



**M’Ikunyua & another v Registrar of Societies; Wanyoike & 5 others  
(Interested Parties) (Judicial Review Application E063 of 2024)  
[2025] KEHC 12048 (KLR) (Judicial Review) (15 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12048 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E063 OF 2024  
RE ABURILI, J  
AUGUST 15, 2025**

**BETWEEN**

**FRANCIS KIRIMU M’IKUNYUA ..... 1<sup>ST</sup> APPLICANT**

**PETER KIOKO NDIKU ..... 2<sup>ND</sup> APPLICANT**

**AND**

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

**AND**

**MARGARET NJERI WANYOIKE ..... INTERESTED PARTY**

**JOYCE NYAKERI ..... INTERESTED PARTY**

**MICHAEL NGUGI KARANJA ..... INTERESTED PARTY**

**JAMES NJOGU ..... INTERESTED PARTY**

**CHALRES MWANGI NGUMI ..... INTERESTED PARTY**

**PETER NDUNG’U MUTIGA ..... INTERESTED PARTY**

**JUDGMENT**

1. The facts of this case are that the exparte applicants claim to be duly elected officials of Zimman Resettlement Scheme Society which is a society registered under the [Societies Act](#) on 2<sup>nd</sup> December 2003 under Registration number 23044 and later the name was changed to Zimman Settlement Scheme Society on 15<sup>th</sup> December, 2028 under file number SOC/44868.



2. Further, that in accordance with Clause 4(a) of the Society's constitution, officials were elected for a five-year term of office at the general meeting and that in 2017, the following officials were elected as Chairman, Vice Chairman, Secretary and Treasurer respectively: Francis Kirima M'I Kunyua John Wainaina, Peter Ndung'u Mutiga and George Oluoch Omondi.
3. The position of officials is said to have been confirmed by the Registrar of Societies. The applicants assert that no elections have been held since 2017 and that owing to the intermeddling of the Society's affairs by the respondent, the elections were not held in 2022 as was expected.
4. The applicants lament that the Registrar purported to impose on the society officials by a letter dated 4<sup>th</sup> September, 2020 and has refused to issue the Society's legitimate officials with a search and extract of officials of the society, thereby allegedly exhibiting its partisan conduct, which conduct made the applicants to seek the Court's intervention vide petition 160 of 2020 to compel the respondent to issue search and extract of the society confirming the office bearers.
5. It is alleged that while the said petition was pending, conservatory orders were issued barring the interested parties from dealing with the society's register and records but that despite those orders, the interested parties purported to hold elections in December 2023 in contempt of those court orders and that the respondent then went ahead to recognize the interested parties as officials of the Society vide the letter dated 23<sup>rd</sup> January 2024, yet the petition had not been determined hence, the interested parties are said to have been illegitimately recognized.
6. According to the applicants, the refusal by the respondent to issue them with a search and extract of officials was intended to deny them an opportunity to challenge the recognized officials who according to the applicants, are illegitimately in office yet, in the applicant's view, the interested parties are officials of a parallel society known as Githu Zimma Society registered on 14<sup>th</sup> November, 2011 vide registration number 29494.
7. Further, that the letter of 4<sup>th</sup> September 2020 which imposed some of the interested parties as officials of the Society is intended to allow them to take over affairs including land and bank accounts of the society and erodes public confidence in the rule of law as it exposes the society to vagaries of mischief makers and was made in excess of the respondent's mandate and in clear breach of the court orders of 8<sup>th</sup> December 2020.
8. The respondent filed a replying affidavit sworn by Maria Goretti Nyariki on 20<sup>th</sup> June, 2024 opposing the application. The deponent who introduces herself as Registrar of Societies denies that the applicants' deponent is the Chairman of the subject society and annexes the notification of change of officials dated 4<sup>th</sup> September 2020 and a confirmation letter dated the same day. She asserts that the said notification of change of officials was subject of litigation vide Nairobi HC JR E1109 of 2020 Republic v Registrar of Societies Exparte Francis Kirima M'I Kunyua and another as shown by copy of annexed judgment of Ngaah J in which the learned Judge struck out the matter which was prosecuted on a withdrawn application.
9. The respondent deposes that after the dismissal of the matter stated above, the applicants herein did not appeal against the decision and that the parties in the petition 160 of 2020 are the same as the parties to this application hence the applicants should not be seen to raise issues with the Registrar's letter of 4<sup>th</sup> September, 2020.
10. On the prayers sought, the respondent deposes that the same are untenable since the Society is regulated by the Societies Act and its Constitution at Clause 4 which provides for the term of office bearers to be



- five years and that the society held an annual general meeting on 30<sup>th</sup> December, 2023 and elected its office bearers hence the confirmation letter of 23<sup>rd</sup> January, 2024.
11. Further, that under section 29 of the Societies Act, societies are mandated to hold elections annually to accord members the chance to deliberate on some mandatory issues including finances and elections of office bearers and trustees hence the respondent could not impose officials on the society.
  12. The respondent also asserts that its role was to receive documents, verify approve and issue confirmation letter on the elected officials.
  13. That the court order in petition 160 of 2020 did not in any way bar the holding of a general meeting and electing office bearers of the society.
  14. That the respondent being a neutral party who did perform her statutory duty and the office bearers having already filed annual returns for 2023-year, mandamus cannot issue, noting that as per the order in petition 160 of 2020, the respondent did issue a search or extract. That the Societies Act at section 29 overrides the society's Constitution as far as annual general meetings are concerned.
  15. The respondent maintains that it acted lawfully hence these proceedings should be dismissed.
  16. The exparte applicants in a bid to respond to the replying affidavit filed what they consider to be a further affidavit signed by the 1<sup>st</sup> applicant on 31<sup>st</sup> July 2024 but not commissioned or taken on oath and annexing several other documents. This fact was brought to the attention of the applicants' counsel at the hearing but no effort was made to correct the situation.
  17. The interested parties filed a replying affidavit sworn on 3<sup>rd</sup> July 2024 by Michael Ngugi Karanja the 3<sup>rd</sup> interested party on behalf of the other interested parties.
  18. According to the interested parties, the 1<sup>st</sup> exparte applicant is not the chairman of the society in issue. He deposes that according to the society's constitution, the officials were to hold office for 3 years from 2017 and that therefore there having been no elections held after three years, the applicants cannot claim the birthright to remain officials of the society without any General meeting being held to reelect them into office.
  19. That the elections were held in 2020 at the special meeting which was procedurally held with a 21-day notice issued for 27<sup>th</sup> August 2020 and attended by more than two thirds of the members of the society and that the applicants despite being invited, failed to attend the said meeting.
  20. That at the said special meeting, the conduct of the 1<sup>st</sup> applicant was extensively discussed regarding his handling of the society's finances among other criminal activities upon which the interested parties were elected as office bearers after which the notification was sent to the respondent for change of officials and on 3<sup>rd</sup> September 2020, the society wrote to the respondent asking for extract of the register with details of the officials to enable them open a bank account and on 4<sup>th</sup> September 2020, the registrar issued an extract confirming the said officials.
  21. That it was upon the said confirmation of officials that the applicants filed JR E1099 of 2020 on 11<sup>th</sup> September 2020 seeking to quash that decision, which application was struck out with costs to the interested parties as shown by the annexed copy of the judgment, which ruling has never been appealed against or set aside.
  22. According to the interested parties, the issues concerning the impugned letter of the Registrar dated 4<sup>th</sup> September, 2020 were fully addressed in the JR E1099 of 2020 hence the applicants cannot relitigate over the issues which were settled by the court, since the said matter was filed by the then officials of the



society seeking to be issued with the extract of the officials of the society, to enable it lodge a complaint with the Inspector General of Police on a land dispute.

23. It is contended that the orders issued by the Court on 18<sup>th</sup> September 2023 pending determination of the matter were spent when the Registrar issued the extract showing a list of officials of the society through the affidavit annexed sworn on 1<sup>st</sup> October, 2021 but that the applicants insisted that the list be issued to them directly before petition 160 of 2020 could be marked as settled.
24. That the Registrar having issued the extract as directed by the Court on 25<sup>th</sup> January 2024, within seven days, the purpose for which that suit was filed was served and the matter was closed, the main and only issue in that matter having been the issue of the list of officials of the society and not assets or leadership dispute.
25. That the applicants have annexed a list of officials dated 22<sup>nd</sup> January 2019 which officials were the former officials who were democratically removed on 27<sup>th</sup> September, 2020 hence that list is a deliberate misleading of the Court.
26. That the orders of 3<sup>rd</sup> December, 2020 issued by Korir J did not suspend the normal operations of the society.
27. That when the society's officials term ended in 2023, it issued a 21-day notice to members to hold a general meeting on 31<sup>st</sup> December 2023 and one of the agenda was to hold elections but members requested for change of date to 30<sup>th</sup> December because of the eve of the new year and that the meeting was successfully held and elections held for the term of new office bearers in accordance with the society's constitution. That the said AGM was attended by more than 2/3 of the members after which the society filed returns in compliance with the law.
28. That the said meeting also expelled the 1<sup>st</sup> ex parte applicant as a member as he had been served with notice to show cause but he refused to appear before the society's executive committee hence he is no longer a member of the society and cannot purport to swear an affidavit as chairman of the society.
29. That the members also amended the term of office bearers in *the constitution* from three years to five years which only took effect after 4<sup>th</sup> January 2024 hence *the constitution* annexed by the applicants is fake and forged and that this court should reject the same and sanction the applicants.

### Submissions

30. Parties' counsel filed written submissions which they also highlighted, canvassing the application.
31. In their submissions dated 31<sup>st</sup> July 2024, the ex parte applicants' counsel assert that there are two rival societies and reiterate their depositions in the supporting and verifying affidavit although they also refer to the further affidavit which this court has struck out for being a nullity hence the court will not make any reference to material other than those which are competently on record.
32. The applicants maintain that the elections were held when the order in petition 160 of 2020 was in force and that it was impossible not to tamper with the register after holding elections since the new officials had to be registered after the notification. Reliance is placed on several cases that focus on disobedience of court orders being: *Hadkinson v Hadkinson* (1952)2 ALL ER 56 on the unqualified obligation to comply with court orders. Further reliance was placed on *Teachers Service Commission v KNUT and 2 others* Petition No. 22 of 2013 and *AB v RB* Civil Appl 4 of 2016, By Attorney General [2004]KLR 431, *R v Chief Officer Finance and Economic Planning Nairobi City County ex parte Mugo Mwangi* [2018] e KLR, *Robert Kisiara Dikir and 3 others v Officer Commanding Keiyan GSU*



- Post and 3 others HCC Pet 119 of 20029 and finally, Republic v Kenya School of Law and another Misc Appl 58 of 2014 all on the importance and consequences of disobedience of court orders.
33. The applicants conclude that they have established a case for judicial review orders sought and that the respondent aided the interested parties to take over the society and grab its assets.
  34. On the part of the respondent, it filed submissions dated 8<sup>th</sup> July 2024 reiterating the replying affidavit and maintaining that it never imposed any officials on the society but that it registered the duly elected officials in accordance with the law and within its mandate.
  35. The interested parties' submissions are dated 27<sup>th</sup> September 2024 maintaining that the 1<sup>st</sup> ex parte applicant was the chairman of the society until 27<sup>th</sup> August 2020 when he was voted out in an election and replaced by the 1<sup>st</sup> interested party. That the said applicant challenged those elections vide Misc. E1099 of 2020 which was struck out after he had withdrawn it hence, he cannot purport to relitigate the matter afresh. That the matter herein is res judicata the withdrawn and struck out matter hence this application should be struck out in limine.
  36. Further, that the letter of 4<sup>th</sup> September 2020 cannot be litigated upon as it is statute barred under Order 53 Rule 2 of the Civil Procedure Rules which provides that certiorari can only be made within six months from the date of the decision that is being challenged.
  37. The interested parties also submit that the alleged contempt of court orders in JR 160 of 2020 is misplaced, these not being contempt proceedings but judicial review proceedings.
  38. That there is no basis for the seeking to quash the letter of 24<sup>th</sup> January 2024 as the elections that were held were in accordance with the society's constitution and the law. They maintain that the prayers sought cannot issue in the circumstances described in the affidavit which is replicated in the submissions.
  39. Finally, that the applicants not being officials of the society had no authority to bring these proceedings.
  40. In the oral submissions, Ms Wahome submitted that the Interested Parties' allegedly elected officials were restrained by Korir J in Petition No. 160/2020. that the 1<sup>st</sup> ex parte applicant was in 2017 elected for 5 years and that the elections carried out by the Interested Parties in 2020 were contrary to the orders in Petition 160/2020. That the Respondent had refused to issue a search and extract of the society's office bearers. She submitted that the Registrar of Societies had no power, mandate or jurisdiction to impose office holders. That the Registrar was to be notified of new officials within 14 days as per Section 17 of the Societies Act. That the Registrar should have given the voted-out officials an opportunity to be heard on their grievances. She relied on Hadkinson vs Hadkinson [1956] ALL ER and Petition 23 of 2013 TSC vs KNUT & 2 Others.
  41. She maintained that the elections were done when the court orders were in force. Further, that Approving the change of the society's constitution was illegal as new officials had not been registered. That the minutes annexed FKM-14 show that some members were deceased while others are out of country and that non-members also voted. That there were strangers of GithuZimma Society who voted and that the alleged new officials of the society were officials of a rival society GithuZimma Society registered on 14/11/2011 as per the annexed certificate of registration FKM-9 (of the unsworn affidavit).
  42. She submitted that the elections were marred with irregularities discrediting fairness. She relied on KHRC & Another vs NGO's Board & Another [2018] eKLR which the Court is said to have castigated such conduct as complained of herein. She accused the Registrar of Societies of abusing her authority. She cited Dry Associate Ltd vs Capital Markets Authority & Another [2012] eKLR.



43. Relying on section, 18 of the Societies Act, she submitted that the decision of the Registrar denied the applicants the right of fair administrative action and that they were condemned unheard and their complaint on a sham election was ignored.
44. She reiterated that the decision to author the impugned letter was contrary to the Rules of natural justice. She cited R vs Registrar of Societies exparte Shahid Sheik & 15 Others [2015] eKLR and submitted that it is a rule of natural justice that no party shall be condemned unheard in that the Registrar allowed elections by Interested Parties and failed to respond to the complaints by the applicants. That the decision to deny the applicants audience, was irrational. She concluded that the impugned letter was ultra vires the Societies Act and the Fair Administrative Action Act. She prayed that the letter be reviewed and quashed in all fairness.
45. On the part of the interested parties, it was submitted that the societies' constitution provided for a term of 3 years not 5 years. That the terms of the applicant lapsed in 2020, as per annexure MNK-19(a).
46. Counsel submitted that the term of 5 years was via an amendment to the old Constitution of Clause at 4. That in 2024 is when there was an amendment at the same Clause 14 which now provides for 5 years. He submitted that as at the time that the applicants were complaining, they were not office bearers and 2 elections had been conducted and the interested parties had been elected to become officials.
47. He submitted that the applicants filed JR. 1099/2020 after the society held elections on 27/8/2020 challenging the extract register issued by the Registrar on 4/9/2020. That application, according to Mr. Omondi, was heard and on 22/7/2022, it was struck out. That those orders are binding on all parties as they have not appealed against. He submitted that the applicants challenge the extract based on elections of 27/8/2020, which issue is res judicata JR 1099/2020 and time barred as per Order 53(2) of Civil Procedure Rules.
48. On Petition 160/2020, it was submitted that the Respondent provided a list of officials vide replying affidavit sworn on 15/12/2020 which was the crux of that petition. That the extract was provided by the Registrar so, the petition was spent.
49. Further, that the Judge held that records of property and officials should not be tampered with but that the records remained until 30/12/2023 when elections were held. That the notice was procedurally issued and Interested Parties were re-elected into office. Counsel submitted that the orders did not suspend the day to day running of the Society as per its constitution.
50. He submitted that in the AGM of 30/12/2023, the applicants had been issued with notice to show cause for having violated the society's constitution but that they declined to attend the said AGM, as a result of which a resolution was passed to expel them from the society. It was therefore submitted that the 1<sup>st</sup> applicant has no locus standi to litigate against the society, since he is not a member of the society. It was also reiterated that the applicants are introducing contempt of court proceedings in these proceedings which is not acceptable. He relied on the case of Raila vs IEBC [2017] eKLR and urged this Court to dismiss the judicial review application with costs. The interested party's Counsel submitted that the Registrar confirmed that Interested Parties were duly elected officials of the society not of a rival society. He also attacked the further affidavit which was unsworn by the exparte applicant stating that it has no probative value to the court.
51. In a rejoinder, Ms Wahome for the applicants submitted that the amended 2024 constitution of the society referred to an unsigned constitution as opposed to her clients' constitution which was signed and registered in 2017.



52. The Court then reminded Ms Wahome whether she knew that her clients' further affidavit of 31/7/2024 signed by Francis Kirima M'Ikunyua was not sworn and she responded that she had seen it in the CTS and confirmed that it was not sworn, urging the court to consider it since the client signed but the advocate did not take it for commissioning.

### **Analysis and Determination**

53. I have considered the application as filed, the grounds, affidavit in support and the responses together with the submissions both oral and written. The issues for determination are whether the unsworn further affidavit is validly on record for consideration as affidavit evidence with its annexures; whether this matter is res judicata JR 1099 of 2020; whether the application was statute barred when it was filed and whether the applicants are entitled to the orders sought. There are also ancillary questions that I will endeavour to answer.
54. On the validity and probative value of an unsworn affidavit, the legal position on the validity of affidavits is well settled. But first, what is an affidavit? An affidavit is a sworn statement put in writing. When you use an affidavit, you're claiming that the information within the document is true and correct to the best of your knowledge.
55. It follows that an affidavit which is not commissioned under oath is not an affidavit properly so called. It is not a valid affidavit and therefore it cannot be used in evidence in any proceedings. It is a nullity. In other words, a document not sworn before a commissioner for oaths is not an affidavit and has no evidential value in law. The legal consequences of such a defect are fatal and the document cannot be relied upon. It is not merely a procedural irregularity that can be cured under Order 19 Rule 7 of the Civil Procedure Rules and Article 159(2)(d) of *the Constitution*, but rather a fundamental defect that goes to the root of its admissibility.
56. In the circumstances, this Court finds that the purported further affidavit dated 31st July 2024 is not a valid affidavit. It is an unsworn statement and, as such, carries no evidentiary value. It is therefore hereby struck out from the record for being incurably defective and legally incompetent.
57. The respondents and interested parties have raised what appears to be a Preliminary Objection on the ground that the issues raised by the applicants are res judicata, having been determined in Judicial Review No. 1099 of 2020, in which the Applicants challenged the extract of 4th September 2020. That the said matter was heard and conclusively determined by this Court and was struck out on 22nd July 2022, with no appeal filed to date.
58. It is well established under Section 7 of the *Civil Procedure Act* that once a matter has been heard and determined by a court of competent jurisdiction, the same cannot be reopened by way of fresh proceedings. The orders issued in JR No. 1099 of 2020 are binding and conclusive as against the present parties as the dispute was between the same parties.
59. However, from the judgment of Ngaah J dated 22<sup>nd</sup> July 2022 in the above matter, there is no merit determination of the same and again, the learned Judge was clear that there was no statutory statement, that the application had been withdrawn vide notice dated 22<sup>nd</sup> September 2022 only for the applicants to file other documents therein namely, another application for leave to file substantive notice of motion. The Judge stated that once proceedings were withdrawn, they were terminated and the Court file ought to have been closed at that stage and that if the applicants intended to seek leave afresh, they could not seek such leave in proceedings which had for all purposes been closed with an application reviving the same proceedings. The learned Judge concluded by striking out the application as being incompetent, defective and an abuse of court process.



60. To that extent, this court finds, without wasting much time delving into details, that the doctrine of res judicata is inapplicable to proceedings which were withdrawn or struck out for being incompletely filed or defective in substance. I therefore reject the preliminary objection based on res judicata JR E1099 of 2020.
61. On the submission by the interested parties that the letter of 4th September 2020 cannot be litigated upon as it is statute barred under Order 53 Rule 2 of the Civil Procedure Rules which provides that certiorari can only be made within six months from the date of the decision that is being challenged, it is true that, pursuant to Order 53 Rule 2 of the Civil Procedure Rules, applications for judicial review must be brought within six months from the date of the act or decision being challenged.
62. In the instant case, however, from the Notice of Motion dated 26<sup>th</sup> March 2024, the impugned extract is dated 23<sup>rd</sup> January 2024 allegedly imposing the interested parties as officials of the Zimman Settlement Scheme Society, and not the extract of 4<sup>th</sup> September 2020. This Application for leave to apply was filed on 22<sup>nd</sup> March 2024 which was within six months hence the claim that it is statutorily time-barred is not merited and the objection declined and dismissed.
63. The applicants have equally raised a very important legal issue claiming that the respondent was in contempt of court when it issued the extract imposing the interested parties as officials of the society yet there was a temporary order issued by Korir J barring the respondent and interested parties from interfering with the society's register and records pending the hearing and determination of that matter. This was vide Petition 160 of 2020, erroneously referred to as JR MISC APPL No. 160 of 2020 and which matter was concluded by way of a consent on 23<sup>rd</sup> January 2024 recorded before Mwita Chacha J where it was ordered that "the Registrar of Societies do issue a copy of an extract of the registered officials of Zimman Settlement Scheme Society within Seven Days from the date hereof."
64. In the same petition, vide the order of 3<sup>rd</sup> December 2020, the court restrained the interested parties from wasting, alienating, or otherwise dealing with Zimman Settlement Scheme Society's land along Thika Road, Kasarani in Nairobi County pending the hearing and determination of the petition.
65. The Court further restrained the interested parties from dealing with Zimman Settlement Scheme Society's register and records pending the hearing and determination of the petition.
66. I have perused the documents filed in respect of the said matter including the order therein. The applicants have interpreted the above order to mean that the respondent was restrained from making any changes in the register which they hold of the society.
67. That is far from the correct position. No doubt, every society has a register and record of its members as mandated by section 25 of the Societies Act and from the plain reading of the order, the interested parties were being restrained from interfering with the society's register and records. The section provides:

25. Register of members

- (1) Every registered society shall keep a register of its members in such form as the Registrar may specify or as may be prescribed, and shall cause to be entered therein the name and address of each member, the date of his admission to membership and the date on which he ceases to be a member. (2) If a registered society contravenes subsection (1) of this section, the society and every officer thereof shall each be guilty of an offence, and the society shall be liable to a fine not exceeding ten thousand shillings, and every officer shall be liable to the like fine or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment:



Provided that an officer shall not be convicted of the offence if he establishes to the satisfaction of the court that he exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his control.

68. There is nothing to show that the respondent or interested parties were restrained from calling for and holding elections of the society, which is a statutory imperative.
69. If the intention of the applicants was to restrain the holding of any general meeting and conducting of elections, nothing prevented it from seeking such orders from the Court. They did not. Instead, they seemed to be interested in protecting the register of members and the society's records and that is what they asked for and were granted by the court in the interim. They cannot later complain that the respondents, who, from the said order, was never restrained from receiving any returns from the society, from receiving and accepting the notification of change of officials of the society following elections.
70. Additionally, there is no evidence that the applicants approached the court in the said petition to seek to bar the society from holding an AGM and conducting elections in December 2023, while petition 160 of 2020 was still subsisting.
71. There was no order barring the interested parties from holding the AGM or conducting elections. It is worth noting that by the time the applicants filed petition 160 of 2020 and JR E1099f 2020, elections had been held in 2020 and new office bearers installed as per the extract of 4<sup>th</sup> September 2020. It is surprising that the applicants did not seek to stop or vacate those election results and only ended up having a consent seeking for an extract of the officials of the society, which would not have changed any situation prevailing namely, that there were officials of the society other than the applicants herein.
72. I say so because as at the time that these proceedings were being filed, even as the applicants claim that there was contempt of court orders in petition 160 of 2020, on 31<sup>st</sup> December 2022, a special general meeting was held with the 1<sup>st</sup> applicant being accused of trying to disrupt that meeting. Later, as shown by the letter dated 3<sup>rd</sup> January 2023, the 1<sup>st</sup> applicant had been issued with show cause letter to appear before the Executive Committee of the society for disciplinary proceedings to be held on 18<sup>th</sup> January 2023 but there is no evidence that he attended the said meeting as a result of which he was expelled from being a member of the society.
73. Accordingly, whereas the 1<sup>st</sup> applicant had the right to bring action before the court, as stipulated in Article 50(1) of *the Constitution* of Kenya, he could not claim to be a member of the society and neither could he claim to be its official, noting that none of the prayers sought seeks to challenge his expulsion as a member or his dethroning as the chairman, elections for his removal having been held in 2020, followed by other elections in 2022 and now the 2023 elections which, from the record, were never challenged at all.
74. It is worth reminding the parties that under section 24 of the *Societies Act*, masqueraders are forewarned as follows:
  24. Purporting to act as officer  
Any person who—
    - (a) acts or purports to act as an officer of a registered society, and who has not been duly appointed or elected as an officer of that society; or
    - (b) having been appointed or elected as an officer of a society (otherwise than at the time of the formation of the society), acts as an officer of that society after the end of the



period prescribed by section 17(1) of this Act for giving notice of his appointment or election to the Registrar, no such notice having been given within such period, shall be guilty of an offence and liable to a fine of five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment:

Provided that this section shall not prevent a person who has been duly appointed or elected as officer of the society from signing the notice prescribed by section 17(1) of this Act.

75. As to who an officer of the society is, section 2, the interpretation section of the Act provides:
- “officer”, in relation to a society, means the president, vice-president, chairperson, deputy chairperson, secretary or treasurer thereof, or any member of the committee, council or governing body thereof, or any person who holds in the society any office or position analogous to the foregoing, but does not include a trustee, auditor or patron who takes no part in the management of the society;
76. Therefore, even assuming that there was any contempt of court orders, only the court in petition 160 of 2020 could deal with that alleged contempt and not through the filing of fresh proceedings as was done by the applicants herein.
77. Additionally, even assuming that the application was properly before the Court, it would still fail on merit. It is not disputed that, at the time the Applicants lodged this challenge, the 1<sup>st</sup> applicant who swore the verifying affidavit was no longer an official of the society. His term as chairman under *the Constitution* then in force, expired in 2020. There was no order of the court staying the elections that followed, electing new officials. It is not in doubt that the original Constitution provided for a three-year term, and the Applicants’ tenure lapsed accordingly, with or without any elections being conducted.
78. I must mention here that there is no statutory requirement under the *Societies Act* (Cap. 108) that *the constitution* itself be signed. What matters is that the minutes by which *the constitution* was adopted are signed by three officers and submitted in support of the application for registration of the society or for amendment of *the constitution* and that Form A & B are duly executed.
79. This is consistent with Sections 19 and 20 of the Act and the Schedule specifying necessary contents of *the constitution*, alongside the procedural requirements for adoption.
80. The evidence on record, particularly Annexure MNK-19(a), confirms that Clause 14 of the Society’s Constitution was only amended in 2024 to provide for a five-year term. This amendment cannot be applied retroactively to validate the Applicants’ expired term. By the time of filing this Application, two elections had already been conducted, in 2020 and again in 2023, through which the Interested Parties were duly elected.
81. I further observe that in Petition No. 160 of 2020, the issue of the society’s officials was directly raised and the Registrar of Societies provided an official list of recognized office bearers in a replying affidavit dated 15th December 2020. That matter was considered spent, as the Registrar had discharged its statutory obligation. The learned Judge in that matter also directed that the property and records of the Society were not to be tampered with, which directive has not been shown to have been violated.
82. Particularly, the most recent elections were held on 30th December 2023, following due notice and adherence to the society’s constitution. The Interested Parties were re-elected, and no challenge has been filed against the validity of those specific elections. The applicants cannot be heard to say that they can challenge the letter of the Registrar of Societies indicating who the officials of the society are,



but that they are not interested in challenging the process by which those officials were elected into office. That is exactly what the applicants have done in the instant case. It is unacceptable.

83. Additionally, although the applicants seek for mandamus to compel the respondent to receive returns from the applicants as the officials of the society, as stated above, the 1<sup>st</sup> applicant deponent has not demonstrated when he was elected and by who, for him to be considered to be a legitimate official of the society, his term office having lapsed after the initial 3 years in 2020 from 2017 and even if it was a five-year term, which is not available, that term would have lapsed in 2023. The Societies Act at section 29 mandates the convening of meetings of societies and at such annual meetings, elections of officials would take place, among other agenda items. The section provides:

29. Meetings of societies

- (1) Every registered society shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting—
  - (a) render a full and true account of the moneys received and paid by the society, such account being audited in accordance with the rules of the society; and
  - (b) cause to be elected or appointed all such officers, trustees and auditors and, where applicable, such committees as are required in accordance with the constitution and rules of the society.
- (2) Any registered society which contravenes sub-section (1) of this section shall be guilty of an offence.

84. t general meetings to be held annually and there being no law that allows holding of an elective position in a society in perpetuity, the applicants cannot claim to have any legitimate expectation to be officials of the society, a position they were dethroned way back in 2020. The question is, which returns and which elections did the society hold culminating in the applicants' being elected as officials for the Respondent to endorse them as such?

85. It is further not in dispute that during the 2023 Annual General Meeting, the 1<sup>st</sup> Applicant was served with notice to show cause for alleged violation of the Society's Constitution. He failed to attend or respond. A resolution was consequently passed at the general meeting to expel him from membership of the society. He has not challenged that expulsion, at least not before this court alleging any illegality, irrationality, procedural impropriety or unfairness.

86. It is a settled principle of law that a person who is not a member of a society lacks locus standi to challenge its internal affairs, including the election of its officials. As the 1st Applicant stands expelled and there is no credible evidence showing reinstatement or membership status, his alleged authority to bring these proceedings is lacking and therefore the application is incompetent.

87. The 1<sup>st</sup> applicant herein does not dispute that he was expelled from the society. Notably, he has neither challenged that expulsion nor sought to be reinstated as a member. Furthermore, his term as chairman came to a natural end upon the expiry of the constitutionally prescribed three-year period, following which fresh elections were duly conducted and new officials elected.

88. Despite this, the applicant has chosen to mount judicial review proceedings solely challenging the Registrar of Societies' letter recognizing the newly elected officials, without addressing the legality of his expulsion or the validity of the elections themselves. He stands before this Court neither as a member of the society nor as an official thereof.



89. A registered society functions as a voluntary association governed by its internal constitution and its management and affairs are, by law and practice, the preserve of its members. The 1<sup>st</sup> applicant, having ceased to be both a member and an office bearer, lacks the requisite locus standi to impugn or question decisions made by the society or actions taken by the Registrar upon lawful notification by the society's duly elected officials.
90. In the circumstances, the Court finds that the 1<sup>st</sup> applicant has no standing to sustain these proceedings, and the same are, on that basis alone, liable to be struck out, noting that all affidavits verifying the facts and or further affidavits were sworn by him claiming to be chairman of the society.
91. Finally, and it is worth repeating here that the applicants appear to introduce issues relating to contempt of court within the present judicial review proceedings. This is both procedurally and substantively irregular. Parties must adhere to proper procedural channels when seeking relief. Contempt is a distinct jurisdiction requiring formal application in the same proceedings where the orders allegedly violated were issued and cannot be introduced by inference in separate proceedings.
92. Having considered the pleadings, submissions, applicable law and binding precedent, this Court finds and holds that the applicants have not made out a case for the issuance of the judicial review orders of certiorari, prohibition and mandamus as sought in the notice of motion dated 26<sup>th</sup> March 2024 and consequently, the said application is hereby dismissed.
93. I order that each party bear their own costs of these judicial review proceedings
94. This file is closed.
95. I so order.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 15<sup>TH</sup> DAY OF AUGUST, 2025**

**R.E. ABURILI**

**JUDGE**

