



REPUBLIC OF KENYA



**Kafa & another v Registrar of Societies; Elema & 6 others (Interested Parties) (Judicial Review Application E131 of 2024) [2025] KEHC 5042 (KLR) (Judicial Review) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5042 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E131 OF 2024**

**RE ABURILI, J**

**APRIL 28, 2025**

**BETWEEN**

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

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

**AND**

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

**AND**

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

**HASSAN TEPO ABODO ..... 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**

**RULING**

1. Pursuant to leave granted by the Court on 23<sup>rd</sup> July 2024, the applicants filed a notice of motion dated 5<sup>th</sup> August 2024. In the motion, the applicants seek an order of Certiorari quashing the respondent's decision to adopt the proposed change of officials as per the list presented by the interested parties and an order of Mandamus compelling the respondent Registrar of Societies, to reinstate them as the bonafide officials of the Marsabit Sakuye Council of Elders.



2. The dispute stems from what the applicants' term as an illegal and unprocedural change of officials of the Marsabit Sakuye Council of Elders by the respondent. It is the applicants' case that the respondent went ahead to undertake the said changes to the records of officials despite the same being a pending issue for determination in ELCJR No. E007 of 2023.
3. Opposing the application, the respondent filed the preliminary objection dated 5<sup>th</sup> September 2024 which is the subject of this ruling.
4. The preliminary objection raises the ground of locus standi. The respondent contends that the applicants did not have the capacity to institute the instant suit and that the same is contrary to Section 41(2) of the Societies Act.
5. The respondent also contends that the applicants disregarded Section 18 of the Societies Act which sets out the procedure for resolving an impasse of officials in a Society. According to the respondent, this Court lacks jurisdiction to entertain the instant matter.
6. The respondent's preliminary objection was canvassed by way of oral submissions on 3<sup>rd</sup> March 2025.
7. In his oral submissions, Mr. Mukamba counsel for the respondent submitted that the applicants had not produced anything to show that they were appointed to represent Marsabit County Sakoye Council of Elders. It was his submission that Section 18 of the Societies Act gives the Registrar jurisdiction to deal with such disputes.
8. Further, that the applicants failed to exhaust internal mechanisms before coming to court. He placed reliance on the case of Republic v Registrar of Societies & another Ex-parte Linus Kathera & another [2018] KEHC 8088 (KLR) where the court is said to have emphasised that the dispute resolution mechanism under Section 18 of the Societies Act must first be exhausted. He also relied on the Court of Appeal decision in Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR). Mr. Mukamba also submitted that the issue of the legitimacy of the officials of the Society was within the mandate of the respondent.
9. Mr. Opini counsel for the interested parties supported the preliminary objection raised by the respondent and submitted that pursuant to the Society's constitution, elections are held every 5 years. The applicants, it was urged became officials in 2012 and that as such, their term ended in 2017 as they were never re-elected.
10. He further submitted that clause 2 of the Society's constitution provides for resolution of disputes yet there was no evidence of convening the meeting to resolve the dispute before coming to court. According to counsel for the applicants, the instant case is premature.
11. Opposing the preliminary objection, Mr. Mwaniki counsel representing the applicants submitted that the preliminary objection as drawn is not on a pure point of law and that it therefore ought to fail.
12. It was submitted that there is reference to the affidavit of the applicants and the letter to the Registrar and that the court is being asked to make a finding on factual matters which include whether there was an election or not. Further, that the court is required to investigate the stated internal resolution mechanisms. Counsel for the applicants also submitted that there was need for evidence of whether the Registrar formed an opinion as to whether a dispute existed between the parties.
13. Counsel also submitted that the applicants are challenging the decision to register other officials as officials of the Society yet there were bona fide officials and therefore this court has jurisdiction to find whether or not the decision was right or wrong.



14. The letter to the Registrar according to counsel was never responded to. Further, that the Registrar has not adduced evidence of who the bona fide officials of the Society are. Mr. Mwaniki submitted that the Preliminary objection is misplaced.
15. Mr. Opini in his rejoinder submitted that the applicants have not provided any documents to show that they are the bona fide officials through elections after 5 years from 2012. Further, that it is upon them to show what steps they have taken to resolve the dispute.

### **Analysis and Determination**

16. I have considered the arguments for and against the preliminary objection raised by the respondent and supported by the interested parties. The law on preliminary objections was settled in the locus classicus case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where the Court held that a preliminary objection must raise a pure point of law, argued on the assumption that all pleaded facts are correct. It cannot be raised where facts must be ascertained or where discretion is involved. The Court warned against the improper use of preliminary objections, which only serves to increase costs and confuse issues.
17. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* [2014] eKLR reiterated that a preliminary objection is in the nature of a demurrer; it must be strictly legal in nature, argued on the basis that all facts are undisputed. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
18. In *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR, the Supreme Court emphasized that a legitimate preliminary objection serves to shield parties and the court from unnecessary expenditure of time and resources. It should not be misused as a tool to prematurely determine substantive disputes that require full judicial consideration.
19. Upon considering the grounds raised and the submissions of counsel, I am not persuaded that the objection raises pure points of law. Whether the applicants have locus standi depends on contested facts regarding their status as officials, the validity of elections and the provisions of the Society's constitution. Likewise, the issue of whether internal mechanisms were exhausted under Section 18 of the *Societies Act* is not self-evident. It requires factual inquiry into whether a dispute existed, whether the Registrar was duly notified, whether the Registrar formed an opinion, and whether the Applicants attempted to resolve the matter internally.
20. Section 18 of the *Societies Act* provides that:
  18. Disputes as to officers
    - (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.

21. The matters raised in this case are not clear-cut points of law capable of disposal by way of a preliminary objection as defined in the Mukisa Biscuit Case, without reference to evidence. The Preliminary Objection is therefore found to be misconceived and fails to meet the threshold set out in Mukisa Biscuit supra.
22. Accordingly, I decline to uphold the Preliminary Objection dated 5/8/2024. I dismiss it. I shall not award any costs to any party as the main dispute is still pending determination. Directions on the hearing of the application to follow.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2025**

**R.E. ABURILI**

**JUDGE**

