

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW MISC. APPLICATION NO E125 OF 2025**

**IN THE MATTER OF THE DECISION OF THE RESPONDENTS’**

**CANCELLATION OF REGISTRATION OF THEOPHILUS CHURCH**

**(CERTIFICATE OF REGISTRATION NUMBER 39176 & SOC 65653)**

**VIDE A NOTIFICATION OF CANCELLATION DATED 19<sup>TH</sup> MAY 2023**

**AND GAZETTE NOTICE NO. 11016 DATED 18<sup>TH</sup> AUGUST 2023**

**AND**

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF  
KENYA 2010**

**AND**

**IN THE MATTER OF SECTIONS 4,6,7,8 AND 9 OF THE FAIR  
ADMINISTRATIVE ACTION ACT, 2015**

**AND**

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

**BETWEEN**

**JOHN GITHIRI NDINGURI**

**(Suing as Chairperson of THEOPHILUS CHURCH).....APPLICANT**

**AND REGISTRAR OF SOCIETIES.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING ON LEAVE TO APPLY**

1. The applicant John Githiri Ndinguri by his chamber summons dated 28<sup>th</sup> August, 2025 Seeks leave of this Court to institute judicial review proceedings for an order of certiorari to quash the decision of the respondents cancelling the registration of his Church named Theophilus Church, of which he is its Chairperson, which the 1<sup>st</sup> Respondent Registrar of

Societies serving under the Office of the Attorney General, the 2<sup>nd</sup> Respondent herein allegedly cancelled vide notification dated 19<sup>th</sup> May 2023 and gazetted vide Gazette Notice No. 11016 dated 18<sup>th</sup> August 2023, without giving him a hearing in 2023, on account of his failure to file annual returns as required by law.

2. The applicant also seeks leave to apply for mandamus to compel the respondents to reinstate the registration of Theophilus Church (Certificate of Registration No. 39176 & Soc 65653). He further prays for costs of the application to be provided for.
3. The application for leave to apply is predicated on the grounds set out in the statutory statement which grounds are replicated and verified by the affidavit sworn by John Githiri Ndingiri on 28<sup>th</sup> August, 2025.
4. Mainly, the applicant contends that the cancellation of the registration of his Church was premature because the time for filing returns was not due and that the Church still had a valid registration for the previous year as he had never defaulted. That since the registration of the Church in 2012, he had faithfully filed his annual returns without fail and that returns once filed last until 31<sup>st</sup> December of the succeeding year and that in this case, the Church was deregistered before 31<sup>st</sup> December 2023 yet he had up until December 2023 to file annual returns for that year when in the month of August, 2023, the Registrar cancelled the registration which in his view, was premature and in violation of his freedom of worship guaranteed under the Constitution..

5. The respondents were served with the application but they never appeared and the applicant appearing in person was allowed to argue his application subject of this ruling. In his oral submissions, he reiterated his pleadings as summarized above.

### **Analysis and Determination**

6. I have considered the application and all its accompanying documents and the oral submissions. The only issue for determination is whether the leave sought is merited.
7. For leave to be granted, under section 9 of the Law Reform Act and Order 53 of the Civil procedure Rules, an applicant must demonstrate that he has a prima facie arguable case for consideration in-depth at the substantive stage. The cause of action should not be stale or barred by statute and the court must also have jurisdiction on many fronts to entertain the matter.
8. It is important to note that the Societies Act under which the applicant's church is registered has provisions for conditions of registration and one such condition is the statutory requirement to file annual returns in order for the society to renew its annual registration status. Failure to file returns can lead to cancellation or revocation of the registration.
9. The question is, what is the remedy for the applicant in the event that the Registrar cancels its certificate of registration on account of failure to file annual returns?

10. The answer lies in the Societies Act itself and I proceed to examine those relevant provisions.

11. Section 15 of the Societies Act deals with appeals and it states:

**15. Appeal from order of refusal, cancellation or suspension**

**(1) Any society aggrieved by the Registrar's refusal to register it, or by the cancellation or suspension of its registration under section 12 may**

—

**(a) in the case of a political party, appeal to the High Court within thirty days of such refusal, cancellation or suspension; or**

**(b) in the case of any other society, appeal to the Cabinet Secretary within thirty days of such refusal, cancellation or suspension and the Cabinet Secretary shall consider, determine and communicate his decision on the appeal within ninety days of the appeal.**

**(2) A society aggrieved by the decision of the Cabinet Secretary under subsection (1)(b) may appeal to the High Court within thirty days of the decision.**

**(3) Notwithstanding the provisions of subsection (1) of section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the proviso to section 4(1), lodges an appeal under subsection (1) of this**

*section, such society shall not, pending the decision on the appeal, be an unlawful society.*

12. The society subject of these proceedings is a Church and therefore it falls within the provisions of section 15(1) (b) and (c) of the Societies Act as reproduced above. The applicant is aggrieved by the cancellation of the registration of the certificate for the Society. He claims that he appealed but his appeal was dismissed. If that be the case, the avenue for ventilating his grievance is clearly spelt out in section 15 as reproduced above. He is not remediless.

13. It is trite law that where there is an established statutory procedure for resolving of disputes, parties must adhere to that procedure and not use what appears to be shortcuts and therefore convenient to them, see **Karume v National Assembly, Ndiara Enterprises Case.**

14. Additionally, section 9(2) of the Fair Administrative Action Act clearly bars this Court from entertaining judicial review proceedings, where there is an effective alternative internal or appeal mechanism provided for resolution of the subject dispute.

15. Thus, even where alleged violation or threatened violation of constitutionally guaranteed rights are concerned, the applicant must first examine whether there are other adequate remedies that are efficient before approaching the court by way of judicial review remedy. This principle is anchored in the

Constitution, the supreme law of the land at Article 159(2) (c) which mandates the Courts in the exercise of judicial authority, to promote alternative dispute resolution mechanisms.

16. Section 9 (2) of the Fair Administrative Action Act is a codification of the doctrine of exhaustion of administrative remedies. Applying the said doctrine, the Court of Appeal in the case of **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR**, stated that the requirement is in conformity with Article 159 of the Constitution as it encourages the use of alternative dispute resolution mechanisms. The Court held as follows:

*“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews... as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts.”*

17. For the above reasons, a Court before which an application for judicial review is placed often satisfies itself, before seizing jurisdiction, that the parties seeking its intervention have first exhausted the prescribed statutory

mechanisms for redress. In the case of **Aly Khan Satchu v Capital Markets Authority (2019) eKLR**, Mativo, J) (as he then was), quashed the decision of the Capital Markets Tribunal on the basis, *inter alia*, that the Tribunal that rendered the impugned decision was not properly constituted and that the applicant had not satisfied the exceptional circumstances requirement under section 9 (4) of the Fair Administrative Action Act. Further, in recognizing that the Capital Markets Act (Cap. 485A) Laws of Kenya provides for an express dispute resolution mechanism, the Court remitted the dispute back to a properly constituted Capital Markets Tribunal.

18. Noteworthy, a person aggrieved by the decision of an administrative body prescribed by statute to hear a dispute has recourse to pursue redress in the High Court, either as a consequence of a provision of the statute providing for an appellate procedure to the High Court, or in exercise of the Constitutional right of access to justice.
19. An appeal procedure under statute ordinarily clothes the High Court with appellate jurisdiction which is often confined to determining the propriety of both the decision-making process as well as review of the merits of the decision itself. However, judicial review is not synonymous with an appeal.
20. In the instant case, the statute regulating societies is clear on the mode of challenging decisions of the Registrar where the decision in question involves refusal, cancellation or suspension of a society's registration certificate and that mode is by way of appeals first to the Cabinet Secretary

within the stipulated timeframe and appeals from the decision of the Cabinet Secretary go to the High Court by way of appeal.

21. Judicial review is a special procedure provided for in law and is a remedy under Article 23 of the Constitution. However, it is not an appeal mechanism. Judicial review is a remedy for violation of fair administrative action where there is no other alternative remedy provided for in law or where the law specifically mandates judicial review as the remedy.

22. Courts have, have recognized exceptions to the doctrine of exhaustion of remedies, which exceptions are also provided for under the Section 9 (4) of the Fair Administrative Action Act. This section provides that in exceptional circumstances, and on application by a party, the Court may exempt such party from the obligation of exhausting alternative remedies if the Court considers such exemption to be in the interest of justice. The exceptional circumstances are not outlined in the Act, thus leaving the Courts to exercise discretion when faced with an application for exemption.

23. In **Krystalline Salt Limited v Kenya Revenue Authority [2019] eKLR** the High Court expressed its view on the definition of “exceptional circumstances” as follows:

*“What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Thus, where an internal remedy would not be effective and/ or where its pursuit would be futile, a court may permit a litigant to*

*approach the court directly. So too where an internal appellate tribunal has developed a rigid policy which renders exhaustion futile.*

*The Fair Administrative Action Act does not define ‘exceptional circumstances. However, this court interprets exceptional circumstances to mean circumstances that are out of the ordinary and that render it inappropriate for the court to require an applicant first to pursue the available internal remedies. The circumstances must in other words be such as to require the immediate intervention of the court rather than to resort to the applicable internal remedy.’”*

24. In **Republic v Council for Legal Education ex parte Desmond Tutu Owuoth [2019] eKLR**, the High Court stated that in determining whether an exception to internal remedies should be granted in allowing parties to institute judicial review proceedings, the Court must look at whether the internal appeal mechanism available to a party under statute would serve the ends of justice.

25. The Court in the above case had previously stated that the doctrine of exhaustion of remedies would not be applied where a party may not have an audience before the forum created, or the party may not have the quality of audience before the forum created which would be proportionate to the interests the party wishes to advance within the suit.

26. Therefore, Courts are obliged to examine whether the dispute resolution mechanism established under the statute in question is competent in the

circumstances of the case to serve the interests of justice, or whether it warrants a party applying for an exemption from the doctrine of exhaustion of remedies.

27. Of interest, when faced with an application under section 9(4) of the Fair Administrative Action Act, Courts have considered the practicality and efficacy of the statutory remedies as well as the nature of the issue at hand when making their decision. For instance, in **Republic vs. Kenya Revenue Authority, Commissioner of Investigation and Enforcement Department Ex-parte Centrica Investments [2019]** it was held that:

*“In view of my analysis and determination of the issue under consideration herein above, it is my conclusion that the ex parte applicant ought to have exhausted the available mechanism before approaching this court. First, I find that this case offends section 9 (2) of the Fair Administrative Action Act Second, the ex parte applicant has not satisfied the exceptional circumstances requirement under section 9 (4) of the Fair Administrative Action Act. Third, it is a requirement under the above sections that an applicant applies for exemption. The ex parte applicant never applied for an exemption, hence its argument that the Tribunal is not sitting or is not properly constituted cannot assist. As stated earlier the provisions of section 9 of the Fair Administrative Action Act cited above are expressed in mandatory terms. As observed*

*earlier, the ex parte applicant never applied for exemption under section 9 (4) discussed herein above.”*

28. In this case, the Societies Act specifically provides for the mode of challenging decisions of the regulator, by way of appeal. An appeal mechanism looks at the merits of the decision being challenged whereas judicial review examines legality and procedural propriety of the decision-making process. For that reason, this court would not dare assume jurisdiction to determine the dispute in question through judicial review proceedings because the appeal mechanism provided for under the Act is the most effective and ideal mode of challenging the impugned decision.

29. Additionally, a party who wishes to approach the court by way of judicial review must act with alacrity and not come to court after an inordinate delay. Expedition is key in judicial review.

30. Again, a party must be aware that where the period for appeal has lapsed, judicial review cannot remedy that situation. The party has the opportunity to approach the relevant body to seek extension of time or seek enlargement of time from the High Court for extension of time for filing an appeal and not to run to the Judicial review Court.

31. In this case, this court observes that the cancellation of the applicant's registration certificate was done in August 2023. The applicant has come to this court over two years later meaning, the Church has been operating

illegally. If that were not the case, why did he take all that time to challenge the cancellation? All Judicial proceedings abhor delay.

32. Even in judicial review proceedings, there is a period within which one can challenge the administrative decision, depending on whether it is a judgment, order or proceedings. It is six months in the case of the above, under the Law Reform Act and Order 53 of the Civil procedure Rules. In all other cases not brought under the new 2024 Fair Administrative Action([procedure) Rules, proceedings must be brought within reasonable time.

33. For all the above reasons, I find that there is no arguable prima facie case before this court for grant of leave to challenge the respondent's decision, there being a statutory appeal mechanism provided for under section 15 of the Societies Act for challenging such decisions. Accordingly, judicial review is not the correct forum for resolution of the dispute involving cancellation of a Society's registration certificate by the Registrar of Societies.

34. In the end, I find the applicant's chamber summons for leave to apply for judicial review orders is devoid of substance before this court and the same is hereby dismissed.

35. As the respondent did not participate in these initial proceedings, I order that there shall be no orders as to costs.

36. This file is closed.

**Dated, Signed and Delivered at Nairobi this 2<sup>nd</sup> Day of December, 2025**

**R. E. ABURILI**

**JUDGE**

ORIGINAL