



**Sian & another v Registrar of Societies & another (Sued as the  
Officials of the East African Namdhari Sangat) (Civil Appeal  
197 of 2017) [2022] KECA 1059 (KLR) (7 October 2022) (Judgment)**

Neutral citation: [2022] KECA 1059 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 197 OF 2017  
W KARANJA, HM OKWENGU & F SICHALE, JJA  
OCTOBER 7, 2022**

**BETWEEN**

**SATVINDER SINGH SIAN ..... 1<sup>ST</sup> APPELLANT**

**KEWAL SINGH FLORA ..... 2<sup>ND</sup> APPELLANT**

**AND**

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

**MANJEET SINGH BHULLER, NARINDER SINGH ROOPRA, DARSHAN  
SINGH CHANA ..... 2<sup>ND</sup> RESPONDENT**

**SUED AS THE OFFICIALS OF THE EAST AFRICAN NAMDHARI SANGAT**

*(Being an appeal against the Ruling of the High Court of Kenya at Nairobi (Odunga,  
J) delivered on 18th November 2015 in HC Misc. Application No. 178 OF 2015)*

**JUDGMENT**

1. This appeal arises from a Ruling of the High Court (Odunga, J (as he then was)), striking out an application in which Satvinder Singh Sian and Kewal Singh Flora (appellants), had sought leave to apply for orders of certiorari against the 1<sup>st</sup> respondent Registrar of Societies (Registrar), to quash the decision of the Registrar made on December 31, 2014 registering the 2<sup>nd</sup> respondents as the bona fide officials of East African Namdhari Sangat (the Society).
2. The appellants who are dissatisfied with the ruling, have lodged an appeal against the decision faulting the Judge: in finding that there was no decision made by the Registrar capable of being quashed; in failing to appreciate that the registration of the 2<sup>nd</sup> respondent as the bona fide officials of the society after the appellants had raised an objection to the registration amounted to a decision; in striking out the appellants' application despite finding that the 2<sup>nd</sup> respondents' conduct and management of



the society left a lot to be desired; and in remitting the matter to the Registrar when the court had jurisdiction and powers to resolve the dispute.

3. The Ruling arose from an application that was filed by the appellants in which the appellants complained that contrary to the Society's Constitution which provides for the holding of elections annually through an annual general meeting, the 2<sup>nd</sup> respondents had been in office for the last 25 years by frustrating any efforts to convene an annual general meeting; that no annual audited accounts had been taken for the said period; and that the appellants' complaint to the Registrar that the 2<sup>nd</sup> respondents who held themselves as the bona fide officials were in office illegally, had not elicited any action.
4. The chamber summons was amended by the appellants on August 6, 2015, as they contended that following the filing of their initial application, the 2<sup>nd</sup> respondents purported to hold elections on July 12, 2015 without any proper notification to members or following the proper procedure, that despite an objection raised by the appellants objecting to the registration of the purported new officials, the Registrar purported to register the 2<sup>nd</sup> respondents as the newly elected officials, hence their application for leave to apply for orders of certiorari against the 1<sup>st</sup> respondent.
5. The Registrar opposed the application through a replying affidavit sworn by Joseph L. Onyango (Onyango), the Deputy Registrar-General and Senior Principal State Counsel in charge of Societies. He deponed that according to the records of the Society held in the Registrar's office, change of officials was last made in 2006 and the last general meeting was held on 12<sup>th</sup> July 2015, but no elections took place. He explained that the Registrar received the information regarding the Society in good faith as the Registrar's office does not interfere with the affairs of any Society, and the election of officials is done by members of the Society in accordance with their Constitution.
6. The 2<sup>nd</sup> respondents objected to the application by raising a preliminary objection, contending that the application was fatally defective and incompetent as the appellants had not obtained any leave for judicial review proceedings, and the court therefore, lacked jurisdiction to entertain the matter. Secondly, a similar application previously filed by the appellants in HCC Misc. Application No. 139 of 2015, had been struck out by the High Court.
7. In his judgment, the learned Judge overruled the preliminary objection holding that, the limitation of 6 months does not apply to the decision of the Registrar of Societies, but in exercising its judicial discretion as to whether to grant leave, the court could take into account any delay in making the application for leave. In addition, according to the Registrar, the last change in the records was in the year 2006 which was 9 years ago, and the appellants had not exhibited any documents to show that there was any decision made by the respondents thereafter. In particular, nothing was exhibited to show that there was any decision made on December 31, 2014 which could be quashed. The learned Judge concluded as follows:

“ 33. What comes out clearly from the foregoing is that the grant of leave to commence judicial review proceeding is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to show to the court that he has a prima facie arguable case for grant of leave. Whereas he is not required at that stage to go into the depth of the application, he has to show that he has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile.

.....



35. In this case, there is completely no iota of evidence with respect to the existence of a decision made on 31<sup>st</sup> December 2014. The failure to satisfactorily prove that there exists a decision capable of being quashed, in my view, shows that the applicants have failed to prove that they have established a prima facie case. Whereas the manner in which the Society's management is being conducted leaves a lot to be desired, there exists options under the Society's Act which the applicants can resort to in order to compel the respondents to invoke its discretionary powers under the Act rather than by seeking to quash a non-existent decision.
36. It follows that this application is not merited due to the delay involved and due to failure to satisfy me that there exists a prima facie case.”
8. In support of the appeal, the appellants filed written submissions in which they argued, inter alia, that the fact that the Registrar registered the 2<sup>nd</sup> respondents as bona fide officials of the Society merely on presentation of returns by the said persons, despite the appellants' complaints, amounted to a formal decision by the Registrar, capable of being quashed. They asserted that any formal action by a public authority affecting the affairs of any person is capable of being quashed by an order of certiorari.
9. The appellants referred the Court to a letter dated April 21, 2015 which in their view, showed that the 2<sup>nd</sup> respondents were confirmed as the bona fide officials of the Society on 31<sup>st</sup> December 2014. The appellants faulted the learned Judge for failing to take this letter into account. They argued that the learned Judge abdicated his duty by referring the matter back to the Registrar who had retained the 2<sup>nd</sup> respondents as bona fide officials of the Society without following lawful procedure. They maintained that in light of the comments made by the learned Judge regarding the conduct of the 2<sup>nd</sup> respondents, there was sufficient material demonstrating a prima facie case upon which the learned Judge should have granted leave to apply for the orders of judicial review sought, and urged that the appeal be allowed.
10. The appellants have filed submissions in support of the appeal emphasizing the above grounds. The respondents did not file any submissions nor did they attend Court for the hearing of the appeal.
11. This matter is before us on a first appeal. The duty of this Court on first appeal is now well settled, having been restated by this Court in many decisions. (See *Peters v Sunday Post Limited* (1958) EA 424; *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* (Civil Appeal No. 161 of 1999) [2013] eKLR). The Court is mandated to re-examine, evaluate subject the whole of the evidence that was before the trial court to a fresh and exhaustive scrutiny, and make its own conclusions, as to whether the appellants' application ought to have been granted. The matter before the trial court having been an application which was determined by way of affidavits and submissions, the trial court like this Court does not have the advantage of seeing and hearing the witnesses.
12. We have carefully perused the record before us and the submissions made by the appellants. We have identified the following two issues for our determination. That is, whether there was a competent application before the court in terms of the decision sought to be quashed, and whether the High Court exercised its discretion judiciously in striking out the application.
13. The appellants' motion which was filed on June 10, 2015 and amended on August 6, 2015 sought to quash the decision made by the Registrar on December 31, 2014. The Registrar denied making any decision on December 14, 2014, but the appellants relied on a letter dated April 21, 2015 as confirming this fact.



14. That letter which was addressed to the appellants' advocate stated as follows:

Dear Sir,

RE: SOCIETIES ACT (Cap 108) and Soc/903 East African Namdhari Sangat

Your letter dated 20<sup>th</sup> March 2015 refers.

Below are the names of the above named society's office bearers as per 31<sup>st</sup> December 2014

Chairman Manjeet S. Bhuller Secretary Narinder S. Roopra Treasurer Darshan S. Chana

Yours faithfully Signed

Joseph Onyango

Deputy Registrar of Societies

15. The above letter does not confirm that the Registrar made any decision on 31<sup>st</sup> December 2014, nor does it confirm that there was any registration of the Society officials done on December 31, 2014. The letter which appears to be a response to an inquiry is simply confirming who the registered officials of the Society were as at December 31, 2014. The Registrar asserted that according to the information availed to him, although the Society held an AGM in 2014 no elections were carried out. We find that there is nothing to contradict the Registrar's assertion nor was there any evidence of any decision having been made by the Registrar on December 31, 2014.

16. The learned Judge properly addressed this issue and in particular, the obligation the applicant had of establishing a prima facie case upon which leave to apply for orders of judicial review could be predicated. As stated by Waki, J (as he then was) in *Republic vs. County Council of Kwale & Another ex Parte Kondo & 57 Others* Mombasa [1998] 1KLR (E&L) a decision referred to by the learned Judge:

“... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially.”

17. In this case, the appellants failed to establish that the Registrar made any decision determining their rights or that he failed to act judicially. The appellants may have raised an objection to the registration of new officials of the Society, but the returns submitted to the Registrar showed that although an Annual General Meeting of the Society was held, no elections were carried out. The officials, therefore, remained the same. In the absence of a decision made by the Registrar on December 31, 2014 that could be subject of the order of certiorari, the learned Judge cannot be faulted for striking out the appellants' application for leave, as the same was not properly anchored.

18. For these reasons, we find no substance in this appeal. It is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**F. SICHALE**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

