expired period until the 15th December, 2014 or in the alternative conduct an all-inclusive general election by the Society
- c. Technically therefore the scope of these orders determined on 15th December, 2014 when the period the applicants application expired by effluxion of time and this was in compliance with the orders of the court.

31. It was the interested parties' case that the applicants cannot be allowed to enlarge the scope of the orders issued by the Court beyond the period envisages by the court in its judgment and therefore the orders sought herein by the ex parte applicants cannot be granted since their grant will be prejudicial to the interest of the interested parties herein and infringe on the lawful jurisdiction of the registrar.

32. It was the interested parties' position that they conducted the society's General Election on 7th January, 2015 in strict compliance with the Constitution of the society.

Determinations

33. I have considered the application, the affidavits filed by the parties herein as well as the submissions of the parties and the authorities relied upon.

34. It is true that on 12th November, 2014, this Court in H.C Nairobi Miscellaneous Application Number 318 of 2013 – **Republic vs. Registrar of Societies & Benedict Hongo Odhiambo & Ors. ex parte Francis Kirima M'ikinyua & Ors** – found *inter alia* that:

“there is no express power conferred on the Respondent under the said provision that empowers him to appoint a committee to manage the affairs of a society and the Respondent has not pinpointed any other provision which empowers him to do so. Without any such powers, it is clear that the Respondent purported to exercise a power not expressly bestowed upon him by the law and hence exceeded his mandate under the said Act. In other words the Respondent acted *ultra vires* his powers and that rendered his action an illegality... Apart from that it is alleged that the Respondent appointed members of a rival society to manage affairs of the applicant society... In my view to appoint persons whose interests are adverse to those of a Society to manage the Society is early irrational and smacks of bad faith on the part of the Registrar of Societies hence warrants the Court in interfering with such action.”

35. The Court then issued the following orders:

1. An order of Certiorari to bring before this court the decision of the Respondent dated 2nd September, 2013 purporting to appoint a committee comprising of the 1st to the 11th interested parties to manage the affairs of the Applicant for the purposes of being quashed which decision is hereby quashed.

2. An order of mandamus compelling the Respondent to confirm that the legal officials of the Applicant are Francis Kirima Mikunyua, John Wainaina Ndungu, Peter Kibe Mutiga, George Oluoch Omondi, Joseph Musyoka Wambua, Kennedy Ochieng Ondoro and Anthony Maina Waihuni pending the expiry of the term of the current officials and or the conducting of an all-inclusive general election by Zimman Scheme Settlement Society.

3. That the Respondent will bear the applicant's costs of these proceedings

36. According to the applicants on 18th December, 2014 they issued a public notice for an AGM scheduled for 31st December, 2014 but were informed that the said notice was too short so the meeting was re-scheduled for 17th January, 2015 and a notice given accordingly. This position is confirmed by the Respondent who stated that the reason why he advised the rescheduling of the meeting was because the period was less than the 21 days stipulated in the Society's constitution.

37. It was however contended that by this time the Respondent had received a notice by a member supported by minutes of the members where it was decided that the AGM be held on 7th January, 2015. The alleged letter was however not exhibited by either the Respondent or the interested parties herein. Without the alleged letter being exhibited it is not possible to make a determination as to the circumstances under which the interested parties, who were not the officials of the Society called for and held their so called Annual General Meeting. Taking into account the history of this matter it was incumbent upon the Respondent to be satisfied that all the legal processes were adhered to before registering any of the factions as officials of the Society. If no member requisitioned for the meeting, and there is a serious dispute as to the authenticity of the said letter, then all the proceedings that took place leading to the "election" of the interested parties as the Society's officials must be null and void.

38. Whereas the Respondent avers that the notice by the interested parties was issued earlier than the one issued by the applicants, there is no evidence that the Respondent brought to the applicant's attention that such earlier notice did in fact exist. It is therefore clear that power ought to be properly exercised and ought not to be misused or abused. According to **Prof Sir William Wade** in his book *Administrative Law*:

"The powers of public authorities are...essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land...regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose...But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them..."

39. It is trite that judicial review will be granted where a decision-maker is shown to have acted in bad faith. Although this is a strong accusation not lightly to be alleged and which is difficult to prove, where it is found to exist, the Court must intervene since good faith, as it was held in **R vs. Secretary of State for Home Department, ex p Fire Brigades Union [1995] 2 AC 513, 563H**, "...is an indispensable element of lawful exercise of...any...statutory discretion."

40. It cannot be doubted that from a holistic reading of the powers of the Registrar under the ***Societies Act***, the Registrar is tasked with the mandate of regulating societies to ensure that they comply with the provisions of the ***Societies Act***, Cap (108) and its constitutive constitution requirements which govern its operations. It is therefore my view that the Registrar must act reasonably in the performance of his statutory mandate. For the Registrar to register persons who claim to be officials of a Society without investigating their *bona fides* would amount to promoting anarchy in the manner in which societies are being administered. In **Republic vs. Attorney General & Another Ex parte Waswa & 2 Others [2005] 1 KLR 280**, the Court held that bias and unreasonableness have been recognised as grounds which stand alone in assisting the Courts to deal with the challenged decisions. In that case it was held that the de-registration of the applicants and the registration of main the rivals within two days was indicative of both bias and unreasonableness on the part of the decision maker and that the failure to give reasons for what was patently lack of even-handedness on the part of the decision maker did constitute procedural impropriety.

41. I must also point out that the applicants on one hand and the interested parties have perfected the art of solving their disputes in Courts rather than by way of internal mechanisms in their constitution. This Court does not relish being turned into a forum at which disputes of societies or associations are resolved since it is not the duty of the Court to run and manage such private entities. As a result of several suits filed by the members of the Society herein the Courts in this Republic are being inundated by several cases which could have been resolved by the Society simply organising a proper and lawful AGM. As a result, the members of the Society are hogging unto themselves the limited time available for the Courts to resolve disputes thereby denying other litigants their fair portion of the judicial resources.

42. As was held by the Court of Appeal in **Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] KLR 229**:

"A court of law would not be entitled in our view to abdicate its cardinal role of making a determination. Section 57(8) contemplates a speedy process to have the rights of both the caveator and caveatee determined and not a protracted trial. In our view, the often quoted principle that a party should have his day in court should not be taken literally. He should have his day only when there is something to hear. No party should have a right to squander judicial time. Hearing time should be allocated by the court on a need basis and not as a matter of routine. Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice...We approve and adopt the principles so ably expressed by both *Lord Roskil* and *Lord Templeman* in the case of *ASHMORE v CORP OF LLOYDS [1992] 2 ALL E.R 486* at page 488 where *Lord Roskil* states:

"It is the trial judge who has control of the proceedings. It is part of his duty to identify crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judges' time as is necessary for the proper determination of the relevant issues."

At page 493 of the same case *Lord Templeman* delivered himself thus:

..."an expectation that the trial would proceed to a conclusion upon the evidence to be produced is not a legitimate expectation. The only legitimate expectation of any plaintiff is to receive justice. Justice can only be achieved by assisting the judge."

.....

In the case of *FREMAR CONSTRUCTION CO LTD v MWAKISITI NAVI SHAH 2005 e KLR* at page 6 where the Court said:-

“Trials are not merely held to glorify the hallowed principle that disputes ought to be heard and determined on oral evidence in open court. Unless a trial is on discernable issues it would be farcical to waste judicial time on it.”

....In our view he, knowingly and dishonestly used the legal process to accomplish an ulterior purpose to that of the court process, which is to protect the interests of justice... The 1st respondent and *Mr Church* did manifestly exploit the process whereas it was in our view clear to them that they lacked good faith in instituting the Originating Summons thereby causing prejudice and delay. The action was also wanting in *bona fides* and was oppressive to the appellant. All these in our view constitute abuse of process.”

43. This was the position adopted by Nyamu, J in *Republic vs. Public Procurement Administrative Review Board & Another Ex Parte Selex Sistemi Integrati Nairobi HCMA No. 1260 of 2007 [2008] KLR 728* when he expressed himself as follows:

“In the long run in the interest of the overriding objectives of case management, no group of litigants no matter how privileged are entitled to more judicial time than any other. Judicial time is an expensive resource which must be apportioned fairly to the entire spectrum of the work in the Court. Every file is important. For Courts to continually inspire confidence of the Court users and litigants, they must have a very sharp sense of proportionality, fairness and equity in the allocation of judicial time.”

44. If the members of the Society cannot run their affairs in an orderly manner in accordance with the rules and regulations which they themselves set for the conduct of their business, may be it is time the Registrar invoked the powers conferred upon that office under the provisions of the *Societies Act*.

45. In this case, it is clear that the decision by the Respondent to recognise the interested parties as the officials of the Society was clearly not above par. The Respondent’s action ought not only to be made in good faith but must also be seen to have been made in good faith.

46. Under section 11(1)(f) of the *Fair Administrative Action Act, 2015*, this Court has the power to *inter alia*, compel the performance by the Respondent of a public duty owed in law and in respect of which an applicant has a legally enforceable right or to set aside the administrative action and remit the matter for reconsideration by the Respondent.

47. In exercise of the said powers I hereby remove into this Court, quash and set aside the Respondent’s decision dated 10th March, 2015 purporting to confirm the Interested Parties as the Officials of Zimman Settlement Scheme for the next three years.

48. I further direct the Respondent to facilitate the Society’s elections for the new officials as per the Society’s constitution to be supervised by the Respondent’s officer(s) other than **Joseph L. Onyango**, within 45 days from the date of service of this decision on the Respondent at the Society’s costs.

49. There will be no orders as to costs.

50. Liberty to apply given.

Dated at Nairobi this 16th day of January, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mwangi for Mr Kenyatta for the applicant

Mr Odhiambo for Mr Wangalwa for the interested parties

CA Mwangi