



**Lafa & another v Registrar Societies; Elema & 6 others  
(Interested Parties) (Judicial Review Application E277 of 2025)  
[2025] KEHC 13546 (KLR) (Judicial Review) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13546 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E277 OF 2025  
RE ABURILI, J  
OCTOBER 1, 2025**

**BETWEEN**

**HUSSEIN INTALO LAFA ..... 1<sup>ST</sup> APPLICANT**

**ALIO TEPE ABUDO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE REGISTRAR SOCIETIES ..... RESPONDENT**

**AND**

**ADAN MAMO ELEMA ..... INTERESTED PARTY**

**HUSSEIN FOLFE KUNO ..... INTERESTED PARTY**

**ABDIKADIR DIDO GUYO ..... INTERESTED PARTY**

**MOHAMED ALI WARIO ..... INTERESTED PARTY**

**GEDOW GOLLO GODANA ..... INTERESTED PARTY**

**MOHAMED ABUDURA GUYO ..... INTERESTED PARTY**

**ALINOOR GOLLO GODANA ..... INTERESTED PARTY**

**RULING**

1. This ruling determines the Applicants' chamber summons application dated 4<sup>th</sup> September 2025 brought pursuant to Order 53 Rules 1 and 2 of the *Civil Procedure Act*. The application seeks leave to apply for judicial review orders of certiorari quashing the decision of the Respondent to register the Interested Parties as officials of Marsabit Sakuye Council of Elders, an order of Mandamus compelling



the Respondent to supervise a fresh elections on behalf of Marsabit Sakuye Council of Elders in strict compliance with the orders of the court made in JR E131 of 2024, and that leave if granted operate as stay of the decision of the Respondent registering the Interested Parties as officials.

2. The application is verified by the affidavit of Hussein Intalo Lafa sworn on 4<sup>th</sup> September 2025. The Applicants' case is that the on 7<sup>th</sup> July 2025 this Honourable Court delivered a judgment granting the following orders;
  - a) An order of Mandamus is hereby issued compelling the Registrar of Societies to oversee and facilitate the holding of fresh elections of officials of Marsabit County Sakuye Council of Elders, in strict compliance with the society's constitution and the *Societies Act* (Cap. 108), and to register the elected officials thereafter in accordance with the law and within the statutory timelines.
  - b) The Registrar of Societies shall ensure that all eligible members of the society are notified of the fresh elections and that the same is conducted in a transparent and lawful manner within sixty (60) days from the date of this judgment which has been delivered offline on account of the saba saba unrest this 7/7/2025.....”
3. According to the Applicants, the Registrar took no action to comply with court orders prompting their advocates to write to her on 15<sup>th</sup> July 2025, which letter is alleged to have been ignored as it has elicited no response.
4. The Applicants' further assertion is that the Registrar did not notify eligible members of the society of fresh elections, ignored the list of members presented by the applicants, registered and oversaw the registration of new members into the society on 21<sup>st</sup> August 2025 notwithstanding that the court order did not direct this.
5. It is also averred that the Registrar failed to ensure that the Applicants scrutinized the list of voters generated on 21<sup>st</sup> August 2025, that she adopted voting by the que system which was not justified or agreed upon by all the contestants and that she proceeded to conduct elections without the participation of eligible members of the Society and only with the participation of the Interested Parties herein.
6. The Registrar is said to have declared the Interested Parties as duly elected even though all other contestants were shut out from participating in the elections, for protesting the manner of compliance of the court orders as contained in the judgment.
7. According to the Applicants, the Registrar, despite protests as seen in the letter dated 22<sup>nd</sup> August 2025, went ahead and registered the Interested Parties as officials of the society.
8. During oral highlights made by counsel for the parties on 22<sup>nd</sup> September 2025, Mr. Mwaniki, counsel for the Applicants submitted that the Applicants were seeking leave to apply for judicial review orders compelling the Respondent to conduct fresh elections in compliance with the court's orders in JR E131/2024.
9. He further submitted that the Respondent went beyond what had been directed by the court in the judgment by recruiting new voters. According to Mr. Mwaniki, the execution of this court's order was irregular and ultra vires. He contended that his clients have a right to move the court either by way of judicial review or contempt but that nothing prevented them from moving the court through judicial review.



10. In response, the Respondent filed a replying affidavit sworn on 11<sup>th</sup> September 2025 by Teresia Gathagu the Registrar of Societies.
11. According to the Respondent, on 4<sup>th</sup> August, 2025, she was served with a twenty-one (21) day notice dated 31<sup>st</sup> July 2025 signed by the 2<sup>nd</sup> Applicant convening the Annual General Meeting of the Society to be held on 21<sup>st</sup> August 2025 at the Chief's compound in Dabel Moyale. That the notice had been issued in compliance with Article 8(b) of the Society's constitution.
12. It is further deposed that two officers from the Respondent's office were deployed to Dabel, Marsabit County, to oversee the Annual General Meeting (AGM) and elections of the Society in strict compliance with the *Societies Act*, and the Society's constitution. Further, that at a security briefing on 21<sup>st</sup> August 2025, attended by government officials and the parties, it was agreed that if quorum was attained, this would prove that the AGM notice of 31<sup>st</sup> July 2025 had been properly circulated. It is contended in deposition that the notice, signed by the 2<sup>nd</sup> Applicant, and lodged with the Respondent on 1<sup>st</sup> August 2025, was acknowledged as valid, thereby deflating the Applicants' later denial.
13. That on the election day, the Respondent's officers, accompanied by the Moyale OCPD, went to the designated venue, the Chief's Compound in Dabel, but the 1<sup>st</sup> and 2<sup>nd</sup> Applicants left the venue and held a separate meeting in a nearby school.
14. It is the Respondent's contention that the school gate was locked under their instructions and access was restricted. However, after that intervention by the OCPD, one of the Respondent's officers was allowed in and given a list of 45 names, which the Applicants claimed were the only valid members, representing local clans.
15. It is claimed that the applicants refused to recognize any other members. Also, that the Respondent advised the Applicants that their actions abandoning the official venue, holding a parallel meeting at the school which was contrary to the notice that the 2<sup>nd</sup> Applicant had issued, restricting access and providing an unsubstantiated list of members were contrary to the society's constitution, lacked legal basis and frustrated a transparent election as ordered by the Court.
16. The Respondent states that the Applicants ignored this advice, left Dabel and cut off communication with officials however and that their conduct was formally communicated to their Advocate.
17. The respondent contends that in compliance with orders of the High Court in Nairobi HCJR/2024 (Hussein Intalo Lafa & Alio Tepo Abudo v Registrar of Societies & Others), the Respondent proceeded to preside over the AGM at the Chief's Compound. That approximately 500 members attended, quorum was met, and membership was verified by national identification cards and residency. It is also the Respondent's case that as the Society's constitution was silent on voting methods, members unanimously agreed to vote by queuing behind candidates.
18. The election is said to have proceeded transparently and the Respondent compiled a report confirming events. That since the 1<sup>st</sup> and 2<sup>nd</sup> Applicants had absented themselves, they did not participate in the process. The Respondent thereafter registered the Interested Parties as duly elected officials, in compliance with the Court's directive to conclude the exercise within statutory timelines.
19. During oral highlights, counsel for the Respondent, Ms. Zahra submitted that all orders made in JR E131/2024 were complied with. Further, that the Registrar supervised the elections as directed and within the timelines given by the court and registered new officials. She contended that leave ought not to be granted.



20. The Interested Parties also filed a replying affidavit sworn on 11<sup>th</sup> September 2025 sworn by Adan Mamo Alema, the 1<sup>st</sup> Interested Party.
21. In their affidavit they contend that the issue raised by the Applicants seems to be the implementation of this honourable court's judgment and as such the applicants ought to have filed an appropriate application in the said suit seeking compliance instead of filing a new suit.
22. According to the Interested Parties, the instant application is res judicata as it concerns the same parties and the same subject matter which has been fully determined by a court of competent jurisdiction.
23. They contend that they have complied with section 17(1) of *Societies Act* and filed a Notice of election of new officials, which Notice has been served upon the Applicants through their advocates.
24. The Interested Parties' further contention is that if the Applicants have any complaint regarding the manner in which the Court directive was implemented, they ought to apply for the directive to be nullified or have the outcome of the elections set aside or file any such other relevant application in the same case file including citation of any errant person for contempt.
25. Mr. Opini counsel for the Interested Parties during oral highlights argued that the 2<sup>nd</sup> Applicant issued a notice for the elections and served all parties who attended, and the Registrar supervised elections as directed by the court.
26. He further submitted that when the 2<sup>nd</sup> Applicant sensed that he was going to be defeated, he disappeared. Further, that if there was non compliance with court orders, a fresh suit cannot be instituted and that the matter can only be canvassed as contempt in the former proceedings.

### **Analysis and determination**

27. I have considered the chamber summons application, verifying affidavit and statutory statement. I have also considered the responses and the submissions by all parties. The main issue for determination is whether the Applicant has made out an arguable case for the grant of leave to apply for judicial review orders against the Respondent.
28. The main reason for leave as explained by Waki J. (as he then was), in Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.
29. Therefore, at the leave stage, this Court's task is to determine whether the applicant has established an arguable case for permission to commence judicial review proceedings.
30. In Republic vs County Council of Kwale & Another Ex-parte Kondo & 57 others (supra) and Meixner & Another vs A.G [2005] eKLR, it was held that the leave of court is required with a view to filtering out frivolous applications and the test to be applied is whether the applicant has an arguable case.
31. It is also important to note that the Court, at this stage, is not expected to delve deep into the merits or demerits of the intended application, should it be of the view that an arguable case for leave is established, so as to avoid prematurely determining the intended substantive application. Additionally, it does not mean that once leave is granted, which may be granted, in most cases, exparte, then the substantive motion must succeed.
32. Leave is merely an avenue for the applicant to exercise the right to access justice and to ventilate their grievances while enjoying the right to a fair hearing before a court of law as guaranteed under Article



50(1) of *the Constitution*, especially where on the face of it, the court does not find that the intended motion is frivolous or an abuse of court process.

33. A brief background of the proceedings in JR NO. E131 of 2024 is that the Applicants before this court who were also the Applicants in JR No. E131 of 2024 were granted leave by the court on 23<sup>rd</sup> July 2024 to apply for judicial review orders of certiorari quashing the Registrar Society's decision to adopt the proposed change of officials as per the list presented by the Interested Parties. They also sought an order of mandamus to compel the Respondent to reinstate them as the bona fide officials of the Marsabit Sakuye Council of Elders.
34. Upon considering the application, responses by the Respondent and Interested Parties and also hearing oral highlights made by counsel on behalf of the parties the court rendered its judgment on 7<sup>th</sup> July 2025 making the following orders;
  - “ 53. Accordingly, an order of Certiorari is hereby issued to bring into this Court and quash the decision of the Registrar of Societies communicated in the letter dated 8<sup>th</sup> December 2023, effecting the change of officials of Marsabit County Sakuye Council of Elders.
  54. An order of Mandamus is hereby issued compelling the Registrar of Societies to oversee and facilitate the holding of fresh elections of officials of Marsabit County Sakuye Council of Elders, in strict compliance with the society's constitution and the *Societies Act* (Cap. 108), and to register the elected officials thereafter in accordance with the law and within the statutory timelines.
  55. The Registrar of Societies shall ensure that all eligible members of the society are notified of the fresh elections and that the same is conducted in a transparent and lawful manner within sixty (60) days from the date of this judgment which has been delivered offline on account of the saba saba unrest this 7/7/2025, which made it impossible for the Judge and staff to access the Court House at Milimani Law Courts. The judgment shall therefore be uploaded to the Case Tracking System for access by the parties.”
35. As seen from the orders issued in the above suit JR No. E131 of 2024, this Court quashed the Registrar's earlier decision and directed the holding of fresh elections under the supervision of the Respondent, with a further mandate to register the duly elected officials in accordance with the law and within statutory timelines.
36. The present application is premised on the assertion that the Respondent failed to comply with that judgment and instead conducted the elections in a manner contrary to the orders of this Court, thereby unlawfully registering the Interested Parties as officials.
37. The Applicants contend that the Respondent failed to notify all eligible members, disregarded their list of members, recruited new voters, adopted a queuing system of voting and eventually registered the Interested Parties as officials duly elected in exclusion of other contestants. In short, their complaint is the manner in which the Respondent executed the orders of the Court.
38. On the other hand, the Respondent and the Interested Parties maintain that the Court's judgment was fully implemented. It is argued that the Respondent's officers supervised the elections at the official venue as per the notice issued by the 2nd applicant, verified membership by national identification, ensured quorum and presided over transparent voting by consensus. The Interested Parties' position is



that the Applicants walked away from the election venue, frustrated the process and have now returned to Court in the guise of a fresh judicial review challenge.

39. The question therefore is whether the Applicants have demonstrated that they have an arguable case for leave to commence judicial review proceedings. It bears emphasis that judicial review remedies address the legality, rationality and procedural propriety of administrative decisions. Where the gravamen of a party's grievance is alleged noncompliance with, or defective implementation of, a subsisting Court order, the proper recourse is not to institute fresh judicial review proceedings but to invoke the Court's inherent jurisdiction to enforce its own orders, including through contempt.
40. This Court is also alive to the doctrine of *res judicata*, codified under Section 7 of the *Civil Procedure Act*, which bars parties from re-litigating matters that have been finally adjudicated upon between them over the same subject matter. In this case, while the Applicants frame their complaint as a fresh challenge, in substance they seek to re-open issues already settled in JR No. E131 of 2024. Judicial review cannot be invoked as a collateral attack on a judgment of this Court. The appropriate recourse lies in enforcement proceedings, including contempt, rather than instituting an analogous application for the court to make a determination that is virtually the same as the former decision. That is unacceptable in law.
41. As was observed in *Meixner & Another v Attorney General supra*, leave should not be granted where the intended proceedings are an abuse of process. Similarly, in *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others supra*, the Court stressed that leave acts as a filter to weed out unmeritorious claims.
42. Applying these principles, I am not persuaded that the present application discloses an arguable case amenable to judicial review. This is because the orders of 7<sup>th</sup> July 2025 were clear and if the Applicants were aggrieved with the manner in which the said orders were executed by the respondent, the appropriate course was to seek redress within those proceedings by way of contempt or an application to set aside the outcome of the elections. To file a fresh judicial review application amounts to a collateral challenge to a concluded matter, and risks undermining the orderly enforcement of Court decrees.
43. I accordingly find that the application before this Court is misconceived, incompetent and an abuse of the process of the Court. The Applicants ought to have pursued contempt proceedings if indeed the Respondent disobeyed, misapplied or failed to implement this Court's orders in the manner directed by the Court.
44. The application dated 4<sup>th</sup> September 2025 is therefore dismissed.
45. Each party bear their own costs, as this matter has lingered in this court for long and considering the relationship between the applicants and the interested parties who are members of a close neat community.
46. This file is closed.
47. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> OCTOBER 2025**

**R.E. ABURILI**

**JUDGE**

