



Naado & 6 others (All Applicants Suing as Officials of Supreme Council Of Kenya Muslism (SUPKEM)- Ex Parte Applicants) v Registrar of Societies; Nzibo & another (Interested Parties) (Judicial Review E036 of 2024) [2024] KEHC 1819 (KLR) (Judicial Review) (27 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E036 OF 2024
JM CHIGITI, J
FEBRUARY 27, 2024**

BETWEEN

**AL HAJJ HASSAN OLE NAADO (NATIONAL CHAIRMAN, SUPKEM) 1ST APPLICANT
MUHNDHAR SHARIFF (DEPUTY CHAIRMAN, SUPKEM) 2ND APPLICANT
ABDULLAHI SALAT (SECRETARY GENERAL, SUPKEM) 3RD APPLICANT
JUMA MUSA (ORGANIZING SECRETARY GENERAL, SUPKEM) 4TH APPLICANT
DEGHO IMANI (DEPUTY ORGANIZING SECRETARY, SUPKEM) 5TH APPLICANT
KHAMIS MWAGUZO (REGIONAL COORDINATOR, SUPKEM) 6TH APPLICANT
KHAMIS OMAR (REGIONAL COORDINATOR, SUPKEM) 7TH APPLICANT
ALL APPLICANTS SUING AS OFFICIALS OF SUPREME COUNCIL OF KENYA MUSLISM (SUPKEM)- EX PARTE APPLICANTS**

AND

REGISTRAR OF SOCIETIES RESPONDENT

AND

**AMB. YUSUF ABDULRAHMAN NZIBO INTERESTED PARTY
JUMBE OMAR EKADEL INTERESTED PARTY**



JUDGMENT

1. This court has three applications before it for determination being the Substantive Notice of Motion dated 19th February 2024, the Notice of Motion Application dated 19th February 2024 and the Chamber Summons Application dated 16th February 2024.
2. The Substantive Notice of motion dated 19th February 2024 wherein the Applicant seeks the following orders;
 1. That by way of Judicial Review, an order of certiorari do issue, to remove to this Honorable Court for purposes of being quashed, and to quash, the Respondent's decision contained in the letters dated 23rd January 2024 and 25th January 2024 alleging that the current 2024 officials of Supreme Council of Kenya Muslims (SUPKEM) are as stated for the year 2017, and which letters are ultra vires the *Societies Act*, and the *Fair Administrative Action Act*.
 2. That by way of Judicial Review, an order of mandamus do issue, (and upon the issuance of the Order of certiorari herein), compelling the Respondent by herself and/or such Officers acting at the Respondent's behest, to forthwith restore unconditionally the Supreme Council of Kenya Muslim's (SUPKEM's) duly filed and paid for Annual Returns for the years 2019, 2020, 2021, 2022, 2023 as filed by the SUPKEM with the Respondent Registrar of Societies on 22nd August 2023 containing notification of the current and validly elected Officers of the Supreme Council of Kenya Muslims (SUPKEM) as contained in the SUPKEM's Form H and Form I lodged under the *Societies Act*, and as originally paid for vide Official Receipt C0683169 upon the conduct of the Annual General Meeting on 12th August 2023 as ordered by the Respondent.
 3. That by way of Judicial Review, an order of Prohibition do issue, prohibiting the Respondent or any Person acting at their behest from purporting and/or alleging that the Interested Party herein AMB. Yusuf Abdulrahman Nzibo is the current National Chairman of the Supreme Council of Kenya Muslims (SUPKEM) based on the 2017 Annual Returns held by the Registrar of Societies in respect of Supreme Council of Kenya Muslims (SUPKEM), or otherwise howsoever.
 4. That the costs be to the Ex Parte Applicants in any event.
3. The Chamber Summons lodged in Court dated 16th February 2024 limited to prayer 5.
4. The Notice of Motion Application dated 19th February 2024 seeks

Ex Parte Applicants' Case

5. The Supreme Council of Kenya Muslims (hereinafter simply "SUPKEM") is a duly registered Society under the *Societies Act*, Cap 108 of the Laws of Kenya, and the Respondent Registrar of Societies is the public officer responsible for maintaining the official records of SUPKEM, and updating such of the statutory records of the Society.
6. The Ex Parte Applicants complain herein that the Respondent has consequently acted arbitrarily and without affording the Applicants a hearing and which impugned decisions contained in the last paragraphs of the respective 2 letters are to their detriment in spite of a formal request lodged with the Respondent dated 24th January 2024 in line with Article 47(1) of *the Constitution* of Kenya.



7. By a letter dated 24th January 2024 rejoinder to the Respondent’s letter dated 23rd January 2024, the Applicants duly notified the Respondent Registrar of Societies of the spurious and baseless allegations contained in the last paragraph of the 2 letters dated 23rd January 2024 and 25th January 2024 she authored.
8. It is to be emphasized that what is in contention in the 2 letters is the last paragraph with the phraseology that the stated 2017 SUPKEM officials are the alleged “current officials of SUPKEM” as at 2024, which cannot be true.
9. The Respondent wholly, and unreasonably ignored the Applicants’ said letter dated 24th January 2024, to date and in spite of the AGM of 12th August 2023 constructively irrationally proceeded to cancel the Annual Returns records of the Society SUPKEM lodged with her and made adverse decisions in the last paragraphs of the respective impugned letters dated 23rd January 2024 and 25th January 2024.
10. The Respondent did not give her reasons for the impugned decision contained in her 2 letters dated 23rd January 2024 and 25th January 2024 in spite of formal queries by the Applicants, necessitating the Court’s intervention.
11. By a letter dated January 25th 2024, and addressed to Kenya’s HAJJ Agents Interested Party christen himself as the current SUPKEM “National Chairman”, well aware that he is not based on the Respondent Registrar of Societies’ last paragraphs contents in the 2 impugned letters. These actions provoked the present proceedings.
12. By his Supplementary Affidavit herein sworn on 23rd February 2024 the 1st Ex Parte applicant Hassan Ole Naado in paragraph 3 thereof, he demonstrated in averring:
 - “3. Contrary to the false impression created and the allegations of the Respondent set out in the Interested party’s Replying Affidavit, I aver that prior to my ascending to the position of the SUPKEM National Chairman, I Hassan Ole Naado have served SUPKEM for 23 years in the following capacity:-
 - a. Treasurer- Transmara District - 1997-2000
 - b. Chairman- Transmara District- 2000-2002
 - c. Having been elected to serve as the Secretary for Youth Affairs- 2002-2005
 - d) Elected as the Deputy Secretary General of SUPKEM- 2005-2016”
13. Official Returns as by law mandated were lodged in 2017 and 2019, there is no basis for the 2 impugned letters to have omitted the entire span of officials of SUPKEM who included Jumbe Omar Ekadel as such SUPKEM official and Member of the National Governing Council of SUPKEM.
14. Breach of Article 47(1) of the Constitution of Kenya and Fair Administrative Action Act by the Respondent
15. In her entire Replying affidavit, the Respondent did NOT in the least address her failure to abide by the imperatives of Article 47(1) of the Constitution of Kenya as read with Section 4 of the Fair administrative Action Act, in respect of the Ex Parte Applicants’ stated letter of 24th January 2024 as it related to the Respondent’s impugned last paragraph in the letter dated 23rd January 2024 (please see a copy of the said letter marked as exhibit “HON 5” and referred to in paragraph 13 of the Applicants’



Verifying Affidavit sworn on 16th February 2024) as replicated in the Respondent's follow up letter dated 25th January 2024. The non-response to which forms their Complaint of the violation of Article 47(1) of *the Constitution*).

16. Mwita J. in the case of Kenya Human Rights Commission & another v Non-Governmental Organizations Co-ordination Board & another [2018] eKLR castigated this sort of conduct complained of herein, where he held in paragraph 40 of his Judgement: -

“40. Taking the above jurisprudence into account, there is no doubt in my mind, that acting as it did, the respondent violated 1st petitioner's right to a fair Administrative Action contrary to Article 47 of *the Constitution*. Administrative Actions that flow from statutes, must now meet the constitutional test of legality, reasonableness and procedural fairness. According a party a hearing before taking action against him is no longer discretionary. It is firmly entrenched in our Constitution as an inviolable right. It is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and quasi-judicial functions. These no longer have place in our constitutional dispensation.”

17. The Ex Parte Applicants rely on the case of Dry Associates Ltd v Capital Markets Authority and Another, [2012] eKLR where the Court observed;

“Article 47 is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under the *Law Reform Act* (Cap 26 of the Laws of Kenya) but is to be measured against the standards established by *the Constitution*.” [emphasis added]

18. Section 18 of the *Societies Act* provides that where the Respondent 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.

19. In interpreting the scope and application of Section 18 of the *Societies Act* without doubt it effects and manifests the intendment of Article 47(1) of *the Constitution* of Kenya which the Respondent violated in issuing the last paragraphs of her 2 impugned letters. Earlier in his above cited decision of Kenya Human Rights Commission & another v Non-Governmental Organizations Co-ordination Board & another [supra], Mwita J in paragraph 33 of his decision held:

“33. Article 47(1) of *the Constitution* is in mandatory terms that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Sub Article 2 makes it even more forceful that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for that action.”



20. Having received the Forms H and I of the SUPKEM and duly stamped them, the Respondent could NOT resile from the legitimate expectation she had so created in receiving these Forms and purport to author the last paragraphs of her 2 letters impugned. The Forms H and I of SUPKEM reflected the SUPKEM's compliance with Section 17 of the *Societies Act*.
21. No complaint was received by SUPKEM from the Respondent that the SUPKEM had in any respect presented the Forms H and the applicant that had violated Section 29 of the *Societies Act* in respect of Annual General Meetings stated therein.
22. The Ex Parte Applicants were entitled to be heard before being condemned in the manner that was demonstrated by the Respondent Reliance is placed on *Onyango Oloo v Attorney General* [1986-1989] EA 456, where it was held:
- “The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To “consider” is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... “Consider” implies looking at the whole matter before reaching a conclusion...”
23. On this issue reliance is placed on the case of *Republic vs. Registrar of Societies Ex Parte Applicants: Francis Kirima M'ikinyua, John Wainaina Ndungu and Peter Kibe Mutiga (suing as officials of Zimman Settlement Scheme Society) & 12 Others* [2014] eKLR, where Emukule J. held:
- “In this case, it is the Respondent's contention that there is confusion and leadership wrangles within the society and that it was this state of affairs which led to the impugned decision. If that was the position one would have expected the Respondent to act pursuant to the provisions of section 18 of the *Societies Act*, Cap 108 Laws of Kenya (hereinafter referred to as the Act) ...”
24. In the case of *Republic v Registrar of Societies Ex-parte Shaahid Sheikh & 15 others* [2015] eKLR Emukule J. again held in paragraph 43 of his decision on a similar case:
- “ 43. It is a rule of Natural Justice that no person should be condemned unheard. By permitting the Interested Parties to proceed and hold a meeting to elect new officers of the Association because the ex parte Applicants did not respond to complaints contained in the two letters with which they were not even served, the Respondent failed to accord the ex parte Applicants an opportunity to be heard. That was against the Rules of Natural Justice.”
25. From the foregoing, it is clear that the Court is entitled to intervene as sought. As demonstrated, the lack of the Respondent's compliance with Article 47(1) of *the Constitution* in relation to the Ex Parte Applicant's stated letter of January 24th 2024 to her was the Respondent's bias against the SUPKEM Ex Parte Applicants' officials and her bad faith. Respondent's Bad Faith Complained of necessitating Court's intervention



26. In paragraphs 5, 6 and 7 of their Statement of claim, the Ex Parte Applicants pleaded as follows:

- “ 5. By ignoring, spurning and totally rejecting the Applicants’ stated response, the Respondent acted irrationally and in contradiction to her own letter dated 2nd May 2023 which stated in categorical terms the SUPKEM officials as at May 2023. She cannot therefore be heard to resile on the said May 2023 letter and utter the purported 2017 officials of SUPKEM.
6. The Interested Party having NEVER demonstrated that he had an identifiable elected position in SUPKEM as at 2024, or a faction of lawfully elected Leadership in SUPKEM and having failed to identify the alleged specific dispute, the Respondent Registrar of Societies was estopped by operation of Section 18 of the Societies Act from in any manner moving in the manner she did to act in ignorance of the Year 2019-2023 Annual Returns of the SUPKEM in terms of Forms H and Form I already submitted under the Societies Act, or to purport to identify the Interested Party herein AMB. Yusu Nzibo as the alleged “current chairman” of SUPKEM in spite of the results of the elections of officials at the 12th August 2023 Annual General Meeting of the SUPKEM Society.
7. The Respondent did not have the right to circumvent or override the Constitution of the Applicant where no fraud or illegality was proven or a Court Order issued in regard to the Forms H and Forms I submitted for the years 2019-2023 Annual Returns already lodged by SUPKEM with the Registrar of Societies.”

27. By the Supplementary Affidavit of the Ex Parte Applicants herein sworn on 23rd February 2024, the Ex Parte Applicants demonstrated that the Interested Party herein Amb. Yusuf Nzibo having exited the SUPKEM’s leadership he could NOT have any locus standi to be recognized as such official of SUPKEM in 2024 at all.

28. The Ex Parte Applicants further swore and tabled evidence that the said Interested Party having been suspended from the position of National Chairman on 19th November 2019 and thereafter the said Interested Party’s suspension having been confirmed at a Special General Meeting of SUPKEM on 18th January 2020, he stood expelled from being SUPKEM National Chairman.

29. These documents were served on the Respondent and duly received by her Office by the official stamps shown.

30. In the result, the Ex Parte applicants submit that the Interested Party was hence not available at all to be recognized by the Respondent as the National Chairman of SUPKEM or as SUPKEM’s official, or at all. To the said extent the act of the Respondent as impugned herein by her 2 stated letters’ last paragraphs warrants the grant of the relief sought herein.

31. In an exact same scenario in the above cited case of Republic v Registrar of Societies Ex-parte Shaahid Sheikh & 15 others [supra] the Court held:

“Further and more fundamentally, section 18 of the Societies Act allows the Respondent to address disputes among members or officers of a registered society only. The complaints raised by the Interested Parties were raised by Tarak Khawaja, the 1st Interested Party on behalf of Sunni Punjabi Muslims. There is no evidence that the complainants were members



or officers of the Association. By seeking to address complaints raised by persons who were strangers to the Association, the Respondent exceeded the jurisdiction conferred upon it by section 18 of the Societies Act. In the same vein, by allowing persons who were not members of the Association not only to convene its general meeting but also to be elected as its officers, the Respondent acted unreasonably. Such an action was irrational and smacks of bad faith on the part of the Respondent.”[emphasis added]

32. The Interested Party is NOT an official of SUPKEM and having elected to exit the SUPKEM after the mediated Settlement alluded to in the proceedings, he was INELIGIBLE to be recognized AT ALL as an official of SUPKEM in the year 2024, let alone the “National Chairman” as purported by the Respondent.

33. In paragraphs 42 to 45 of their Statement of Facts herein dated 16th February 2024 the Ex Parte Applicants pleaded as follows:

“ 44. By a duly executed Consent settlement dated 5th June 2023, in a Court-ordered Mediated Settlement in the cited Nairobi HCC No. 262 of 2019, the said AMB. YUSUF ABDULRAHMAN NZIBO resolved to EXIT amicably the leadership of SUPKEM, and hence he cannot be heard to assert any such alleged position of “National Chairman” of SUPKEM.

45. The Interested Party AMB. YUSUF Abdulrahman Nzibo unequivocally ceased to hold ANY office in SUPKEM’s ancillary bodies, including the SUPKEM Association of Hajj & Umrah.”

34. Reliance on this point is again placed on the above cited decision of Emukule J in the case of Republic v Registrar of Societies Ex-parte Shaahid Sheikh & 15 others [supra] where the learned Judge (with respect) discussed the legal basis of this issue as follows in paragraph 46 of his said Judgement: -

“ 46. Even assuming that the Interested Parties were all members of the Association and were therefore qualified to raise a dispute concerning the running of the Association and were eligible to be elected as officers, section 18 (2) of the Societies Act is clear on what the Registrar can do in case the dispute is not resolved or attempts made to resolve it within one month. The Registrar can only cancel the registration of the society. By allowing the Interested Parties to hold a meeting and proceed with elections at the exclusion of the ex parte Applicants, the Respondent employed a remedy that is not prescribed and therefore acted against and outside the express provision of section 18 (2) of the Act.”

35. The Ex Parte Applicants demonstrated that they indeed have been lawfully elected under the Constitution of SUPKEM. No provision of SUPKEM’s constitution was demonstrated as breached in that regard by either the Respondent or the Interested Party in their respective replying Affidavits.

36. It was therefore wrong for the Respondent to purport to recognize the Interested Party Amb. Yusuf Nzibo as the “current [2024] “National Chairman” of SUPKEM by means of the last paragraphs of the 2 impugned letters.



37. Reliance is placed on the above decision of Republic v Registrar of Societies Ex-parte Shaahid Sheikh & 15 others [supra] where similarly the Court castigated the Registrar of Societies in the following terms: -

“ 51. Section 17 of the Societies Act (Cap 108, Laws of Kenya), provides the procedure for registration of officials of a society following an election, that is to say, change of officers or title of office. The notification is required to be in the prescribed form, and given to the Registrar within fourteen (14) days of the change, and the notice shall be signed by three officers of the Society. It is an offence not to file such changes.

52. That being the position in law, firstly, it means that the Muslim Association Mombasa Special General Meeting held on 12th July, 2015 and set out in Form H and I dated 13th July, 2015, and secondly the officials elected thereat, are duly elected office bearers of the Muslim Association of Mombasa. Consequently, the Respondent had no authority in law, to purport to confirm another body of persons as the Board of the Muslim Association of Mombasa. Thirdly, the confirmation of an interim board of Directors on 30th June by the Deputy Registrar of Societies was done without giving the Applicants an opportunity to be heard, contrary to the provisions of sections 18, 49 and 50 of the Societies Act.”

38. There are set processes within the Societies Act for the lodging of documentation with the Respondent confirming the status of CURRENT elected officials of SUPKEM, but not by a letter on who were SUPKEM's officials in 2017 by which act the Respondent has thereby trampled upon in authoring the impugned last paragraphs of the respective 2 letters.

39. In the face of the foregoing the said last paragraphs of the Respondent must be quashed as was held in Pashito Holdings Ltd. & Another v. Paul Nderitu Ndun'gu & Others, [1997] 1 KLR (E&L) where the Court stated thus:

“An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...” [emphasis added]

40. It is the Ex Parte Applicants that they have demonstrated that the Respondent grossly contradicted herself in her Replying Affidavit at paragraph 35 stated Indeed by a letter dated 2nd May 2023 to Advocates identified as Salim Omar & Co. Advocates, the Respondent Registrar of Societies unequivocally stated that the SUPKEM's office bearers are:

1. Chairman-HASSAN OLE NAADO
2. Deputy Chairman- MUHNDHAR SHARIFF
3. Secretary General-ABDULLAHI SALAT
4. Organizing Sec. Genera-JUMA MUSA



5. Deputy Org. Secretary-DEGHO IMANI
 6. Regional Coordinator-Khamis Mwanguzo
 7. Regional Coordinator-Khamis Omar
- 36) By an earlier letter dated 31st March 2023, the Assistant Registrar of Societies, Janet Karuchoru had communicated to the SUPKEM confirming the above office bearers of the SUPKEM. No further letter or communication had countermanded or otherwise negated these 2 letters which post date 2017.
 - 37) Having noted that the Interested Parties had failed to copy their alleged “complaint” of the affairs of the Society SUPKEM (SUPKEM) dated 22nd May 2023 on the said party or at all, the Respondent ought to have considered the said action as an indicator of the bad faith of the Interested Party calling for more vigilance on the office of the Respondent and to engage restraint.”
41. If, as the Respondent purported in her Replying Affidavit of 22nd February 2024 that she could “only” recognize the 2017 Officials of SUPKEM, it makes NO sense at all that she could then on 31st March 2023 and 2nd May 2023 issue the above reference letters signifying the Ex Parte Applicants AS the officials of SUPKEM.
 42. Pursuant to Section 40 of the *Societies Act*, she has NEVER recalled this communication to all and sundry. She has to date NEVER countermanded this communication of 31st March 2023 and 2nd May 2023 by reason of which she stood bound by the doctrine of estoppel.

Abuse of Power by the Respondent amounting to illegality

43. The Ex Parte Applicants have complained that it was not open to the Respondent to adjudge the alleged unacceptability and resultant “expunging” of the Forms H and Forms I of the Society SUPKEM lodged with the Respondent’s Office for the 2019-2023 period when the lodging of these documents had been done within the legal parameters of the *Societies Act* and an official receipt issued in proof of their acceptance.
44. The Ex Parte Applicants rely on, and invoke Article 232(1) of *the Constitution* which is binding on the Respondent herein and provides:

“ 232. Values and principles of public service

1. The values and principles of public service include
 - a. high standards of professional ethics;
 - b. efficient, effective and economic use of resources;
 - c. responsive, prompt, effective, impartial and equitable provision of services;
 - d. involvement of the people in the process of policy making;
 - e. accountability for administrative acts;
 - f. transparency and provision to the public of timely, accurate information;



- g. subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- h.
- i.”

45. Hence in clear breach of Article 232(1)(e) and (f) of *the Constitution* the bases of the unlawful revocation of the SUPKEM’s Forms H and Forms I of the Society SUPKEM lodged with the Respondent’s Office for the 2019-2023 period was therefore made on the basis of extraneous reasons mounted by busy bodies and wholly unsupported by factual examination of the said Forms as stated above, entitling this Honourable Court to reverse the said action.

46. Reliance is made on the case of, Freekenya Popular Initiative Society & 3 others v Registrar of Societies (Jacob Ikiaria) & 4 others [2020] eKLR where it was held:

“20. Clear reading of Article 232(1) of *the Constitution* reveal that the values and principles of Public Service include accountability for administrative acts and that values and principles of public service apply to public service in all state organs in both levels of government.”

47. As already submitted above, the ONLY option open to the Respondent under Section 18(3) of the *Societies Act* was to dissolve the SUPKEM as a Society and NOT purport to illegally INSTALL dead and already exited Interested Party as an official of SUPKEM in the manner she did.

48. The Respondent expressly admitted in paragraph 25 of her Replying Affidavit sworn on 22nd February 2024 that she HAD accepted the subject Forms H and I of the SUPKEM as herein tendered.

49. She then purported in the same averment that the Form “H” was allegedly “irregularly filed” but the rhetorical question is WAS her last paragraph of the 2 impugned letters the LEGAL solution to her alleged infraction attributable to the Forms H submitted? No.

50. By their Supplementary Affidavit herein sworn on this 23rd February 2024, the Ex Parte Applicants demonstrated that the Secretary General of the SUPKEM Amb. Mohammed Adan Mahat had RESIGNED as such in the year 2018 and hence the Respondent’s allegations to DEMAND of the SUPKEM the signing of their Forms H by a person who has CEASED holding such a position cannot be tenable.

51. The SUPKEM Constitution was followed to the letter in the circumstances where an official resigns, is removed, or passes on and the Respondent elected to act blind to this.

52. Moreover, the Applicants have averred also in the Supplementary Affidavit sworn on this 23rd February 2024 in rebuttal to the allegations by the Respondent and the Interested Party concerning the Forms H and I of the period 2019-2023 that it was the filing of the Interested Party’s HCC No. 262 of 2019 that provoked the Respondent’s letter dated 28th October 2019 to the SUPKEM stating as follows in paragraphs 5 and 6 thereof:

“It is not lost on this office that processing a notification for change of officials when there is a pending suit regarding the leadership of the Society would amount to contempt of court and the same would be in contravention of the *Contempt of Court Act* No. 46 of 2016 [sic]



[this Act was declared unconstitutional in 2017 and was hence unjustifiably cited in the letter by the Respondent as at October 2019]

We therefore advise that all the parties should await the determination of Nairobi HCC 206 of 2019 Yusuf Abdulrahman Nzibo & Others vs Hassan ole Naado [sic]”

53. The said case was settled by Mediation and the same is NOT alive for ANY adjudication and therefore cannot anymore form the purported basis of the refusal of the Respondent to accept the SUPKEM’s Forms H and I of the said period. Remarkably in his entire Replying Affidavit Yusuf Nzibo said totally nothing of it.
54. Indeed, Interested Party Amb. Yusuf Nzibo at an officially convened SUPKEM FAREWELL PARTY meeting duly minuted of 22nd July 2023 he CONFIRMED his official exit from SUPKEM leadership.
55. It cannot therefore be tenable that the Respondent is breaching SUPKEM’s Constitution and Section 18 of the *Societies Act* to bring back the said Interested Party WITHOUT ANY ELECTION of the Interested Party as such “National Chairman” of SUPKEM, and in breach of the law.
56. The Respondent did NOT act within the province of the *Societies Act* in publishing the last paragraphs of the 2 impugned letters which she authored of 23rd January 2024 and of 25th January 2024 and in spite of the Ex Parte Applicants’ FORMAL requires that she corrects the misleading and illegal communication by their letter dated 24th January 2024 she failed to do so.
57. Reliance is placed in the case of Republic v Registrar of Societies Ex-parte Shaahid Sheikh & 15 others [supra] where again Emukule J. intervened as exactly sought herein and he led:

“ 54. Despite notification on 9th July, 2015 to the Respondent’s Deputy Registrar to correct office bearers of the Muslim Association of Mombasa, the Respondent has, according to the Applicants pleadings not responded to that verification. The Respondent maintains that the Interim Officials were duly elected the Muslim Association of Mombasa. This view is both inconsistent with the facts, and more importantly contrary to the law, the provisions of the *Societies Act*.

56. In the circumstances and for those reasons, there shall firstly issue an order of certiorari to remove to this court and quash the decision of the Deputy Registrar of Societies contained in the letter dated 30th June, 2015 purporting to confirm the interim office bearers of the Muslim Association of Mombasa. Secondly, there shall issue the judicial review order of mandamus to compel the Registrar of Societies to confirm (in terms of section 17 of the *Societies Act*), that the officials elected the Muslim Association of Mombasa’s Special General Meeting held on 12th July, 2015 and set out in Form H and I dated 13th July, 2015, are the duly elected office bearers of the Muslim Association of Mombasa.”

The respondents case:

58. Section 30 of the *Societies Act* provides the following:

“ 1) Every registered society shall furnish annually to the Registrar, on or before the prescribed date, such returns, accounts and other documents as may be prescribed.



- 2) If any return, account or other document furnished under subsection (1) of this section is incomplete in any material particular, it shall be taken not to have been furnished for the purposes of subsection (1) of this section.
- 3) Any registered society which contravenes subsection (1) of this section shall be guilty of an offence.
- 4) Any person who willfully makes or orders or causes or procures to be made any false entry in or omission from any return, account or other document furnished under this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.”

59. Further to the above, Rule 13 of the Societies Rules provides: the annual return required under section 30(1) of the Act shall be furnished on or before the 31st March in each year, and shall be in respect of the immediately preceding calendar year, and shall be in Form I in the Schedule to these Rules signed by three officers of the society.
60. The Respondent submits that the last time the Society filed its Annual returns was in 2018 which was done by officials who were elected in 2017 vide a Form H dated 24th October, 2017 following changes made on 23rd October, 2017.
61. The Annual Returns for the year ending 2019 – 2022 and filed on 2nd March, 2023 contained different officials from the ones elected in 2017. This action was irregular, incomplete in material particulars and against the requirements for filing Annual Returns and was assumed not to have been furnished.
62. The changes vide the Form H made on 18th January, 2020 and filed on 2nd March, 2023 was belatedly brought beyond the requirements of fourteen (14) days provided under Section 17 (1) of the [Societies Act](#) and there was no just reason or proof of any meeting held to ratify the purported elections as required.
63. Further to the above, the application was not accompanied by a list of members present during the meeting, there was no Notice convening the meeting wherein the elections were held and there was no introduction letter addressed to the Registrar of societies and notifying her of the changes.
64. Therefore, the Annual Returns (Form I) and Form ‘H’ as submitted did not meet the legal requirements. In an effort to sanctify this irregularity and to hoodwink this honorable Court into believing that they are the rightfully elected officials, the Exparte Applicants held an election on 12th August, 2023 where the purported officials were elected as pleaded in their application. This action by the Exparte Applicants in this end justifies the Respondent’s action of expunging the irregular Form H and Form I filed on 2nd March 2023
65. The Respondent’s letters dated 23rd January, 2024 and 25th January, 2024 were issued within the framework of the [Access to Information Act](#) and they do not amount to ultra vires conduct.
66. The Respondent Applicants have not proved how the Respondent acted ultravires, how she did not follow statutory procedure requirements and her failure to observe principles of natural justice, thus they are not entitled to the Orders sought.
67. The Respondent has the duty and the responsibility to rectify errors on the register of Registered Societies where she receives a complaint or where it comes to her realization there was an error when processing applications.



Interested Case

68. In opposing the application, The Application the Interested party filed a replying affidavit dated 22nd February 2024.
69. A brief Summary of the case before the Court is that;
- a. In September 2017, SUPKEM conducted an Annual General Meeting(AGM) held in Al-Huda Mosque, South B Nairobi where members of the Executive Committee were elected. The said members inter alia include; Yusuf Abdulrahman Nzibo-Chairman, Mohamed Adan Mahat- Secretary General, Mohamed Washala Abdi-deputy ISecretary General, Bakary Athman Chemaswet-National Treasurer and Abdullahi Omar Salat-Organizing Secretary. This was communicated to the registrar vide a FORM H dated 24th October 2017.
 - b. The Interested Party was elected as the chairman of SUPKEM while the 1st Applicant, one Hassan Ole Naado vied for the position of Secretary General but suffered a crushing defeat and lost miserably.
 - c. Since then society did not conduct an election as confirmed by the Registrar of Societies.
 - d. Sometime in March 2023, the 2017 duly elected officials got wind of information to the effect that the society's leadership was tempered with through forged annual returns and notifications of change of office bearers (FORM H) by the ex-parte Applicants herein.
 - e. On 2nd May 2023, the firm of Salim Omar & Co. Advocates wrote to the registrar requesting for a search/confirmation of the society's officer bearers as at that date and the search issued on the same day confirmed the fears that the records were tempered with as it showed the Ex-parte Applicants as the officials instead of those elected in 2017. The firm of Advocates lodged a complaint dated 22nd May 2023 on behalf of the officials bringing to the Registrar's attention the blatant illegality and fraud.
 - f. Vide a letter dated 6th June 2023, the Registrar wrote to the 3rd Applicant herein who purported to be the Secretary General to respond to the complaint within 14 days. The same did not elicit any response and on 23rd June 2023, in the absence any response to the complaint, the Registrar made the following decision;
 - i. The Annual returns for years 2019-2022 and notification of change of officers filed on 2nd March 2023 have been expunged from the record;
 - ii. The Society to conduct its Annual General Meeting within 60 days;
 - iii. The Society to furnish the Registrar of Societies with a true and complete list officers and members;
 - iv. The Society to file its Annual Returns for years ending 2019-2022
 - g. The decision aggrieved the 1st Exparte Applicant who also purported to represent the society and filed judicial review proceedings in HCJR E104 of 2023- Republic -Vs- Registrar of Societies Ex parte SUPKEM & Hassan Ole Naado through a chamber summons application filed under certificate of urgency dated 31st July 2023 that led to the following order;

“ 5. THAT leave hereby granted shall operate as a stay of execution of the entire contents of the Respondent's (Registrar of Societies) letter to the SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM)



dated 23rd June 2023 until the determination of the Judicial Review Notice of Motion herein filed under such terms as directed or until further Court orders”

- h. The stay order meant that the Registrar’s decision to expunge and directions for SUPKEM to conduct AGM within 60 days, furnish a true and complete list of officers and members and file its annual returns for years ending 2019-2022 was put on hold and frozen until the determination of the case.
 - i. On 12th August 2023, the Ex-parte Applicants purported to have conducted an Annual General Meeting pursuant to the Registrar’s letter dated 23rd August 2023 virtually where they were elected as SUPKEM officials. They claim that they forwarded the returns and Form H to the Respondent on 22nd August 2023 and the same was received thus becoming SUPKEM’s office bearers in contravention of the stay of execution order which they obtained on 1st August 2023.
 - j. Vide letters/searches dated 23rd January 2024 and 25th January 2024 the Registrar of Societies confirmed SUPKEM’s office bearers to be those elected in 2107 as indicated in the Form H dated 24th October 2017.
70. Pursuant to the request by the firms of Kusow and Company Advocates and Litunda & Co. Advocates on 23rd January 2024 and 25th January 2024, the Registrar issued searches/confirmations confirming the office bearers of SUPKEM as those contained in the FORM H dated 24th October 2017 and listed SUPKEM’s officials as; Yusuf Abdulrahman Nzibo-Chairman, Abdullahi Sirat Osman-Deputy Chairman, Mohamed Adan Mahat- Secretary General, Mohamed Washala Abdi-deputy Secretary General, Bakary Athman Chemaswet-National Treasurer and Abdullahi Omar Salat-Organizing Secretary etc.
71. The Registrar having expunged the documents filed by the ex-parte Applicants from record on 23rd June 2023, what remained in the register was the returns and Form H dated 24th October 2017 and by the time of its issuance on 1st August 2023, the stay of execution order was overtaken by events, the events being the expunging of the returns and the notification on 23rd June 2023.
72. According to them, the Stay of execution order did not amount to a reinstatement order reinstating the expunged documents into the register. If it was, the court order could have explicitly stated as such.
73. The information in the letters precipitated the Ex-parte Applicants’ filing of the instant judicial review proceedings.
74. The gravamen of their case is that having conducted an AGM on 12th August 2023 where the Ex-parte Applicants were elected as officials of SUPKEM, any search by the Registrar ought to have reflected them as SUPKEM officials and that the searches dated 23rd and 25th January 2023 were issued in bad faith and was ultra vires and breach of their legitimate expectation and their right to fair to fair administrative action.
75. On 16th February 2024 HCJR E104 of 2023 was struck out. This automatically lifted the stay order issued on 1st August 2023 and effectively reinstated the impugned decision which to date remains in force since it was not set aside nor challenged.
76. The 23rd June 2023 decisions being legally in force reinstated the returns filed in 2017 as the only returns in SUPKEM’s file and thus the searches issued on 23rd and 25th January 2024 were lawfully issued as they are a true reflection of the contents of the file.



Issues for Determination

77. The Ex parte Applicants are seeking an order certiorari to quash the said letters; an order of mandamus to compel the Respondent to restore the annual returns and forms H & I filed pursuant to an AGM conducted on 12th August 2023 and order of prohibition prohibiting the Respondent from purporting that the interested party is the current National Chairman of SUPKEM.
78. The Ex-parte Applicants state in the paragraph “a” of the Certificate of urgency by J. Harrison Kinyanjui dated 16th February 2024 certifying Chamber Summons Application of even date as extremely urgent state that;
- “Following an AGM held on 12th August 2023, the Applicants were duly elected as officials of SUPKEM and the Forms H and I thereof were submitted to the Respondent Registrar of Societies which she received and has in her custody. The returns were stamped received by the Respondent on 22nd August 2023.”
79. The Ex-parte Applicants accuse the Respondent of bad faith, unreasonableness, irrationality and bias in disregarding annual returns and Forms H & I purportedly filed on 22nd August 2023 following elections of officials at an AGM conducted by SUPKEM on 12th August 2023.
80. The gravamen of the Ex-parte Applicants’ case is that having been elected as officials in SUPKEM’s AGM conducted on 12th August 2023 which results were communicated vide returns and Form H filed on 22nd August 2023, they become SUPKEM’s office bearers. This is misconceived, bad in law and holds no water because;
- a. As stated above, on 23rd June 2023, following a complaint received from officials elected in 2017, the Registrar made the following decisions which we take the liberty to reproduce once again;
- i. The Annual returns for years 2019-2022 and notification of change of officers filed on 2nd March 2023 have been expunged from the record;
- ii. The Society to conduct its Annual General Meeting within 60 days;
- iii. The Society to furnish the Registrar of Societies with a true and complete list officers and members;
- iv. The Society to file its Annual Returns for years ending 2019-2022
- b. Following the filing of HCJR E014 of 2023, by the 1st Applicant, Justice Chigiti on 1st August 2023 stayed the execution of the Registrar’s decisions until determination of the case as follows;
- “That leave hereby granted shall operate as a stay of execution of the entire contents of the respondent’s (Registrar of Societies) letter to the Supreme Council of Kenya Muslims (SUPKEM) dated 23rd June 2023 until the determination of the Judicial Review Notice of Motion herein filed under such terms as directed or until further Court orders”
- c. The stay order meant that the Registrar’s decision to expunge and directions for SUPKEM to conduct AGM within 60 days, furnish a true and complete list of officers and members and file its annual returns for years ending 2019-2022 was put on hold and frozen until the



determination of the case. The execution of decision having been stayed, it could not be acted on until the HCJR E104 of 2023 was determined.

- d. The AGM purportedly conducted on 12th August 2023 through which the Ex-Parte Applicants claim to have been elected as officials as evidenced by the returns and Form H was illegal and void ab intio because;
- i. As at 12th August 2023, the stay of execution order issued on 1st August 2023 by Justice Chigiti was fully in force and thus no AGM could be conducted.
 - ii. The AGM having been conducted in violation of the Applicants' own court order issued 11 days before on 1st August 2023, the same is null and void ab intio and nothing turns on the same. A similar fate befalls the elections, returns and Form H which were purportedly filed on 22nd August 2023 being the results of the AGM on whose strength the Exparte Applicants claim to be the Officials of SUPKEM. The AGM having been conducted in violation of the order of the court, it is like it was never conducted.
 - iii. In *Martin Nyaga Wambora & 4 others v Speaker of the Senate & 6 others* 2014] eKLR the Court said as follows regarding any action done in contravention of a court order;

“282. We are in agreement with the above authorities, to the effect that anything done in disobedience of court orders is null and void ab intio and is a nullity in law. Therefore, the 6th Respondent having proceeded to pass a resolution for the removal of the 1st Petitioner from office in defiance of court order means that the resolution was a nullity. It is like that the resolution was never passed in the first place. In the circumstances, there was no valid resolution which could have been forwarded to the Speaker of the Senate for action under Section 33(2) of the Act. The subsequent actions of the Senate are a nullity including the decision to remove the first Petitioner from office.
 - iv. In *Clarke and Others vs Chadburn & Others* [1985] 1 All E.R. (PC) 211, it was held as follows;

“An act done in willful disobedience of an injunction or Court Order was not only a contempt of Court but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others.”
 - v. In *Republic v Attorney General & another ex parte Council of Legal Education* [2017] eKLR Justice Odunga(As he then was) echoed the above sentiments thus;
 19. In *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the Court of Appeal held that judicial power in Kenya vests in the Courts and other tribunals established under *the Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law. The consequences of failure to obey Court orders are that any action taken in breach of the court order is a nullity and of no effect.



- vi. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 cited in *Republic v Attorney General & another ex parte Council of Legal Education*(supra) Lord Denning defined an act that is void as follows;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

- vii. The purported elections held in the AGM conducted on 12th August 2023 where the ex-parte Applicants claims have been elected as officials and on who basis they challenged the letters dated 23rd and 25th January 2024 are thus a nullity and it is like it was never conducted and so are the returns and Form H purportedly filed on 22nd August 2023 which the Ex-parte Applicants purport to derive legitimacy from as there was no valid returns and Form H to be forward to the Registrar.

81. On 16th February 2024, the Court determined HCJR E104 of 2023 by striking out the same, automatically lifting the stay order and reinstating with full force the Registrar’s decision dated 23rd June 2023.
82. The searches dated 23rd January 2024 and 25th January 2024 were thus a true reflection of the record as the returns and form H the Applicants are relying on were results of an AGM conducted in disobedience and violation of court order and could not be filed.
83. The decision to expunge the documents from the Record and the directions on conduct of an AGM having been stayed by the Court on 1st August 2023, was the Registrar under an obligation to file returns and documents filed in violation of a court order? Can the Registrar be said to have acted unreasonably, irrationally and in bad faith in refusing to legitimize actions done in contempt of a court order? certainly not.
84. The Applicants have abused the court process by obtaining a stay order then using the same to stay in power and hold a sham AGM whose conduct was stayed by the Court order and installed themselves as SUPKEM’s elected officials, all in a bid to legitimize their stay in power which was without any basis.
85. According to the interested party, what was conducted on 12th August 2023 cannot be said to amount to an election as purported because;
- a. The same contravenes the procedure for elections as set out in SUPKEM Constitution. We have detailed this procedure in the Interested Party’s Replying Affidavit sworn on 22nd February 2024.
 - b. Election was not part of the agenda of the AGM held on 12th August 2023-see page 100 of the Ex-parte Applicants bundle in violation of the Article 10(II)(c)SUPKEM Constitution.
 - c. No National Executive Committee elections could be held on 12th August 2023 as there were no grassroots elections electing the delegates/National Governing Council who were to appoint them was ever conducted.
 - d. The Registrar of Societies was not invited to preside over the said elections as required.



- e. The minutes of the said AGM held on 12th August 2023 in violation of court order purport that the Ex-parte Applicants were confirmed as officials, yet that is not how elections of the office bearers are conducted.
- f. The purported AGM was held virtually via Zoom platform yet there is no provision for virtual meetings in the Society's Constitution neither was the exigency for the same demonstrated.
- g. The said AGM held on 12th August 2023 was not held in disobedience of this Honourable Court's stay order issued on 1st August 2023 but also a stay order issued in MCCC/E3644/2023 IDDI MARJAN SULEIMAN AND SALIM LEMOMO RAMADHAN AND 2 OTHERS Vs- HASSAN OLE NAADO AND ABDULLAHI SALAT AND 1 OTHERS by the Honourable Musiega(SRM) on 11th August 2023.

2) Whether the respondent was justified in law in issuing the impugned letters dated 23rd January 2024 & 25th January 2024.

- 86. Article 35 of *the constitution* guarantees every citizen "the right to access to information held by the state."
- 87. Section 48 of the *Societies Act* stipulates that;
 - "48. Inspection of documents by public
 - On payment of the prescribed fees, any person may inspect at the office of the Registrar the register and any documents relating to any society lodged with the Registrar under this Act, and may obtain from the Registrar a copy of or extract from such register or document.
- 88. Vide the letters dated 23rd and 25th January 2024, the Registrar responded to the 21st November 2023 and 18th January 2024, the Firms of Kusow & Co. Advocates and Litunda & Co. Advocates request for information letters.
- 89. The Respondent confirmed that officials of SUPKEM were those elected in 2017 as per the form H dated 24th October 2017 thus discharging the obligation placed on her by Article 35 of *the Constitution* and Section 48 of the *Societies Act*.
- 90. The letters dated 23rd and 25th January 2024 reproduced the information contained in SUPKEM's register held by the office.
- 91. The Respondent was justified in issuing the said letters confirming the SUPKEM officials to be those elected in 2017 because;
 - a. On 23rd June 2023, the Respondent issued a decision inter alia expunging the annual returns and Form H that installed the Applicants as officials of SUPKEM from the record. The decision also directed SUPKEM to conduct an AGM for elections within 60 days.
 - b. The expungement meant that the said documents were removed from the register as at 23rd June 2023.
 - c. Registrar having expunged the documents filed by the ex-parte Applicants from record on 23rd June 2023, what remained in the register were the returns and Form H dated 24th October 2017 and by the time of its issuance on 1st August 2023, the stay of execution order was overtaken by events, the events being the expunging of the returns and the notification on 23rd June 2023.



The Stay of execution order did not amount to a reinstatement order reinstating the expunged documents into the register. If it was, the court order could have explicitly stated as such.

- d. In violation of their own stay order and in a bid to use the same to legitimize their stay in power, a sham AGM was convened on 12th August 2023 wherein the ex- parte Applicants purport to have been elected. Since this was done in contempt of court and in breach of the procedures for elections, the same though received were not filed because by doing so, the registrar will have sanitized an illegality.
 - e. As at 23rd January 2024 and 25th January 2024, the only documents in the file for purposes of search were the annual returns and Form H filed in 2017 listing the Interested Party led officials as the office bearers. The letters were thus a reflection of the information contained in the Register as at that date.
 - f. The impugned letters dated 23rd and 25th January 2024 are just searches which any member of the public can apply for in exercise of their right to information under Article 35 of *the Constitution* and the issuance of the same ought not to be proceeded by a notification to the members of the society as wrongly asserted by the ex-parte Applicants or an opportunity to be heard. Once a member of the public applies for a search, the Registrar issues the same as per the returns and Form H in the Register as at that date, which in the instance case was the returns made in 2017.
 - g. The Respondents fault the Registrar for not giving searches that reflect the information contained in the returns and Forms H& I which was forwarded to her on 22nd August 2023 when this will have been an illegality since the AGM that gave rise to the purported forms was held in violation of a court order.
92. The Ex-parte Applicants accuse the Respondents of ignoring their letter dated 24th January 2024 and received by the Registrar on 25th January 2024 demanding that the Registrar should rectify the said letters to reflect the latest Form H they filed on 22nd August 2023. This is preposterous because as at 23rd January 2024 when the search was issued, the only documents in the file were those filed in 2017, the other returns and Forms having been expunged from the record. Further the purported latest Forms alluded to in the letter dated 24th January 2024 were those prepared and filed following the conduct of an AGM on 12th August 2023 in purported compliance with Registrar's decisions made on 23rd June 2023, a decision they had stayed on 1st August 2023 thus the purported latest forms having been generated in violation of a court order ARE A NULLITY AND OF NO LEGAL EFFECT and the Registrar was not bound to comply or incorporate them.
93. It is the interested parties case that whether the Applicants, having filed and paid for the returns and Forms H & I on 22nd August 2023 had legitimate expectation that they were officials of SUPKEM, it is commonplace that the returns and Forms being a product of an AGM held in violation of a court order was a nullity and of no legal effect thus no legitimate expectation could arise from an illegal process and compelling the Registrar to adopt the same is tantamount to forcing her to comply with an unlawful action. The Applicants cannot assert a legitimate expectation borne out of an illegality.

Whether the ex-parte applicants are entitled to the reliefs sought.

94. Following the striking out of HCJR E104 of 2023 on 16th February 2024, the decision of the Registrar contained in the letter dated 23rd June 2023 was reinstated. The same was never set aside and is not the subject of challenge before this Court. The same thus enjoys legal force.



95. First, the Applicants seek an order of certiorari to quash the searches dated 23rd and 25th January 2024 confirming SUPKEM officials as those of 2017 for being ultra vires. As demonstrated above, the Registrar having expunged all other returns and forms on 23rd June 2023, she acted within her powers and the law in issuing the search as per the 2017 returns and Forms which remained in the file following the expungement.
96. The Applicants seek an order of Mandamus to compel the Registrar to unconditionally restore the returns and Forms purportedly filed on 22nd August 2023. This order cannot issue because;
 - a. The purported returns and Forms were products of an AGM and elections held in contempt and in violation of this Honourable Court order issued on 1st August 2023 inter alia staying the registrar's direction that an AGM be held thus the same remains null and void.
 - b. Compelling the Registrar to restore the said returns and forms will be tantamount to sanctioning an illegality and giving judicial imprimatur to contemptuous actions and nullities.
 - c. Without prejudice to the foregoing, whatever happened on 12th August 2023 does not amount to an election as the laid down procedures were never followed.
97. The prayer for an order of a Prohibition Order prohibiting the Respondents from alleging that the Interested party is the Current Chairman of SUPKEM.
98. This order cannot issue because, pursuant to the Registrar's decision made on 23rd June 2023 which expunged the Applicants returns and forms from the record and which decision remains valid and in force, the only returns and forms in the register are those of the 2017 elections in which the Interested party was elected as the Chairman. That letter is still in force unless fresh elections post the 16th February 2024 ruling are conducted as the AGM held on 12th August 2023, which forms the basis of this order, is a nullity and of no legal effect.
99. The interested party submits that as per the Registrar's decision dated 23rd June 2023 which expunged the Ex-parte Applicants' returns and Forms and which was effectively reinstated following the ruling delivered on 16th February 2024 and which remains in force the legitimate and bonafide officials are as contained in the letters dated 23rd and 25th January 2024.
100. The Ex-parte Applicants' assertion that the Interested party was suspended and removed as official is contested and seriously controverted and the same cannot form the subject of determination before this court. Even the Respondent cannot confirm the same. The purported mediation agreement is a stranger to the Interested party and so are the inadmissible photos attached to the Applicants supplementary affidavit which is not accompanied by a certificate of electronic evidence.
101. The applicants are power hungry and will resort to anything including acting in contempt of their own court order as demonstrated above. they are keen on taking over the helm of the society through dubious and underhand tactics and we urge the court to shoo them away and not fall for such illegal advances.
102. If the Applicants have any issue with the Interested party, the proper forum is the purported court that adopted the mediation settlement. They can enforce the same before the same court and not before this court.



103. In *Republic v National Transport & Safety Authority & 10 others Ex parte James Maina Mugo* [2015] eKLR, it was held as follows;

“ 54. Therefore, judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See *R vs. Secretary of State for Education and Science ex parte Avon County Council* (1991) 1 All ER 282, at P. 285.

55. It follows therefore that where the resolution of the dispute before the Court requires the Court to make a determination on disputed issues of fact that is not a suitable case for judicial review. The rationale for this is that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect determine the merits of the dispute the Court would not have jurisdiction in a judicial review proceeding to determine such a dispute and would leave the parties to ventilate the merits of the dispute in the ordinary civil suits.”

Analysis and Determination

104. The Court has considered the arguments adduced by all the parties, their respective pleadings, the rival submissions and evidence produce before this court the following are the issues for determination are;

i) Whether the;

A. Substantive Notice of Motion dated 19th February 2024,

B. the Notice of Motion Application dated 19th February 2024 and

C. The Chamber Summons Application dated 16th February 2024 are merited?

ii) Who shall bear the costs?

105. The Notice of Motion Application dated 19th February 2024 is overtaken by events shall flow with the substantive Notice of Motion of even.

106. The Chamber Summons Application dated 16th February 2024 is alive to the extent of prayer 5 which is subsumed in the arguments and submissions in the Substantive Notice of Motion dated 19th February 2024.

107. Judicial review jurisdiction was discussed in the Ugandan case of *Pastoli vs Kabale DistrictLocal Government Council & Others*, (2008) 2 EA 300, that:

“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR).

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without



Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”

108. The Supreme Court in Petition No. 6(E007) of 2022 Edwin Dande & Others v The Inspector General, National Police Service & Others reaffirmed that, the court concluded at paragraph 85 [see page 33] and held as follows:

“It is clear from the above decisions that when party approaches a court under the provisions of *the Constitution* then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of Order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of *the Constitution*, then the Court can only limit itself to the process and manner in which the decision complained of was reached or action taken and following our decision in SGS Kenya Ltd and not the merits of the decision per se.”

109. In Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR, the Court of Appeal stated;

“Judicial review is concerned with the decision making process, not with the merit itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters.....The court should not act as a court of appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision”.

110. The matter before me being a judicial review court, I have limited my analysis to the question of the procedure followed by the respondent in arriving at the adverse decision.

111. Article 47 (1) of *the Constitution* states as follows;

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”



Article 47(2)

“If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

112. Article 47 has now been effectuated by the *Fair Administrative Action Act*, 2015 under which section 4(3) provides as follows:

- “(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
- a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.”

113. The status of fair administrative action in Kenya’s constitutional and jurisprudential framework was discussed by Onguto, J in *Kenya Human Rights Commission vs Non-Governmental Organizations Co-ordination Board* [2016] eKLR a case in which the powers of the same Respondent were in question, in which the learned Judge expressed himself inter alia as follows:

“As to what constitutes fair administrative action, the court in *President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others* (CCT16/98) 2000 (1) SA 1, stated thus:

“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...” [Emphasis supplied]



Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light.

The Petitioner also alleges violation of its right to fair hearing. Article 50(1) of *the Constitution* makes provision for fair hearing. The Article is to the effect that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

The right to fair hearing is evidently closely intertwined with fair administrative action. The often cited case of *Ridge vs. Baldwin* [1964] AC 40 restated the right to fair hearing as a rule of universal application in the case of administrative acts or decisions affecting rights. In his speech to the House of Lords in 1911, Lord Loreburn aptly put it as a ‘duty lying upon everyone who decides anything’ that may adversely affect legal rights.

Halsbury Laws of England, 5th Edition 2010 Vol. 61 at para 639 on the right to be heard states that:

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.”

I would state that it now appears that the court, effectively has a duty to look into not only the merits and legality of the decision made due to the requirement of “reasonable” action under Article 47, but also the process and procedure adopted due to the requirement of following all precepts of natural justice under both Articles 47 and 50 (1) of *the Constitution*. The court proceeding under Article 47 of *the Constitution* is expected not only to pore over the process but also ensure that in substance there is justice to the petitioner. The traditional common law principles of judicial review are, in other words, not the only decisive factor.

It may sound like stretching the precincts of traditional judicial review, but clearly by *the Constitution* providing for a “reasonable” administrative action and also enjoining decision makers to provide reasons, the constitutional scheme was to entrench the blazing trend where courts were already going into merits of decisions by innovatively applying such principles like proportionality and legitimate expectation. I must however confess that the line appears pretty thin and, perhaps, more discourse is required on the subject of traditional judicial review and the now entrenched substantive constitutional judicial review.”

114. Article 50(1) provides that every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent and impartial tribunal or body.



115. The twin rules of natural Justice that no man shall be a Judge in his own cause (Nemo Judex in causa sua) and that no man shall be condemned unheard (audi alteram partem) are cardinal principles of law which are fundamental in our Justice system. They are basically an embodiment of the duty to act fairly. However, there is no legal definition or standard regarding what constitutes procedural fairness and each case must be decided on its own merits.
116. The critical issue that this court shall deal with is whether or not The Respondent acted ultra vires, and whether or not she followed the statutory procedural requirements in arriving at the impugned decision as contained in letters dated 23rd January, 2024 and 25th January, 2024 were ultra vires.
117. The Respondent informs the court that upon receiving a complaint and in keeping with the principles of natural justice the registrar forwarded the complaint letter to the society's Secretary General vide a letter dated 6th June, 2023 with instructions to respond within Fourteen (14) days from the date of the letter.
118. The letter did not elicit any response from the Ex-parte Applicants herein and the Respondent vide a letter dated 23rd June, 2023 and in exercising her duty of rectifying errors on the Society's records expunged the Annual Returns for years 2019 — 2022 and notification of change of officers filed on 2nd March, 2023 and subsequently directed the society and within 60 days to undertake the following: -
1. The Society to conduct its Annual General meeting.
 2. The Society to furnish the Registrar of Societies with a true and complete list of its officers and members;
 3. The Society to file its Annual Returns for years ending 2019 — 2022.
119. According to the Respondent the last time the Society filed its Annual returns was in 2018 which was done by officials who were elected in 2017 vide a Form H dated 24th October, 2017 following changes made on 23rd October, 2017.
120. The Annual Returns for the year ending 2019 – 2022 and filed on 2nd March, 2023 contained different officials from the ones elected in 2017.
121. The changes vide the Form H made on 18th January, 2020 and filed on 2nd March, 2023 was belatedly brought beyond the requirements of fourteen (14) days provided under Section 17 (1) of the [Societies Act](#) and there was no just reason or proof of any meeting held to ratify the purported elections as required.
122. It is the Respondents' case that the application was not accompanied by a list of members present during the meeting, there was no Notice convening the meeting wherein the elections were held and there was no introduction letter addressed to the Registrar of societies and notifying her of the changes and that the Annual Returns (Form I) and Form H as submitted did not meet the legal requirements.
123. According to the Respondent, in an effort to sanctify this irregularity and to hoodwink this honorable Court into believing that they are the rightfully elected officials, the Exparte Applicants sent a Notice for Annual General Meeting dated 20th July, 2023 signed by the expunged Secretary General and held an election on 12th August, 2023 where the officials were elected.
124. This court limits itself to the question around the letter sent by the respondent to SUPKEM.
125. It is this court's view that this letter was addressed to 3rd Applicant because the Respondent believed that he was an official of SUPKEM per the records in her custody.



126. On 23rd June 2023 he was one of the officers who was expunged before the 60 days' notice to comply with the requirement that the Society to conduct its Annual General Meeting within 60 days and the Society to furnish the Registrar of Societies with a true and complete list officers and members.
127. The Respondent removed the names prematurely before giving the Applicants time to convene or furnish the Registrar of Societies with a true and complete list officers and members.
128. How were they supposed to comply with the requirements of the Respondent when their names were expunged before the 60 days had expired?
129. The June 2023 letter generated a legitimate expectation in the mind of the Applicants that they were properly in office.
130. This might have further jolted the Applicants into holding an election on 12th August, 2023 where the officials were elected in a bid to beat the 60 days' notice. This court has no business interrogating the legality of this meeting or otherwise.
131. It is not in dispute that the Respondent did not send the foregoing correspondences or letters to the Interested Party nor any other officials who were in the registrar's records per the 2017 records.
132. This court wonders why this was not done yet the Registrar confirmed that they are the officials in her 23rd and 25th January 2024 letters.
133. Given that the Respondent maintains that the legitimate officials are the ones in their records since 2017, then they are the ones who should have been called upon to comply with the law through the letter dated 23rd June 2023 and not the person to whom the letter was sent to.
134. Given that it was clear to the Respondent that there was a leadership dispute, The Respondent should have heard both the applicants and the interested party before unilaterally deciding on who the officials are before expunging the applicants from the records.
135. Being a judicial review court, I will not delve into how the Respondent would have resolved the issue.
136. The Respondent Registrar of Societies was estopped by operation of Section 18 of the *Societies Act* from in any manner moving in the manner she did to cancel the Year 2019-2023 Annual Returns of the SUPKEM in terms of Forms H and Form I already submitted under the *Societies Act* through the procedure that she embraced.
137. The court's attention has been drawn to the fact that there exists a duly executed Consent settlement dated 5th June 2023, in a Court-ordered Mediated Settlement in the cited Nairobi HCC No. 262 of 2019 and where the interested party resolved to exit the leadership of SUPKEM amicably.
138. Further to this, through the letters dated 31st March 2023 and 2nd May 2023 the Respondent confirmed to all and sundry that the current officials of SUPKEM are the Applicants and the Respondent must not have come up with a contrary decision though the 2 impugned letters of 23rd January 2024 and 25th January 2024 alleging that the SUPKEM officials as per the 2017 records are allegedly the "current officials" of SUPKEM as at 2024.
139. The foregoing facts as read alongside the fact that the Respondent accepted the Applicants' annual returns, statutory fees and even stamped their documents albeit faulty for many years, no doubt, created the impression in the mind of the applicants at they were the legitimate SUPKEM office bearers since 2017.



140. A rebuttable presumption that they were legitimate officials was also created by the effluxion of time. In a fair democratic system where the rule of law exists, the only way this presumption could have been displaced is through the application of fair administrative action process through a fair hearing, which, in my assessment, the Respondent failed to provide.

141. In Republic vs. Kenya Revenue Authority Ex parte Shake Distributors Limited HC.Misc. Civil Application No. 359 of 2012 it was held that:

“On the issue of legitimate expectation, the Applicant submitted that it met all the pre-requisite conditions and obtained all the documents necessary for the importation of sugar. The Applicant argued that it had received an assurance that after meeting the necessary conditions its legitimate expectation would be protected and not breached. In reply the Respondent submitted that it did not make any representation to the Applicant that it would clear its imports without imposing conditions permitted in law or release them on terms which contravene customs law or practice.

“According to Harry Woolf, Jeffrey Jowell and Andrew Le Sueur at page 609 of the 6th Edition of DE SMITH’S JUDICIAL REVIEW, ‘Such an expectation arises where a decision maker has led someone affected by the decision to believe that he will receive or retain a benefit or advantage (including that a hearing will be held before a decision is taken)’. It follows therefore that the cornerstone of legitimate expectation is a promise made to a party by a public body that it will act or not act in a certain manner. For the promise to hold, the same must be made within the confines of law. A public body cannot make a promise which goes against the express letter of the law...”

142. Section 7(1) of The *Fair Administrative Action Act* stipulates as follows;

“Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to– (a) a court in accordance with section 8; or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.”

143. Under Section 7(2) (m) A court or tribunal under subsection (1) may review an administrative action or decision, if the administrative action or decision violates the legitimate expectations of the person to whom it relates.

144. In order to exercise her discretion, the Respondent arrived at a decision after considering the following-

“The Annual Returns for the year ending 2019 – 2022 and filed on 2nd March, 2023 contained different officials from the ones elected in 2017. This action was irregular, incomplete in material particulars and against the requirements for filing Annual Returns and was assumed not to have been furnished.

The changes vide the Form H made on 18th January, 2020 and filed on 2nd March, 2023 was belatedly brought beyond the requirements of fourteen (14) days provided under Section 17 (1) of the *Societies Act* and there was no just reason or proof of any meeting held to ratify the purported elections as required.

Further to the above, the application was not accompanied by a list of members present during the meeting, there was no Notice convening the meeting wherein the elections



were held and there was no introduction letter addressed to the Registrar of societies and notifying her of the changes.

Therefore, the Annual Returns (Form I) and Form H as submitted did not meet the legal requirements”

145. Although this court appreciates that it is not sitting on appeal and must not do a merit analysis it is rather plain that the foregoing presents a list of considerations that a party who is likely to get affected by the outcome of such a fundamental process should have been given a chance to react to by presenting their case.
146. The applicants and indeed even the interested parties were not afforded an opportunity to argue their case.
147. When the Applicants did not respond to the Respondents letter, then the Respondent should have reached out to the officials including the interested party who had last lodged documents with the Respondents.
148. In Republic v Public Procurement Administrative Review Board & 2 others [2019] eKLR; Nairobi HC Misc. Civil Application No. 187 of 2018 it was postulated that:

“29. Procedural impropriety generally encompasses two things: procedural ultra vires, where administrative decisions are challenged because a decision-maker has overlooked or failed to properly observe statutory procedural requirements; and common law rules of natural justice and fairness. Lord Diplock noted that "failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice," is a form of procedural impropriety....”

149. The Respondent’s decision contained in the letters dated 23rd January 2024 and 25th January 2024 alleging that the current 2024 officials of Supreme Council of Kenya Muslims (SUPKEM) are as stated for the year 2017, is predicated on an ailing procedural background and the same are ultra vires the *Societies Act*, and the *Fair Administrative Action Act* and I so hold.
150. Without attempting to predict what the Respondent would have said I hold that what is critical to the judicial review court is the fact that the applicant’s letter dated 24th January 2024 in line with Article 35 of *the Constitution* seeking to know why the Annual Returns of the SUPKEM for the 2019-2023 period was expunged unlawfully from the Respondent’s remain responded to. It matters not whether or not the Applicant was an official of SUPKEM. What counts is that the Applicant must be a citizen of Kenya. There is no allegation that he is not a citizen.
151. In Republic v Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, Halsbury’s Law of England, 4th Edn. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right



and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed."

152. Having satisfied myself in the foregoing, it is my finding and I so hold that the Applicant has made out a case for the and the Respondent has a duty and the requisite powers to restore Supreme Council of Kenya Muslim's (SUPKEM's) duly filed and paid for Annual Returns for the years 2019, 2020, 2021, 2022, 2023.

153. In *Republic v Principal Kadhi, Mombasa Ex-parties Alibhai Adamali Dar & 2 others; Murtaza Turabali Patel (Interested Party)* [20221 eKLR, the Court rendered itself thus:

"The Order of "Prohibition" issues where there are assumptions of unlawful jurisdiction or excess of jurisdiction. It's an order from the High Court directed to an inferior tribunal or body as in this case the Kadhi's Court. Its functions is to prohibit and/or forbids encroachment into jurisdiction and further to prevent the implementation of orders issued when there is lack of jurisdiction."

"Although prohibition was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by prohibition. Certiorari and prohibition frequently go hand in hand, as where certiorari is sought to quash the decision and prohibition to restrain its execution. But either remedy may be sought by itself."

154. The Respondent acted irrationally, unfairly and without any reasonable justification in arriving at the decision and the Applicants have proven that in the circumstances they are entitled a prohibition order as sought which I hereby grant.

155. Before I pen off, this court has noted with a lot of concern the consistent attack that was mounted against the registrar of societies. This is an officer of the State and an officer of the court and she must never be subjected to any personal attacks for acts done while discharging her official duties. Whether she has done the right thing or the wrong thing must not form the basis of attacking a government official so long as she is has acted in her official capacity. There are statutory avenues and channels which aggrieved litigant must adopt in raising concerns which litigants are encouraged to embrace. These will present appropriate safeguards that will promote the rule of law and the right to fair hearing to all the parties before the right redress platform that will afford such an officer an opportunity to defend themselves. I need not say more.

Disposition:

156. The upshot of the foregoing is that the Respondent's decision contained in the letters dated 23rd January 2024 and 25th January 2024 are procedural ultra vires, The registrar has overlooked or failed to properly observe statutory procedural requirements; and common law rules of natural justice and fairness and in particular the administrative process as outlined in Section 12 of the *Societies Act*, Article 47 and 50 of *the Constitution* and I so hold.



Orders;

1. The substantive Notice of Motion dated 19th February 2024 is allowed in the following terms:
2. An order of certiorari is hereby issued, to remove to this Honorable Court for purposes of being quashed, quashing, the Respondent's decision contained in the letters dated 23rd January 2024 and 25th January 2024 alleging that the current 2024 officials of Supreme Council of Kenya Muslims (SUPKEM) are as stated for the year 2017, and which letters are ultra vires the *Societies Act*, and the *Fair Administrative Action Act*.
3. An order of mandamus is hereby issued compelling the Respondent by herself and/or such Officers acting at the Respondent's behest, to forthwith restore unconditionally the Supreme Council of Kenya Muslim's (SUPKEM's) duly filed and paid for Annual Returns for the years 2019, 2020, 2021, 2022, 2023 as filed by the SUPKEM with the Respondent Registrar of Societies on 22nd August 2023 containing notification of the current and validly elected Officers of the SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM) as contained in the SUPKEM's Form H and Form I lodged under the *Societies Act*, and as originally paid for vide Official Receipt C0683169 upon the conduct of the Annual General Meeting on 12th August 2023 as ordered by the Respondent.
4. An order of Prohibition is hereby issued prohibiting the Respondent or any Person acting at their behest from purporting and/or alleging that the Interested Party herein Amb. Yusuf Abdulrahman Nzibo Is the current National Chairman of the SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM) based on the 2017 Annual Returns held by the Registrar of Societies in respect of SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM), or otherwise howsoever.
5. The Notice of Motion Application dated 19th February 2024 and prayer 5 of the Chamber Summons Application dated 16th February 2024 are allowed.
6. Costs to the applicant.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2024

.....

J. CHIGITI (SC)

JUDGE

