



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO. 15 OF 2011

**IN THE MATTER OF AN APPLICATION BY TEENAGE MOTHERS AND GIRLS
ASSOCIATION**

**OF KENYA (TEMAK) FOR LEAVE TO APPLY TO CITE THE RESPONDENTS FOR
CONTEMPT**

OF COURT IN RESPECT OF THE COURT ORDER DATED THE 6TH APRIL 2011

AND

IN THE MATTER OF THE NO-GOVERNMENTAL ORGANISATION

CO-ORDINATION ACT, NUMBER 19 OF 1990

BETWEEN

TEENAGE MOTHERS AND GIRLS

ASSOCIATION OF KENYA (TEMAK).....APPLICANT

AND

THE NON-GOVERNMENTAL ORGANISATIONS

CO-ORDINATION BOARD.....1ST RESPONDENT

PETER OLE NKURAIYIA.....2ND RESPONDENT

HENRY OTIENO OCHIDO.....3RD RESPONDENT

LINDON OTIENO.....4TH RESPONDENT

JUDGMENT

What is before this Court is the Ex-parte applicant's Notice of Motion dated 11th April 2011 seeking orders that:-

“1. This court be pleased to issue an order of certiorari to remove into the High Court the decisions of the Respondent contained in Gazette Notice No.15883 dated 24.11.2010 and

published on 3.12.2010 canceling the Applicant's registration Certificate No.OP/218/051/96146/104 and in its letter dated 4.3.2011 for the purposes of their being quashed and on such removal, the decisions be quashed.

2. This court be pleased to issue an order of prohibition barring the Respondent from taking any action adverse to the Applicant pursuant to the Gazette Notice No.15883 dated 24.11.2010 and published on 3.12.2010 canceling the registration certificate of the Applicant No. OP/218/051/96146/104 and the decision contained in the Respondent's letter dated 4.3.2011.

3. Costs of these proceedings be provided for.”

The application which is supported by the affidavit of Joab Othatcher, a Director is premised on the ground that the Respondents acted in excess of their jurisdiction or abused their powers under the law and acted in bad faith.

In opposition to the Notice of Motion the 1st Respondent filed a replying affidavit sworn on 25th January 2011 by Henry Otieno Ochido Head of Operations, Compliance and Research. He deposes inter alia that the judicial review proceedings were overtaken by events the ex-parte applicant having been deregistered by Gazette Notice No. 15883 dated 3rd December 2010.

At the hearing of the Notice of Motion which the Advocate for the Respondents did not attend despite being duly notified Counsel for the ex-parte applicant submitted that the Gazette Notice No. 15883 ought to be quashed as the decision to deregister the applicant was taken without giving the applicant an opportunity of being heard. Counsel submitted that it is implicit in the provisions of Section 16 of the Non-Governmental Organizations Co-ordination Act that before such a decision is taken the Non-Governmental Organization must be given a hearing. Further that it is now a Constitutional right. He argued that the impugned decision was taken in bad faith in retaliation for having been sued by the applicant in respect of another matter. Moreover that the decision was motivated by a desire or scheme by the respondent to assist a third party who had a dispute with the applicant. He further argued that the cancellation amounted to an abuse of power in that the respondent chose not to defend the cases filed against it by the applicant choosing instead to take away the applicant's capacity to sue. He urged this court to allow the application with costs to the applicant stating that no steps had been taken to respond to this application, the replying affidavit filed on 18th October 2012 being in response to an application for contempt.

I have considered the application and submissions carefully. At paragraph 2 of the 1st Respondent's Replying Affidavit dated 25th January 2011 and filed herein on 26th January 2011 Henry Otieno Ochido the deponent states that the affidavit is sworn in reply to among others the application for Judicial Review. The application is therefore opposed. It is my finding that the same has no merit. As conceded by Counsel for the applicant Section 16(1) of the Non-Governmental Organizations Co-ordination Act empowers the Board to cancel a certificate upon being satisfied that -

“(a) the terms or conditions attached to the certificate have been violated; or

(b) the organization has breached this Act; or

(c) the Council has submitted a satisfactory recommendation for the cancellation of the certificate.”

Section 16(2) however makes it mandatory that a notice of the cancellation be issued to the affected Non-Governmental Organization. The cancellation takes effect within fourteen days after the date of such notice. It is clear from the applicant's pleadings that notice of the cancellation was published in the Gazette Notice No. 15883 dated 3rd December 2013. That notice was not itself a cancellation but a notice of intention to cancel. Cancellation would only take effect fourteen (14) days after the date of the notice. This presupposes that the applicant could oppose the cancellation within those fourteen days. The applicant has not stated that it took any action in answer to the notice. In any event Section 19(1) of the

Act expressly gives an aggrieved party a right of appeal within sixty days from the date of the decision. This appeal is to the Minister who is required to issue a decision within thirty days. If aggrieved by the decision of the Minister the aggrieved party can appeal the decision in the High Court. That is the procedure that the applicant herein should have followed. It is now settled that where such a procedure exists it should be strictly followed – see **International Center for Policy and Conflict and Others Versus Honourable Uhuru Muigai Kenyatta and Others – High Court Petition No. 552 of 2012** where a five Judge bench of this Court stated:-

“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.”

Accordingly this application for Judicial Review is dismissed with costs to the Respondents.

Signed, dated and delivered at Kisumu this 9th day of March 2017

E. N. MAINA

JUDGE

In the presence of:-

Mr. Ragot for Otieno for the Applicant

N/A for the Respondent

Court Assistant – Serah Sidera