



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 37 OF 2015

IN THE MATTER OF: AN APPLICATION BY THE APPLICANTS FOR ORDERS OF JUDICIAL REVIEW BY
WAY OF ORDERS OF CERTIORARI AND MANDAMUS DIRECTED TO THE REGISTRAR OF SOCIETIES

AND

IN THE MATTER OF: THE SOCIETIES ACT, CHAPTER 108 OF THE LAWS OF KENYA

AND

IN THE MATTER OF: THE MUSLIM ASSOCIATION MOMBASA

REPUBLIC.....APPLICANT

VERSUS

THE REGISTRAR OF SOCIETIES.....RESPONDENT

TARAK KHAWAJA & 6 OTHERS..... INTERESTED PARTIES

EX PARTE: SHAAHID SHEIKH & 8 OTHERS

RULING

Introduction

1. The ex parte Applicants were granted leave on 4th September, 2015 to institute these judicial review proceedings. They thereafter filed on 8th September, 2015 a Notice of Motion (the Application) of even date in which they seek the following:

a. An **order of certiorari** to remove into this court and quash the decision of the Deputy Registrar of Societies contained in the letter dated 30th June, 2015 confirming interim office bearers of the Muslim Association of Mombasa.

b. An **order of mandamus** to compel the Registrar of Societies to confirm that the officials elected at the Muslim Association of Mombasa's Special General Board meeting held on 12th July, 2015 and set out in the Forms H and I dated 13th July, 2015 are the duly elected office bearers of the Muslim Association of Mombasa.

c. Costs.

2. The facts of this case, in brief, are that Muslim Association of Mombasa (hereinafter "the Association") was registered as a society on 29th September, 1953. One of the objectives of the Association was to maintain **Sakina Sunni Mosque** (hereinafter "Sakina Mosque") for the general benefit and welfare of its members and the Muslims of Kenya in general.

3. The Association continued with its operations and is still in existence to date. On 1st July, 2012, a general body meeting of the Association was held during which ten (10) persons were elected to its Board. The Constitution of the Association was also amended to *inter alia*, limit the membership to 300 persons.

4. In or about the month of December 2013, persons described by the parties as “radicals” took over the control and running of Sakina Mosque and it was closed for about one year. Due to the tension that ensued some of the ten officials elected on 1st July, 2012 resigned leaving the Board with only five (5) members.

5. In March 2015, the Interested Parties led by **Tarak Khawaja**, the 1st Interested Party, lodged a formal complaint with the Respondent regarding the amendment of the Association's Constitution to limit the membership to 300 on the basis that the intention of the amendment was to turn the society into a private members club. The Interested Parties also complained that the ex parte Applicants' intention was to transfer the Association to another society called **Punjab Muslim Association** which had been registered in 2014 to rival the Association. The Interested Parties further complained that replacement of the Association's officials who had resigned had not been done yet the Association was going on with normal operations.

6. The complaint triggered a series of actions by the Respondent starting with a letter dated 5th March, 2015 which required the Association to respond to the complaints raised by the Interested Parties within 30 days. The Association did not respond prompting the Respondent to do a reminder by a letter dated 15th May, 2015 requiring response within 14 days. According to the Respondent, the ex parte Applicants did not respond within the given time or at all. This prompted the Respondent to allow the Interested Parties to convene a meeting of the members of the Association to elect new officers. The Interested Parties convened the meeting on 28th June, 2015 during which they were elected as interim officers of the Association. The Respondent then confirmed the Interested Parties as the *bona fide* interim officers of the Association by a letter dated 30th June, 2015. It is that letter of 30th June, 2015 that aggrieved the ex parte Applicants and prompted them to file this case.

7. When leave was granted to the ex parte Applicants to file the substantive motion, the court also ordered that the leave do operate as stay of the Respondent's decision to approve the Interested Parties as the bona fide officials of the Association. The Interested Parties were aggrieved by the stay order and by their Notice of Motion dated and filed on 17th September, 2015, they sought the setting aside and/or variation of the same. The said application was canvassed simultaneously with the ex parte Applicants' substantive Notice of Motion for judicial review. This Ruling is therefore in respect of the ex parte Applicant's Notice of Motion dated 8th September, 2015 for judicial review remedies and the Interested Parties' Notice of Motion dated 17th September, 2015 for the setting aside of the stay order.

The Ex-Parte Applicants' Case

8. The ex parte Applicants' application is supported by the Statutory Statement dated 3rd September, 2015, two Affidavits of SHAAHID SHEIKH sworn on 3rd September, 2015 and 2nd October, 2015 respectively as well as an Affidavit of NEYYAR BUTT sworn on 3rd September, 2015.

9. The ex parte Applicants' case is that they did not receive the two letters dated 5th March, 2015 and 15th May, 2015 through which the Respondent directed the ex-parte Applicants to respond to the complaints by the Interested Parties. If I understand them correctly, the ex parte Applicants are saying that the Respondent started the process leading to the confirmation of the Interested Parties as interim officers of the Association without involving them.

10. The ex parte Applicants submitted that the Respondent's decision to replace the Association's office bearers with the Interested Parties was *ultra vires* the provisions of the Societies Act, Cap. 108 of the Laws of Kenya (“the Societies Act”) and was unfair. They contended that contrary to **section 18** of the Societies Act, the Respondent did not communicate to the ex parte Applicants to resolve any dispute as to the office bearers of the Association before confirming the Interested Parties as interim officials. Further, that the Respondent did not accord the ex parte Applicants, as the duly elected officials of the Association, an opportunity to be heard on whether there was any vacancy in the office or dispute regarding the Association's office bearers.

11. The ex parte Applicants contend that under **section 18 (2)** of the Societies Act, the Respondent only had powers to cancel the registration of the Association and not to direct that a meeting be convened and that interim officials be elected.

12. The ex parte Applicants argued that an order issued by the Registrar of Societies under section 18 of the Societies Act can only be binding if served in accordance with **Sections 49 and 50** of the Act. They argued that the letter dated 30th June, 2015 in which the Respondent confirmed the appointment of the Interested Parties as interim office bearers of the Association was not served in accordance with Sections **49 and 50** of the Societies Act because the same was hand delivered to the ex parte Applicants by Tarak Khawaja, the 1st Interested Party instead of being served personally or by registered post. The ex parte Applicants therefore contend that the decision contained in the said letter of 30th June, 2015 cannot be binding on them or on the Association as it was not delivered in accordance with the law.

13. It is the ex parte Applicants' case that the confirmation, by the Respondent, of the alleged interim office bearers was made without considering the procedure for and eligibility of a person to be appointed/elected as an office bearer of the Association as set out in its Revised Constitution. Specifically, that the confirmation of TARAK KHAWAJA, FAROOK UPPAL, ATIF BUX and SALIM CHAUDRY as officials and members of the Association was unreasonable since the said persons are not members and are therefore not eligible under the Association's Constitution to take charge of its affairs.

14. The ex parte Applicants contend that some of the persons confirmed by the Respondent as the new office bearers of the Association did not attend the meeting in which they were allegedly elected and have never consented to being elected as officials of the Association. Specifically, the ex parte Applicants cited the case of NEYYAR BUTT who has not only written but sworn an Affidavit on 3rd September, 2015 and filed in court on 4th September, 2015 saying that he was not aware of and did

not attend the alleged meeting of 28th June, 2015 in which he was appointed as the interim Vice-Chairman of the Association. He further states that he did not consent to being so appointed.

The Respondent's Case

15. The Respondent, the Deputy Registrar of Societies, was represented by the Attorney General. The Respondent opposed the ex parte Applicant's application through a Replying Affidavit sworn by JOSEPH L. ONYANGO on 2nd October, 2015.

16. The Respondent stated that all the requisite procedures and due processes of the law were followed before the Interested Parties were confirmed as interim officials of the Association.

17. The deponent averred that in March 2015 he received a complaint from the Interested Parties regarding the membership clause in the Association's Revised Constitution that limits the membership to 300 people on the basis that the restriction had converted the Association into a private members club. The Interested Parties also complained to the Respondent that the ex parte Applicants intended to transfer the Association to another society called Punjabi Muslim Association. Further, the Interested Parties complained that there had not been any replacement of the Association's office bearers who had resigned.

18. Following the said complaints, the Respondent wrote a letter dated 5th March 2015 to the officials of the Association notifying them of the above complaints by the Interested Parties and requiring them to respond within 30 days. In the said letter, the Respondent instructed the officials of the Association to convene a meeting to amend the constitution to allow membership from the whole community as well as to conduct proper elections.

19. The deponent averred that the letter of 5th March, 2015 did not elicit any response from the ex parte Applicants prompting him to write a reminder dated 15th May, 2015 in which he instructed the Secretary of the Association to convene a meeting within 14 days to deliberate on the complaints, review the constitution, and elect officials to fill the vacuum left through resignations. In the said letter, the Respondent was categorical that if the ex parte Applicants failed to convene a meeting as directed, the Respondent would authorize the complainants (Interested Parties) to convene such meeting.

20. The Respondent stated that since the ex parte Applicants did not respond to the two letters, the Interested Parties, as the complainants, went ahead to convene an all inclusive meeting of all the members of the Association and members of the community on 28th June, 2015 in which an interim Board was appointed. It is these officials appointed on 28th June, 2015 that the Respondent confirmed through its letter dated 30th June, 2015 which the ex parte Applicants seek to quash.

21. The Respondent accused the ex parte Applicants of failing to inform him that all of its officials had resigned from the leadership of the Association and there was a leadership vacuum. The Respondent further accused the First ex parte Applicant of usurping the Secretary's duties by issuing the notice that convened the meeting in which other ex parte Applicants were appointed as Board members of the Association in violation of the Societies Act.

22. It is the Respondent's case that despite being notified by an alleged secretary of the Association through a letter dated 14th July, 2015 of appointments done at a special general meeting of the Association, it was not able to confirm those appointments because as far as it is concerned, there already existed in place office bearers of the Association elected during the meeting of 28th June, 2015 convened by the Interested Parties.

23. The Respondent therefore supports the Interested Parties' application dated 17th September, 2015 seeking to set aside the interim order of stay and supports the dismissal of the ex parte Applicants' application for judicial review.

The Interested Parties' Case

24. The Interested Parties opposed the ex parte Applicants' application through a Replying Affidavit sworn by TARAK KHAWAJA on 1st October 2015. The Interested Parties also seek the setting aside of the stay order granted on 4th September, 2015 through their application dated 17th September, 2015.

25. The Interested Parties averred that elections of the Association were conducted in 1988 during which five persons were elected as officials and that subsequently, the chairman, **Syed Ikramul Hassan** and the Secretary, **Mohamed A. Chaudhry** died while in office. That following their demise, no elections were conducted to replace them but instead the Association was run by an invalid board for two decades. The Interested Parties relied on a letter dated 14th December, 2011 from the Respondent's office showing that the last annual returns were filed on 31st December, 1988.

26. The Interested Parties averred that after the demise of the Chairman and the Secretary, no notice of change of office bearers for the period 1989 to 2012 was given contrary to **Section 17** of the Societies Act and no annual returns were filed for the same period contrary to **Sections 27 and 30** of the Societies Act. Further that no annual general meetings were held and elections conducted periodically contrary to **Section 29** of the Societies Act.

27. According to the Interested Parties, the Association was solely run by **Ramzan Allan** in the absence of the Board during the period that he was in office and that the son of Ramzan Allan, Shaahid Sheikh (First ex parte Applicant) was elected as the chairman of the Association after which its constitution was amended to limit membership to 300 people only. The Interested Parties contend that some of the amendments to the Association's constitution were against the provisions of the Societies Act.

28. The Interested Parties further contend that the Ex-Parte Applicants were given a chance to be heard through the letters of 5th March, 2015 and 15th May, 2015 but they did not utilize the chance. They contend that the appointment of **Dr. Ajmal Fazil, Dr. Zahir Alavi** and **Mr. Nazir Khan** as per the minutes of 20th February, 2015 is questionable because there was no valid board at the time hence the appointments were against the constitution of the Association.

29. It is the Interested Parties' submission that the ex parte Applicants misled the court to grant them the stay order on 4th September, 2015 without disclosing material facts to wit; that the interim board of the Association comprising the Interested Parties was duly elected on 28th June, 2015 during general meeting of the Association; and that the Board was elected because members were unhappy with the way the association was being run.

30. The Interested Parties say that the members of the Association will suffer irreparable loss and damage if the interim board of the Interested Parties are barred from executing the mandate conferred upon it of running the activities of the Association.

The Issue for Determination

31. There are two main issues for the court's determination:

- i. Whether the Ex-Parte Applicants' application for the judicial review orders is merited and should be granted; and
- ii. Whether the order of stay made on 4th September 2015 should be set aside.

32. In my view, the two issues are mutually exclusive. The determination of one issue in the affirmative leads to the determination of the other in the negative. Put differently, if the court answers the first question in the affirmative, then naturally the second issue will be answered in the negative. If the first issue is however determined in the negative, the second one will automatically be answered in the affirmative. It is in consideration of the foregoing that the court allowed the hearing of the two applications to proceed simultaneously to save on judicial time.

Whether the Judicial Review Remedies Sought are Merited

33. Cases on the scope, purview and confines of judicial review proceedings are legion. Courts and scholars have stated and restated the purpose of judicial review proceedings and instances that warrant the court's intervention by way of judicial review remedy or remedies. In the case of **REPUBLIC vs. ISAAC THEURI GITHAE & ANOTHER [2007] eKLR**, it was held that:

“The purpose and purview of judicial review proceedings is confined to the decision making process. The Court in an application for an order of judicial review is not concerned with the merits or otherwise of the decision or threatened action. It is intended to ensure that an inferior tribunal or authority he has been subjected to has given the individual affected fair treatment. The authority is the one mandated to make a decision on the merits and the court should not attempt to substitute its decision or opinion in place of that of the tribunal or authority constituted by law to decide the matters in issue.

The court intervenes where the authority has acted in excess of its jurisdiction or without jurisdiction, where there is an error of law on the face of the record, where it has failed to observe rules of natural justice or where the authority has acted unreasonably. In those circumstances the court will call for the decision for purposes of quashing it by an order of certiorari. But normally where there is a threatened breach of any of the foregoing principles the court will issue an order of prohibition to prevent the threatened breach.”

34. In the case of **KENYA NATIONAL EXAMINATION COUNCIL v REPUBLIC EX-PARTE GEOFFREY GATHENJI NJOROGE & 9 OTHERS [1997] eKLR**, the Court of Appeal held that an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. Similarly in the case of **REPUBLIC vs. ISAAC THEURI GITHAE, (supra)** it was stated that the court may make a judicial review intervention only where the authority has acted in excess of its jurisdiction or without jurisdiction, where there is an error of law on the face of the record, where it has failed to observe rules of natural justice or where the authority has acted unreasonably.

35. The substantial issue to be considered here is whether the Respondent, by confirming the Interested Parties as interim office bearers of the Association, through the letter dated 30th June, 2015, acted in excess of its jurisdiction or without jurisdiction, committed an error of law on the face of the record, failed to observe rules of natural justice and/or acted unreasonably.

36. One of the ex parte Applicants' complaints against the Respondent is that it did not serve them with the letters dated 5th March, 2015 and 15th May, 2015 in accordance with **sections 49 and 50** of the Societies Act. The Respondent and the Interested Parties on the other hand contend that the two letters were duly served upon the ex parte Applicants.

37. The dispute herein is about who are the *bona fide* officers of the Association. While the Interested Parties contend that they are the proper office bearers of the Association by virtue of their election on 28th June, 2015 during a general meeting of the Association, the ex parte Applicants dispute that position and assert that the Interested Parties were not members of the Association and therefore could not properly convene a general meeting for purposes of electing its officers. The Respondent on its part sides with the Interested Parties and states that it confirmed them as interim officers of the Association after the ex parte Applicants declined to respond to the Interested Parties' complaints conveyed through the Respondent's letters of 5th

March, 2015 and 15th May, 2015. In essence, the Respondent's defence to the allegations leveled against it by the ex parte Applicants is that it acted within the law and jurisdiction to confirm the Interested Parties' election because the ex parte Applicants refused to respond to its letters of complaint. Those two letters are therefore very fundamental in the resolution of the dispute herein and therefore the court has to determine whether they were duly served.

38. To start with, I will refer to **section 18** of the Societies Act which deals with disputes as to officers of a society. The section provides as follows:

“(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 institution of proceedings for the settlement of such dispute.

2. If an order under 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.”

39. **Section 18** therefore gives a guideline of what should happen if a dispute as to officers of a registered society arises. The Registrar is to order the society in writing to resolve the dispute or institute proceedings for the settlement of the dispute within one month or such period as the Registrar may certify, failure to which the Registrar may deregister the society. In the instant case, the Respondent states that its order was contained in the letters of 5th March, 2015 and 15th May, 2015.

40. But just how is the Registrar's order referred to above supposed to be served? I revert to sections 49 and 50 of the Societies Act which provide as follows:

“49. An order given by the Registrar to any society under section 18, section 19 or section 31 of this Act shall be binding—

(a) upon the society if served in accordance with section 50 (1) of this Act; and

(b) upon every officer thereof upon the order or a copy thereof is served.

50. (1) Every order, notice, summons or other document issued under this Act or under any rule made thereunder shall be validly served—

(a) on a society, if it is sent by registered post addressed to it at its registered postal address; or

(b) on an individual, if it is served or is sent by registered post addressed to him at the registered postal address of the society with which he is concerned.

(2) Any document served by being sent by registered post shall be deemed to have reached the person or society to whom or to which it is addressed at the end of ninety-six hours after the time of posting.”

41. The two letters in issue were addressed to the secretary of the Association. They were therefore supposed to be served upon the secretary either personally or by registered post (see **section 50 (1) (b)** of the Act). The ex parte Applicants have denied that they received the two letters. The Respondent in its Replying Affidavit has stated that the letters were served upon the ex parte Applicants but did not explain how they were served. In her oral submissions in court, the Respondent's learned counsel, M/S Lutta stated that the letters were served by registered post but admitted that there was no evidence of posting.

42. In my view, the moment the ex parte Applicants denied that they received the two letters, the burden shifted to the Respondent to prove service. The Respondent did not produce any certificate of posting and therefore failed to discharge that burden. **Sections 49** and **50** of the Societies Act are clear on how the Registrar's order is to be served. The Respondent contravened the said sections by failing to serve the two letters on the ex parte Applicants.

43. It is a rule of Natural Justice that no person should be condemned unheard. By permitting the Interested Parties to proceed and hold a meeting to elect new officers of the Association because the ex parte Applicants did not respond to complaints contained in the two letters with which they were not even served, the Respondent failed to accord the ex parte Applicants an opportunity to be heard. That was against the Rules of Natural Justice.

44. Another important issue which I wish to address my mind to is whether the Interested Parties were qualified to convene the meeting of 28th June 2015 and be elected as officers of the Association. The ex parte Applicants averred that **Tarak Khawaja** (elected as interim Chairman), **Farook Uppal** (elected as interim Treasurer), **Atif Bux** (elected as Committee Member) and

Salim Chaudhry (elected as Committee Member) were not members of the Association and were therefore not eligible under the Association's Constitution to be elected as officers. The ex parte Applicants attached a list of the Association's members showing that the said persons are not members of the Association. Further, those averments were not controverted by either the Interested Parties or the Respondent. I have no reason to doubt the ex parte Applicants that the said persons were not members of the Association.

45. The Association's Revised Constitution dated 1st July, 2012 was duly adopted and approved by the Respondent by its letter dated 12th September, 2012. **Clause 13.2** of the said Constitution provides that the members of the Board of Directors shall be members of the Association of not less than 5 years' standing. By allowing some of the Interested Parties to be elected as officers of the Association when they were not members, the Respondent acted unreasonably. Those persons were not even competent to attend and participate in the Association's meeting of 28th June, 2015 or any other meeting for that matter. Further and more fundamentally, **section 18** of the Societies Act allows the Respondent to address disputes among **members or officers** of a registered society only. The complaints raised by the Interested Parties were raised by Tarak Khawaja, the 1st Interested Party on behalf of Sunni Punjabi Muslims. There is no evidence that the complainants were members or officers of the Association. By seeking to address complaints raised by persons who were strangers to the Association, the Respondent exceeded the jurisdiction conferred upon it by **section 18** of the Societies Act. In the same vein, by allowing persons who were not members of the Association not only to convene its general meeting but also to be elected as its officers, the Respondent acted unreasonably. Such an action was irrational and smacks of bad faith on the part of the Respondent.

46. Even assuming that the Interested Parties were all members of the Association and were therefore qualified to raise a dispute concerning the running of the Association and were eligible to be elected as officers, **section 18 (2)** of the Societies Act is clear on what the Registrar can do in case the dispute is not resolved or attempts made to resolve it within one month. The Registrar can only cancel the registration of the society. By allowing the Interested Parties to hold a meeting and proceed with elections at the exclusion of the ex parte Applicants, the Respondent employed a remedy that is not prescribed and therefore acted against and outside the express provision of **section 18 (2)** of the Act.

47. In the case of **REPUBLIC vs. REGISTRAR OF SOCIETIES EX-PARTE APPLICANTS: FRANCIS KIRIMA M'IKINYUA, JOHN WAINAINA NDUNGU AND PETER KIBE MUTIGA (SUING AS THE OFFICIALS OF ZIMMAN SETTLEMENT SCHEME SOCIETY) & 12 OTHERS [2014] eKLR**, the Registrar of Societies had appointed a committee to manage the affairs of a registered society due to leadership wrangles. Odunga, J. held that the Registrar exceeded his mandate under the Societies Act. The learned Judge stated that:

"In my view where a statute donates powers to an authority, the authority ought to ensure that the powers that it exercises are within the four corners of the statute and ought not to extend its powers outside the statute under which it purports to exercise its authority. In Republic vs. Kenya Revenue Authority Ex Parte Aberdare Freight Services Ltd & 2 Others [2004] 2 KLR 530 it was held that the general principle remains however, that a public authority may not vary the scope of its statutory powers and duties as a result of its own errors or the conduct of others. Similarly, in East African Railways Corp. vs. Anthony Sefu Dar-Es-Salaam HCCA No. 19 of 1971 [1973] EA 327, it was held that it has been recognised for a long time past, that courts are empowered to look into the question whether the tribunal in question has not stepped outside the field of operation entrusted to it. An administrative or executive authority entrusted with the exercise of a discretion must direct itself properly in law. See R vs. Barnet London Borough Council Ex Parte Nilish Shah [1983] 1 ALL ER 226 at 240.

In this case, it is the Respondent's contention that there is confusion and leadership wrangles within the society and that it was this state of affairs which led to the impugned decision. If that was the position one would have expected the Respondent to act pursuant to the provisions of section 18 of the Societies Act, Cap 108 Laws of Kenya (hereinafter referred to as the Act)...

It is clear 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." (emphasis added)

48. Likewise in this case, by allowing the Interested Parties to convene a meeting of the Association and to hold elections, the Respondent purported to exercise a power not expressly bestowed upon him by the law and hence exceeded his mandate under the Societies Act. In other words, the Respondent acted *ultra vires* his powers and that rendered his action an illegality. For the foregoing reasons, it is my considered view that the application for the order of certiorari is merited and should be allowed.

49. On the prayer for **mandamus**, the resistance mounted by the Respondent is that the meeting of 12th July, 2015 in which the ex parte Applicants were elected as officers of the Association was convened by the First ex parte Applicant who is the Chairman and not by the Secretary as required by the Societies Act. I however note that the notice of the meeting which was published in The Standard Newspaper of 27th June, 2015 was issued by Mohamed Arif, the Secretary. That ground cannot therefore stand.

50. The second resistance mounted by the Interested Parties is that the appointment of **Dr. Ajmal Fazil, Dr. Zahir Alavi and Mr. Nazir Khan** as per the minutes of 20th February, 2015 is questionable because there was no valid board at the time hence the appointments were against the Constitution of the Association. The minutes of the said meeting however show that the

meeting of the Board was attended by six (6) members including the Chairman and the Secretary. **Clause 15.5** of the Constitution of the Association provides that the quorum of the Board is six (6) members including the Chairman and Secretary. I therefore find no fault or irregularity in the meeting held on 20th February, 2015 or the appointment of the said persons.

51. Section 17 of the Societies Act (Cap 108, Laws of Kenya), provides the procedure for registration of officials of a society following an election, that is to say, change of officers or title of office. The notification is required to be in the prescribed form, and given to the Registrar within fourteen (14) days of the change, and the notice shall be signed by three officers of the Society. It is an offence not to file such changes.

52. That being the position in law, **firstly**, it means that the Muslim Association Mombasa Special General Meeting held on 12th July, 2015 and set out in Form H and I dated 13th July, 2015, and **secondly** the officials elected thereat, are duly elected office bearers of the Muslim Association of Mombasa. Consequently the Respondent had no authority in law, to purport to confirm another body of persons as the Board of the Muslim Association of Mombasa. **Thirdly**, the confirmation of an interim board of Directors on 30th June by the Deputy Registrar of Societies was done without giving the Applicants an opportunity to be heard, contrary to the provisions of sections 18, 49 and 50 of the Societies Act.

53. Factually, Neyyar Butt, the alleged Vice-Chairman of the Interim Board, unlawfully confirmed by the Respondent, has by an Affidavit sworn on 3rd September, 2015, denied being aware of, or attending the alleged meeting held on 28th June, 2015, and in addition denied that he agreed to be appointed as the interim vice-chairman of Muslim Association of Mombasa.

54. Despite notification on 9th July, 2015 to the Respondent's Deputy Registrar to correct office bearers of the Muslim Association of Mombasa, the Respondent has, according to the Applicants pleadings not responded to that verification. The Respondent maintains that the Interim Officials were duly elected the Muslim Association of Mombasa. This view is both inconsistent with the facts, and more importantly contrary to the law, the provisions of the Societies Act.

56. In the circumstances and for those reasons, there shall **firstly** issue an order of **certiorari** to remove to this court and quash the decision of the Deputy Registrar of Societies contained in the letter dated 30th June, 2015 purporting to confirm the interim office bearers of the Muslim Association of Mombasa. **Secondly**, there shall issue the judicial review order of mandamus to compel the Registrar of Societies to confirm (in terms of section 17 of the Societies Act), that the officials elected at the Muslim Association of Mombasa's Special General Meeting held on 12th July, 2015 and set out in Form H and I dated 13th July, 2015, are the duly elected office bearers of the Muslim Association of Mombasa.

57. To promote brotherhood and understanding, I decline to make order for costs, and direct that each party bears its own costs.

Dated, Signed and Delivered in Mombasa this 3rd day of December, 2015.

M. J. ANYARA EMUKULE

JUDGE

In the presence of:

Miss Mwangi for ex parte Applicants

Ms. Lutta holding brief S. Lutta for Respondents

Miss Mboku for Interested Parties

Mr. Silas Kaunda Court Assistant