



Kericho Muslim Association (Suing through its Secretary Mohamed Abdullahi Unshur) v Supreme Council of Kenya Muslim & another; Aziz & 24 others (Interested Party); Muhammed (Applicant) (Civil Case 257 of 2016) [2024] KEHC 7938 (KLR) (Civ) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 257 OF 2016

JN MULWA, J

JUNE 27, 2024

BETWEEN

KERICHO MUSLIM ASSOCIATION (SUING THROUGH ITS SECRETARY MOHAMED ABDULLAHI UNSHUR) PLAINTIFF

AND

SUPREME COUNCIL OF KENYA MUSLIM 1ST DEFENDANT

THE REGISTRAR OF SOCIETIES 2ND DEFENDANT

AND

ABDULQADIR ABDUL AZIZ & 24 OTHERS INTERESTED PARTY

AND

ABDUL KADER MUHAMMED APPLICANT

RULING

1. Before the court for determination is an Application dated 18/12/2023 brought by the Interested Parties herein seeking orders: -
 1. Spent
 2. That the Plaintiff's Chairman one Mr. Abdul Kader Muhammed be ordered and/or compelled to issue an Election Notice as per orders issued by the court on 4/10/2024.



3. That in the alternative the plaintiff's chairman be committed to prison for a period of six (6) months or such period as would be deemed necessary for contempt of court by disobeying and breaching orders granted on 4/10/2024.
 4. That in the alternative the Registrar of Societies be directed to issue a Notice of Election of the Plaintiff to be conducted at Kericho Muslims School (Chepkdon Academy) within 28 days of the date of the order.
2. The 1st Interested party and Chairman of the Association swore the affidavit in support of the Application on 18/12/2023 and the grounds found on its face.
 3. The main issue raised by the Applicants is that the Chairman of the Plaintiff has failed to issue a Notice of Election by the Plaintiff Association, the last such election having been done on 2016 and there being no bar or financial barrier for the said election from being conducted, and that the Chairman being aware of the court orders, by consent the parties dated 4/10/2022 went ahead and applied to set them aside which the court declined and has since failed to call for elections of the Association.
 4. It is the Applicants averments that the last election was conducted on 1/05/2016 (7 years ago) and there having been a dispute the Registrar of Societies, the 2nd Defendant directed that fresh elections be done within 45 days thereafter being from 20/06/2016, which has since lapsed.
 5. Citing court orders of 28/02/2022 (Chitembwe J.) rendering that there is no bar from the Association holding an election; the Respondents do not oppose the application stating that the issues that have barred election have since been settled and therefore urging the court to direct that the election be done.

Determination

6. The consent orders filed by the parties by their Advocates on 4/12/2022 settled the long drawn election dispute between the parties since 2016

As held by Chitembwe J. in his ruling dated 4/10/2022 the Association may sue or be sued by its registered officials including the Chairman who is one of the Interested Parties.

It is therefore not correct as stated by the Chairman of the Association that as the Secretary had since died there is no suit in place before the court.

It is instructive to note that no appeal has been filed against the ruling nor any order barring the members of the Associations from holding an election for its officials.

7. It is also contradictory by the Respondent in its Replying Affidavit that the application herein is an abuse of court process as he has already issued a notice of election. If that be so the rest of the parties and particularly the Plaintiff (Association) and the 1st Defendant as well as the 2nd Defendant had not been served with such notice.

The court therefore finds the Respondent blowing both hot and cold Supporting and Opposing the instant application at the same time.

8. The ruling dated 28/02/2022 by Chitembwe J. dealt fully with the legal parameters upon which an Association may hold its election. I shall not repeat the same. Needless to state the Association is bound by its by-laws and has timelines of when to hold its elections.

The last such election was held in 2016 as confirmed by the Registrar of Societies and the same cancelled and an order directing fresh elections made.



I therefore fully agree with the Applicant, the Interested Parties and Chairman of the Plaintiff Association despite taking the court through uncalled for arguments and legal drama that it is necessary that members of the Association be represented by officials of their choice through an election.

9. For the reasons stated above, the Application dated 18/12/2023 succeeds and the following orders are issued:-
 1. That the Chairman of the Plaintiff Association one Abdul Kader Muhammed do within 21 days of this ruling, issue an election notice for election of the Association Officials to be conducted at Kericho Muslims School (Chepkolon Academy)
 2. In default, the Registrar of Societies is directed to issue such notice of election of the officials of the Plaintiff Association within 21 days of such default, to be conducted at the same venue as stated at (1) above.
 3. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 27TH DAY JUNE, 2024.

JANET MULWA

JUDGE

