



**Republic v Registrar of Society & another; Warutere (Interested Party);
Barasa & 12 others (Ex parte Applicants) (Judicial Review Application
E006 of 2024) [2026] KEHC 6073 (KLR) (4 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION E006 OF 2024**

JM NANG'EA, J

MAY 4, 2026

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF SOCIETY 1ST RESPONDENT

KENYA CHURCH OF CHRIST 2ND RESPONDENT

AND

PETER WARUTERE INTERESTED PARTY

AND

GEOFFREY BARASA EX PARTE APPLICANT

JEREMIAH ZABLON EX PARTE APPLICANT

BENJAMIN ATELA EX PARTE APPLICANT

JOHN ARUPIA PAPA EX PARTE APPLICANT

JOSEAH KIMETO EX PARTE APPLICANT

JOHANA KAMAU EX PARTE APPLICANT

MOSES IKWARA EX PARTE APPLICANT

JANE IMAI EX PARTE APPLICANT

VIVIAN EMILY EX PARTE APPLICANT

DORIKA OMUSE EX PARTE APPLICANT

DEDAN OKIROR EX PARTE APPLICANT

ZIPPORAH BARASA EX PARTE APPLICANT



JUDGMENT

1. Leave was on 27th March 2024 granted to the Ex-parte Applicants to bring Judicial Review proceedings for orders in the nature of the prerogative writs of certiorari and prohibition. Pursuant to the grant of leave, they brought a Notice of Motion dated 5th April 2024 expressed to be filed under Section Order 53 of the Civil Procedure Rules 2010. The orders sought are as hereunder;-
 1. An order of Certiorari quashing the decision of the Registrar of Societies Nairobi registering the Interested Party as the sole trustee of the 2nd Respondent.
 2. An order of prohibition restraining the Interested Party from solely running the affairs of the Respondent.
 3. That the costs of Application is provided for.
2. The Application is based on grounds set out on the body thereon and further supported by the 1st Ex parte Applicant's affidavit purported to have been sworn on 5th April 2024. He contends in a nutshell that the Interested Party illegally short changed them by removing them as the Nakuru trustees of the 2nd Respondent and by amending *the constitution* of the latter unlawfully and un-procedurally since the required approval threshold was not achieved. The Ex- parte Applicants further lament inter alia that they have been locked out of the Church they had "built from scratch with the help of friends."
3. The Application is also supported by a Statutory Statement and affidavit in verification of facts as required, which reiterate the averments.
4. The Interested Party and the 2nd Respondent oppose the Application through an affidavit in reply sworn by the Interested Party. Stating that he is the secretary of the 2nd Respondent, the Interested Party avers that the former is a society registered under the *Societies Act*. He faults prayer (1) of the Motion for insinuating that he is the 2nd Respondent's sole trustee, contending that the Nakuru local Church does not have its own trustees but falls under the bigger umbrella of the Church's National Office.
5. The Interested Party further avers that he was lawfully elected as the 2nd Respondent's Secretary on 17th December 2020 during elections conducted by the National Office. While seeming to concede that the 2nd Respondent's Constitution was indeed amended, the Interested Party claims that the amendment followed a long consultative process involving congregants of all their Churches in the country. According to the Interested Party, the amendment did not only affect the Nakuru Church but all the 2nd Respondent's Churches across the country since local Churches do not have Constitutions of their own but are governed by *the Constitution* of the Head Office. Requisite notices of a general meeting to amend *the Constitution* was said to have been duly given. A total of 2,362 members of the Church voted to amend *the Constitution* which was thereafter adopted. The votes are said to meet a two thirds (2/3) of the present members which is the Constitutional threshold for approval of amendment of the Church's Constitution.
6. The Interested Party further contends that despite receiving the notices of the meeting, the Ex- parte Applicants chose not to attend and/or participate. It is alleged that the Ex- parte Applicants are only driven by a desire to take over the Church's land and are further accused by tormenting chaos before, prompting complaints to the police.



7. The Applicants' put in a Supplementary Affidavit reiterating their affidavit evidence. The Interested Party's affidavit in reply is impugned for purporting to be a reply by the 2nd Respondent as well yet the latter had not given a written authority in that regard. The election of the Interested Party as Secretary is questioned because he had been "dis-fellowshipped" and thus ineligible for election to any office in the church.
8. Contrary to the Interested Party's position, the Applicants insist that their Nakuru church is autonomous and can run its affairs and own property in its own name.
9. The 1st Respondent has not replied to the Application.
10. Learned Counsel representing the Ex-parte Applicants as well as the Advocates for the Interested Party and the 2nd Respondent filed written submissions which I have perused.
11. Relying on the Supreme Court decision in *Peninah Nandako Kilishwa vs Independent Electoral and Boundaries Commission & 2 Others* (2015) eKLR, Counsel for the ex-parte Applicants submit that Judicial Review always concerns itself with the process that conveys the ultimate decision and not the merits of the decision. It is contended that the 1st Respondent's decision to recognize and register a revised Constitution of the 2nd Respondent and registering the Interested Party as the latter's Secretary was illegal, irrational and procedurally defective. As the 1st Respondent did not react to the Application, the Ex-parte Applicants conclude that it does not oppose the same, (see *Karuru Munyororo vs Joseph Ndumia Murage & Another*, Nyeri HCCC No. 95 of 1988) cited in support of this position).
12. The Ex-parte Applicants further reference Article 5(g) of the 2nd Respondent's Constitution which provides that;

"National Office Bearers have no authority to institute law suits on behalf of the society without approval by a majority of members in a special or annual general meeting".
13. The Church's Annual General Meeting was not properly convened and lawful threshold achieved, according to the Ex-parte Applicants.
14. On their part the Interested Party and the 2nd Respondent fault the Ex-parte Applicants for bringing a defective Application. Counsel allude to Order 53 Rule 7 Civil Procedure Rules 2010 which enacts as follows;

"In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed the Applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court."

It is pointed out that the impugned decision of the Respondents has not been exhibited contrary to the requirement of the law.
15. The 2nd Respondent and the Interested Party also contend that the Ex-parte Applicants contest the Interest Party's appointment as Trustee and not as Secretary of the 2nd Respondent.



16. On the basis of Counsel submissions and additionally as held in Republic vs Kenya Revenue Authority Ex-parte Yaya Towers Limited (2008) eKLR;

“Judicial Review is concerned with the decision making process and not with the merits of the decision itself.”
17. Is the Application merited? Whereas the Ex-parte Applicants dispute purported registration of the Interested Party by the 1st Respondent as the sole trustee of the 2nd Respondent, their contentions in the Application relate to the Interested Party’s election or appointment as Secretary of the 2nd Respondent. The Application in this regard therefore seems to be at variance with evidence in support thereof.
18. The onus was on the Ex-parte Applicants to show that the Interested Party was unlawfully irregularly appointed as sole Trustee of the 2nd Respondent. There is no evidence in proof of the claim.
19. Besides the Application is defective as pointed out by the Interested Party and 2nd Respondent since the impugned decision of the Respondents appointing and/or registering the Interested Party as trustee is not exhibited contrary to the provisions of Order 53 Rule 7 of the Civil Procedure Rules 2010. An order of certiorari as prayed does not commend itself to the court in the circumstances.
20. As there is no evidence that the Interested Party is the sole trustee or was unlawfully appointed as the only trustee of the 2nd Respondent, an order of prohibition as prayed is not also warranted.
21. The upshot is that the Application is dismissed with no order as to costs.

J. M. NANG’EA - JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 4TH DAY OF MAY , 2026.

In the presence of:

Ex-parte Applicants’ Advocate, Mr Ouma.

1st Respondent, Absent

2nd Respondent and Interested Party’s Advocate, Mr Ndichu.

Court Assistant (Mr Ng’eno).

J.M. NANG’EA - JUDGE.

