



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**MISCELANEOUS APPLICATION NO. 67 OF 2017**

**IN THE MATTER OF AN APPLICATION BY CHAMA CHA UZALENDO TO APPLY FOR  
LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS AGAINST THE  
REGISTRAR OF POLITICAL PARTIES**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**CHAMA CHA UZALENDO.....APPLICANT**

**AND**

**THE REGISTRAR OF POLITICAL PARTIES..... RESPONDENT**

**JUDGEMENT**

1. By a Notice of Motion dated 21<sup>st</sup> February, 2017, the *ex parte* applicant herein, **Chama Cha Uzalendo** hereinafter referred to as “the Party”), seeks an order *mandamus* compelling the Respondent to cause a notice of the changes and alterations on the party officials list, namely the National Executive Council list of officials of the Party, as per the Applicant’s letter dated 17<sup>th</sup> January, 2017, to be published in the Gazette forthwith pursuant to section 20(1) of the **Political Parties Act**. The applicant also seeks an order as to costs.
2. The application was supported by an affidavit sworn by **Hon. Wavinya Ndeti** who described herself as the current Party Leader of the Applicant.
3. According to the applicant, through a letter dated 17<sup>th</sup> January, 2017, it duly notified and forwarded a list of its party officials, namely the National Executive Council for gazettelement by the Respondent herein, the Registrar of Political Parties.

4. It was the applicant's case that section 20(1) of the **Political Parties Act**, Chapter 7B of the Laws of Kenya (hereinafter referred to as "the Act"), provides that where a fully registered political party intends to change or amend its Constitution; its rules and regulations, the title, name or address of any party official, its name, symbol, slogan or colour, or the address and physical location of the head office or country office, it shall notify the Registrar of Political Parties of its intention and the Registrar shall, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette.

5. It was the applicant's case that despite the mandatory provisions of the law as herein stated, the Respondent herein has capriciously refused, declined and/or neglected to gazette the changes as duly notified by the Applicant despite lacking the discretion to refute gazette, for purposes solely of frustrating the Applicant's attempt at compliance with the next General Elections calendar.

6. The applicant disclosed that it had since also publicised the changes in a national newspaper as required under the law hence the Respondent's refusal to comply with express provisions of the Act is irrational and unreasonable and as such, ripe for the issuance of prerogative writs sought from this Honourable Court. The applicant further averred that the Respondent's actions are contrary to the law and in violation of the Applicant's right guaranteed under Article 38 of the Constitution. Further, the said actions are contrary to the letter and spirit of the Constitution and specifically Articles 10 and 73 which provide for the national values and principles of governance and responsibilities of leadership, respectively.

7. It was disclosed that the Respondent had in previous correspondence to the Applicant's bankers acknowledged to have effected the changes even though a gazette notice to that effect had never been published. To the applicant, it is on the desire and out of abundance of caution that the changes be published in the Kenya Gazette as required under the law.

8. It was the applicant's case that in light of the foregoing, it is quite clear that the Respondent's actions are laced with *mala fides* and unreasonableness and hence there is need that the orders sought in the present application are granted. To the applicant, it remains apprehensive that if this Court does not intervene, the Applicant herein is likely to suffer prejudice and irreparable harm by not complying with the requisite timelines imposed to the General Elections hence it is fair and just that this Honourable Court grants the Orders sought in the present Application.

9. It was submitted on behalf of the applicant that section 20 of the Act contemplates that whenever a party makes or intends to amend or make changes to its Constitution, rules and regulations, title, name or address of its officials, as in this case, or the address and physical location of the head office or county office, such an intention or change shall be notified to the Registrar of Political Parties within fourteen days after receipt of such notification, who is under an obligation to cause a notice of the intended change or alteration to be published in the Gazette.

10. It was submitted that whereas the Registrar of Political Parties has failed and/or declined to cause a publication of the said Gazette Notice with the changes in the list of the Party officials, she has, through communication to third parties affirmed and upheld the said changes by confirming that the names contained in the Applicant's letters are the new party officials of the Party as exemplified by her communication to the Manager of the Commercial Bank of Kenya.

11. It was therefore contended that the Registrar is acting contrary to section 20 of the Act and Article 38 of the Constitution by failing and/or refusing to cause a gazette notice to be published communicating the amendments to the list of the officials of the Chama Cha Uzalendo.

12. It was further submitted that the failure and/or omission by the Registrar to cause the gazette of the said changes is prejudicial to the Applicant; an infringement of its right to fair administrative action as guaranteed under Article 47 of the Constitution and the **Fair Administrative Action Act**; and an infringement of its political rights guaranteed under Article 38 of the Constitution. To the applicant, the continued failure to gazette the changes is undermining the authority of the Applicant to carry out its

activities through its officials and they have to constantly explain themselves to members of the public, political party partners and other partners.

13. In support of its case, the applicant relied on **Republic vs. Kenya Vision 2030 Delivery Board & Another Ex-Parte Eng Judah Abekah, JR Case No. 223 of 2014 and Republic vs. The Commissioner of Lands and Another Ex-Parte Kithinji Murugu M’agere, Nairobi High Court Misc. Application No. 395 of 2012.**

14. The application was not opposed by the Respondent.

15. Section 20 of the Act provides as hereunder:

***(1) Where a fully registered political party intends to change or amend—***

***(a) its constitution;***

***(b) its rules and regulations;***

***(c) the title, name or address of any party official; or***

***(d) its name, symbol, slogan or colour;***

***(e) the address and physical location of the head office or county office:***

***it shall notify the Registrar of its intention and the Registrar shall, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette.***

***(2) The political party giving notification under sub-section (1) shall publish such notification in at least two daily newspapers having nationwide circulation.***

***(3) Upon the expiry of thirty days from the date of publication of the notice in subsection (1), the political party may, after taking into account any representations received from the public under subsection (1) and (2), effect the change or alteration in accordance with its constitution and rules.***

16. It is therefore my view that when the Respondent receives a notification under section 20 of the Act, it has no option but to, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette. His or her discretion only arises upon receipt of representation consequent upon the publication. The law further prescribes the period within which the gazettment is to be done. This is a clear manifestation of the seriousness with which the law treats such notification. It clearly manifests that such gazettment ought to be done expeditiously so as to achieve the purpose of Article 38 of the Constitution that guarantees political rights. Article 38(2) of the Constitution provides that:

***Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—***

***(a) any elective public body or office established under this Constitution; or***

***(b) any office of any political party of which the citizen is a member.***

17. By giving the notification the applicant was in effect expressing the wishes of its members in the exercise of their political rights under the Constitution. It is only through the exercise of the political will of the citizenry that the national values and principles of governance under Article 10 of the Constitution which includes democracy can be realised. Further it ought to be realised and appreciated that in the

preamble to the Constitution Kenyans recognised democracy as one of their aspirations of governance. That ideal cannot be realised unless their aspirations to participate in political affairs of the country is translated into reality. By placing roadblocks in their ability to manage the affairs of their political parties, the Respondent would be violating their political rights and would be a hindrance to the attainment of the democratic ideals espoused in the Constitution.

18. Article 47 of the Constitution provides that:

***(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***

***(2) 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.***

19. The said Article was the subject of judicial interpretation in **Judicial Service Commission vs. Mbalu Mutava & Another [2015] eKLR**, Civil Appeal 52 of 2014 in which the Court of Appeal held that:

**“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”**

20. It follows that the Respondent was duty bound to gazette the applicant’s notification of the changes and alterations on the Party’s National Executive Council list of officials as mandated in section 20 of the Act. By failing to do so, the Respondent fettered the statutory powers conferred upon her by the law. This position was dealt with in **R vs. Secretary of State for Home Department ex p Venebles [1998] AC 407** as follows:

**“a person on whom power is conferred cannot fetter the future exercise of its discretion by committing himself now as to the way in which he will exercise his power... By the same token, the person on whom power has been conferred cannot fetter the way in which will use that power by ruling out of consideration on the future exercise of power factors which may be relevant to that exercise”**

21. To deliberately set out not to exercise a power properly conferred by the law without legally recognised justification in my view is as much an abuse of power as to purport to exercise a power which is not conferred.

22. The Court of Appeal in **Republic vs. Kenya National Examinations Council ex parte Gathenji & Others Civil Appeal No. 266 of 1996** held that:

**“..an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”**

23. Similarly in in **Shah vs. Attorney General (No. 3) Kampala HCMC No. 31 of 1969 [1970] EA 543** where **Goudie, J** held, *inter alia*, as follows:

**“*Mandamus* is a prerogative order issued in certain cases to compel the performance of a duty...Thus it is used to compel public officers to perform duties imposed upon them by**

common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual...In cases where there is a duty of a public or quasi-public nature, or a duty imposed by statute, in the fulfilment of which some other person has an interest the court has jurisdiction to grant *mandamus* to compel the fulfilment...Whereas *mandamus* may be refused where there is another appropriate remedy, there is no discretion to withhold *mandamus* if no other remedy remains. When there is no specific remedy, the court will grant a *mandamus* that justice may be done...In *mandamus* cases it is recognised that when statutory duty is cast upon a Crown servant in his official capacity and the duty is owed not to the Crown but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of *mandamus* to enforce it.”

24. In the absence of any response by the Respondent, this Court finds merit in the Notice of Motion dated 21<sup>st</sup> February, 2017.

### **Order**

25. Accordingly, an order *mandamus* is hereby issued compelling the Respondent to cause a notice of the changes and alterations on the party’s officials list, namely the National Executive Council list of officials of the Party, as per the Applicant’s letter dated 17<sup>th</sup> January, 2017, to be published in the Gazette forthwith pursuant to section 20(1) of the ***Political Parties Act***. The said notification to be gazetted within 14 days from the date of service of this order on the Respondent.

26. The applicant will have half the costs of these proceedings.

27. It is so ordered.

**Dated at Nairobi this 6<sup>th</sup> day of March, 2017**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Mr Ochieng Oginga for Mr Willis Otieno for the applicant**

**CA Mwangi**