

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)



2012/HP/1465

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

**IN THE MATTER OF: ORDER 53 RULE 3 OF THE RULES OF THE
SUPREME COURT**

BETWEEN:

**THE HOUSE OF JOY CHURCH INTERNATIONAL &
MINISTRIES REGISTERED TRUSTEES**

Applicant

And

**THE CHIEF REGISTRAR OF SOCIETIES
THE ATTORNEY GENERAL**

1st Respondent
2nd Respondent

**BEFORE THE HONOURABLE MRS. JUSTICE N.A. SHARPE-PHIRI ON THE
17th SEPTEMBER, 2013**

For the Applicant: Mr. Y. Yosa of Messrs Simeza Sangwa & Associates

For the Respondents: No appearance

J U D G M E N T

Cases referred to:

1. *Derrick Chitala v Attorney General (1995-97) ZR 91*
2. *Council of Civil Service Unions and others v Minister for the Civil Service (1984) 3 All ER 935 at 950*
3. *Frederick Chiluba v Attorney General (2003) ZR 153*
4. *Nyampala Safaris Ltd & Others v Zambia Wildlife Authority & Others (2004) ZR 49*
5. *Ridge v Baldwin (1963) 2 All ER 66*

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6. *Three Rivers District Council and others v Bank of England (2000) 3 All ER 1*
7. *Rookes v Barnard (1964) 1 All ER 367*

Other authorities referred to:

1. *The Supreme Court Practice (1999) Edition*
2. *The Societies Act, Chapter 119 of the Laws of Zambia*
3. *De Smith, Woolf and Jowell: Judicial Review of Administrative Action, 5th Edition, (London. Sweet & Maxwell, 1995)*

This is an application for Judicial Review made pursuant to **Order 53 rule 3 of the Supreme Court Practice (White Book)**. It was made by way of Originating Notice of Motion on the 13th December, 2012 following the grant of leave to commence the proceedings on the 4th December, 2012. The Applicant seeks to quash the decision of the Chief Registrar of Societies *Mr. Clement Andeleki* made on 1st August, 2012 to deregister the Applicant's society on grounds that it was involved in criminal activities and for non-payment of statutory fees.

In support of the application, the Applicant relied on the following documents:

1. **Ex-parte summons for leave to apply for judicial review, filed on 30th November, 2012;**
2. **Affidavit verifying facts filed on 30th November, 2012;**
3. **Notice of application for leave to apply for judicial review filed on 30th November, 2012;**
4. **Affidavit in reply filed on 1st February, 2013;**
5. **Supplementary affidavit in reply filed on 28th March, 2013.**

6. Applicants final submissions filed on 3rd June, 2013 pursuant to my Order of 27th May, 2013;

The Respondent opposed the application by way of an affidavit in opposition filed on the 9th January, 2013. The Respondent also filed submissions on the 12th June, 2013 pursuant to an Order of this Court dated 27th May, 2013.

The relief sought in the Notice of application for leave to apply for Judicial Review dated 30th November, 2012 is as follows:

- (i) *An Order of certiorari to remove into the High Court for the purpose of quashing the said decision;*
- (ii) *A declaration that the said decision is unlawful as it contravenes Section 13(2) of the Societies Act, Chapter 119 of the Laws of Zambia;*
- (iii) *A declaration that the Chief Registrar's decision violated Section 13(3) of the Societies Act, Chapter 119 of the Laws of Zambia and the rules of natural justice;*
- (iv) *An Order of mandamus to compel the Chief Registrar of Societies to re-register the Applicant's society/Church;*
- (v) *Prohibition to restrain the Chief Registrar of Societies from otherwise interfering in the operations of the Applicant's Church;*
- (vi) *Damages against the Chief Registrar of Societies for his misfeasance in public office;*

- (vii) *If leave to apply is granted, a direction that such grant should operate as a stay of the de-registration to which this application relates pursuant to Rule 3(10)(a) of Order 53 of the Rules of the Supreme Court;*
- (viii) *The Applicant requests an oral application pursuant to Rule 3 (3) of Order 53 of the Rules of the Supreme Court;*
- (ix) *If leave to apply is granted, a direction that the hearing of the application for judicial review be expedited;*
- (x) *An order for costs;*
- (xi) *And that all necessary and consequential directions be given.*

In support of the claim, the Applicant stated (vide exhibits 'HMM 2' and 'HMM 3') in the affidavit in support dated 30th November, 2012 sworn by one *Hildah Manzi Mwansa*, that the Applicant's society was registered under the Societies Rules on the 13th May, 2010 and incorporated under the Land (Perpetual Succession) Act on the 13th June, 2012 and that on the 1st August, 2012, the Chief Registrar of Societies did notify the public, through a press statement exhibited as 'HMM 5', that the Applicant's society had been deregistered. The Applicant submitted an appeal to the Minister of Home Affairs on the 3rd August, 2013 (marked as 'HMM 6') against deregistration of their society as announced by the Chief Registrar of Societies.

In opposing the application, the Respondent filed an affidavit in opposition on the 9th January, 2013 sworn by one *Clement Andeleki*. He states that the decision to deregister the Applicant's society was done legally and properly on account of the Applicant's breach of several provisions of the Societies Act, specifically failing to remit statutory fees to the Registrar of Societies; failing to

furnish the office of the Registrar of Societies with audited accounts and annual returns as required; failing to comply with an order dated 10th January, 2012 as directed by the office of the Registrar of Societies and also failing to notify the office of the Registrar of Societies on the status of their society. He went on to say that despite the Applicant being aware of their obligations under the Societies Act as per letter on 13th May, 2010, it had disregarded the provisions of the Act and the Notice of default issued to them on the 13th May, 2011. He states further that a Notice of default was issued to the Applicant on the 10th January, 2012 in which they were reminded of their obligations under the Society Act; that following their failing to comply, a Notice of Intention to cancel their Certificate of registration was issued on the 4th July, 2012 in which the Applicant was requested to show cause why it should not be deregistered. In spite of this Notice of default, the Respondent contends that the Applicant did not comply with the Societies Act as required and neither did they show cause why they should not be deregistered.

The Deponent therefore contends that the Applicant was given sufficient notice and opportunity to comply with the Societies Act but willfully disregarded the provisions of the said Act and as a result thereof, the 1st Respondent deregistered the Applicant's society and that the deregistration was done legally, rationally and properly.

In response to the affidavit in opposition, the Applicant filed an affidavit in reply, on the 1st February, 2012 and a supplementary affidavit in reply dated 28th March, 2013 both sworn by *Hildah Manzi Mwansa*. She states in the affidavit that the contents of the affidavit in opposition are untrue as the Applicant was not deregistered on grounds of breach of the provisions of the Societies Act but according to the press statement issued by the Chief Registrar of Societies on 1st August, 2012, the decision was made on grounds of alleged criminal activities. She stated further that the Applicant had not been

requested to furnish the office of the Registrar with audited accounts nor had it failed to notify the Registrar of the status of their Society. She went on to state that a Notice of default was never issued to the Applicant on the 13th March, 2011 as evidenced by the fact that the Notice exhibited in the affidavit in opposition marked as 'CA2' is not addressed to the Applicant. She states further that the said notice dated 13th March, 2011 could not have been issued as the Applicant's society had only been in existence for ten months by that date and could not have committed the alleged default under the law. She also stated that the Applicant did not receive the Notice of default dated 10th January, 2012 and the address endorsed thereon on the purported Notice exhibited as 'CA3' is not the address of the Applicant's society. Further, she stated that the Applicant was not served with the notice of intention to cancel the certificate of registration purportedly issued on the 4th July, 2012 and that it only learned of the deregistration of their society on the 1st August, 2012 on the Radio Phoenix news.

The Applicant went on to state that following the announcement of the deregistration of the society, the deponent and other members of the society attended upon the Registrar of Societies to inquire into the grounds of deregistration and the only documents availed to the Applicant as to the reasons for the deregistration was as indicated in the press statement issued by the Registrar of Societies. She added that the Registrar of Societies did not furnish the Applicant with a copy of the Notice of Intention to cancel the certificate of registration purportedly issued on the 4th July, 2012 when they attended before him on the 1st August, 2012 and at subsequent meetings implying therefore that these documents were not in existence at the time but came as an afterthought.

Lastly, the deponent highlighted the fact that if the Notice of Intention to cancel the certificate of registration was issued on the 4th July, 2012, the statutory

period of thirty days in which the Applicant was to respond, had not expired on the 1st August, 2012. She also stated that the Applicant was not given sufficient notice to comply with the Societies Act and that the Applicant did not blatantly disregard the provisions of the Societies Act.

In the final submissions in support of this application, the Applicant's Counsel one *Mr. Yosa* began by giving the background of the case. He stated that the Applicant's society was registered under the provisions of **Section 7 of the Societies Act** but on the 1st August, 2012, the Registrar of Societies announced the deregistration of the Applicant's society on the grounds that they were engaged in criminal activity and for non payment of statutory fees to the Office of the Registrar of Societies. He submitted that the Applicant seeks to review the decision of the Chief Registrar of Societies to deregister the Applicant's society on the ground that they were not afforded an opportunity to be heard nor were formally written to. He states that the Applicant challenges the 1st Respondent's decision on grounds of illegality, procedural impropriety and irrationality.

On the ground of *illegality*, Counsel for the Applicant submitted that the decision of the 1st Respondent to deregister the Applicant's society for alleged involvement in criminal activity and non-payment of statutory fees to the Registrar of Societies is illegal and contravenes **Section 13 (2) of the Societies Act**. He submitted that **Section 13(2) of the Act** specifies the grounds upon which the Registrar may cancel the registration of a society registered under the Act and the involvement in criminal activities and non-payment of statutory fees to the Registrar are not amongst these grounds upon which the Registrar could cancel the registration of a society. Counsel argued that the Registrar's decision was therefore null and void *ab initio*. He stated further that there was no evidence of the Applicant's purported involvement in criminal activities and that the penalty for non-payment of statutory fees as provided under **Rule 21**

of the Societies Rules is prescribed as a fine. Therefore the decision by the Registrar to deregister the Applicant's society was illegal by virtue of the fact that he imposed a sanction beyond that prescribed by law.

Counsel referred to the case of Derrick Chitala v Attorney General where the Supreme Court of Zambia acknowledged the current trends when considering administrative decisions adopted the case of Council of Civil Service Unions & Others V Minister for the Civil Service.

Counsel also referred to the case of Frederick Chiluba v Attorney General, where the Supreme Court held that,

'To succeed under illegality as a ground, the appellant has to prove that the decision of the National Assembly contravened or exceeded the terms of law which authorized the making of that decision or that the decision pursues an objective other than that for which the power to make the decision was conferred. By looking at the wording of the power and the context in which the power is to be exercised, the Court's ultimate function is to ensure that the exercise of the power is within or intra-vires the statute.'

Counsel proceeded to cite the case of Nyampala Safaris Ltd & Others v Zambia Wildlife Authority & Others, and argued that in that case, the Supreme Court held that the decision of a public authority may be quashed for 'illegality' where that authority either acted without jurisdiction or exceeded its jurisdiction.

The Applicant's Counsel went on to argue that the 1st Respondent in purporting to deregister the Applicant's society on grounds of alleged involvement in criminal activity acted beyond the scope of **Section 13 (2) of the Societies Act**. He further submitted that the 1st Respondent also acted in excess of his

powers in deregistering the Applicant's society on grounds of non-payment of statutory fees as this penalty was in excess of the powers provided for by law. Counsel argued that the 1st Respondent's affidavit in opposition contends that the deregistration of the Applicant's society was also on account of the failure to furnish audited accounts and annual returns, failure to comply with the order dated 10th January, 2012 as well as the failure to notify the 1st Respondent of the status of the Applicant's society.

Counsel contended that, according to **Section 19 of the Societies Act**, the obligation to furnish the 1st Respondent with audited accounts and returns only arose where the society had been ordered to do so by the Registrar. In the present case, Counsel argued that no such request was ever made to the 1st Respondent. Further with regard to the question of failing to comply with the order of 10th January, 2012, Counsel stated that the Notice was not issued by the 1st Respondent nor served on the Applicant, and in any event, the offences outlined in the purported order do not constitute grounds for deregistration of a society. Lastly, the contention that the Applicant failed to notify the 1st Respondent as to the status of its society, Counsel for the Applicant stated that under the Societies Rules, there is no requirement to notify the Registrar of Societies as to the status of a society and therefore this was an extraneous consideration not supported by law. Counsel therefore submitted that, the decision by the 1st Respondent to cancel the Applicant's certificate of registration was undoubtedly made in contravention of the law, thus illegal and ought to be quashed.

Counsel for the Applicant in advancing the ground of *procedural impropriety* stated that the 1st Respondent's decision to de-register the Applicant's society is fraught with *procedural impropriety*. He referred to **Section 13 (3) of the Societies Act**, which he submitted, placed a mandatory duty on the 1st Respondent to notify the Applicant of the intention to deregister the society and

to give the Applicant an opportunity to submit reasons why it should not be deregistered. Counsel argued that the 1st Respondent did not give the Applicant an opportunity to be heard and the purported notice marked as 'CA4' was fabricated as it was not served upon the Applicant and the Applicant only discovered the purported deregistration on the Radio Phoenix news. Counsel submitted that when the Applicant met the 1st Respondent to inquire into the grounds upon which their society was deregistered, the only document he availed to the Applicant was a copy of the press statement.

Additionally, Counsel stated that the Applicant's Advocates, Messrs Mumba Malila and Partners (the Applicant's former Advocates) wrote to the 1st Respondent on the 6th September, 2012 inquiring as to the reasons for the deregistration of the Applicant, the 1st Respondent did not respond to this letter. Counsel therefore submitted that the 1st Respondent's failure to notify the Applicant of the intention to deregister the society and to avail them an opportunity to be heard, renders the 1st Respondent's decision liable to be quashed on grounds of procedural impropriety in accordance with the case of Council of Civil Services Unions.

Counsel went on to argue that there was a clear breach of statutory procedure and the rules of natural justice as the Applicant was not afforded an opportunity to respond to the allegations that gave rise to the Registrar's decision to deregister the society. In the Derrick Chitala V Attorney General case, Counsel argued that the Supreme Court endorsed the dictum of Lord Diplock cited above, and held that susceptibility to judicial review also covers failure by an administrative authority to observe procedural rules that are expressly laid down in the legislative instruments by which its jurisdiction is conferred. Counsel also referred to the case of Ridge V Baldwin and argued that the failure to comply with the requirements of **Section 13 (3) of the Act**

not only rendered the decision to deregister the Applicant's society illegal but also void.

On the issue of *irrationality*, Counsel for the Applicant argued that the decision of the 1st Respondent to deregister the Applicant's society under **Section 13 of the Societies Act and Rules 16 and 21 of the Societies Rules** was irrational as it was based on allegations that were yet to be proved in a court of law. He referred to the *Lerrick Chitala* case, where Ngulube, CJ (as he was then) stated that,

'The principle can be summarized as being that the decision of a person or body performing public duties or functions will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no such person or body properly directing itself on the relevant law and acting reasonably could have reached that decision.'

Counsel for the Applicant went on to argue that the 1st Respondent's actions of deregistering the Applicant's society, was not only ill conceived and unlawful but also amounted to **malfesance in public office**. He submitted that the elements constituting malfesance in public office were considered in the case of *Three Rivers District Council & Others v Bank of England*, where the Court stated the rationale for the tort as follows:

'The tort of malfesance in public office is an exception to 'the general rule that, if conduct is presumptively unlawful, a good motive will not exonerate the defendant, and that, if conduct is lawful apart from the motive, a bad motive will not make him liable'.... The rationale of the tort is that in a legal system based

on the rule of law executive or administrative power 'may be exercised only for the public good' and not for ulterior and improper purposes.'

The Court went further to outline the elements that constitute malfeasance in public office as follows:

'The ingredients of the tort

It is now possible to consider the ingredients of the tort. That can conveniently be done by stating the requirements of the tort in a logical sequence of numbered paragraphs.

(1) The defendant must be a public officer

It is the office in a relatively wide sense on which everything depends. Thus a local authority exercising private law functions as a landlord is potentially capable of being sued (see Jones' case). In the present case it is common ground that the Bank satisfies this requirement.

(2) The second requirement is the exercise of power as a public officer

The ingredient is also not in issue. The conduct of the named senior officials of the banking supervision department of the Bank was in the exercise of public functions. Moreover, it is not disputed that the principles of vicarious liability apply as much to malfeasance in public office as to other torts involving malice, knowledge or intention (see Racz v Home Office (1994) 1 All ER 97, (1994) 2 AC 45).

(3) ***The third requirement concerns the state of mind of the defendant***

The case law reveals two different forms of liability for malfeasance in public office. First there is the case of targeted malice by a public office, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the Plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful.'

Counsel argued that in considering the facts of this case the elements of malfeasance in public office have been sufficiently satisfied by virtue of the fact that the 1st Respondent went ahead to deregister the Applicant's society on grounds not provided for by law and without affording the Applicant an opportunity to be heard despite being fully aware of his powers under the Societies Act. He went on to argue that an award of exemplary damages ought to be made on account of the 1st Respondent's actions. He referred to the case of Rookes v Barnard for the principles upon which a Court could make an award of exemplary damages. He also referred to the learned authors of De Smith, Woolf and Jowell: Judicial Review of Administrative Action, and argued that the learned authors acknowledge that the Courts have power to award damages for malfeasance in public office in judicial review proceedings.

In opposing the application, Counsel for the Respondents advanced several arguments in the Submissions of 12th June, 2013. He argued that the Chief Registrar's decision to deregister the Applicant's society was not illegal as the decision did not exceed or contravene the provisions of the law and that the

decision was made in pursuance of the objective for which the power to make the decision was conferred.

Counsel argued further that the Registrar acted in accordance with **Section 13 (2) of the Societies Act**, which gives the Registrar discretionary power to cancel the registration of any society. He submitted that pursuant to the provisions of **Subsection 3 of the said Section 13 of the Act** which prescribe that prior to cancelling the certificate of registration of a society, the Registrar shall notify his intention to the society concerned, the 1st Respondent did notify the Applicant of its intention to cancel their registration vide its notices marked as 'CA 4' and 'CA5'. He argued further that the Act gives the Registrar of Societies discretion to cancel the registration of any society upon violation of the provisions of the Societies Act. He stated that in this case, the Applicant had failed to remit statutory fees, failed to furnish the Registrar of Societies with audited accounts and annual returns as required under the provisions of **Section 19 and 20 of the Societies Act**. He went on to argue that it was therefore nothing illegal in the decision of the Registrar to deregister the Applicant.

On the grounds of *procedural impropriety*, the Respondents contend that there was no procedural impropriety as the Registrar did comply with the provisions of the law and gave adequate notice to the Applicant as shown by exhibit 'CA4' dated 4th July 2012 and that the Applicant was therefore given an opportunity to be heard. On the question of irrationality or '*Wednesbury unreasonable*,' Counsel for the Respondents argued that the decision of the Registrar of Societies cannot be said to be irrational on account of the fact that notice was given to the Applicant, and that the Applicant was in breach of its statutory obligations.

In conclusion, Counsel for the Respondents contended that the Registrar's decision to deregister the Applicant was not done for an ulterior motive or improper purpose and does not therefore amount to a malfeasance in public office. As such, the Applicant is not entitled to damages as claimed. He urged the Court to dismiss the application.

I have considered the affidavits in support and in opposition. I have also considered the submissions made by Counsel for the Applicant and the Respondents.

The Applicant seeks to quash the decision of the 1st Respondent to deregister the Applicant's society. The Applicant alleges that this was done on grounds of alleged involvement in criminal activities and for non-payment of statutory fees to the Registrar of Societies. In seeking this and other reliefs, the Applicant has argued that the decision was illegal, irrational and procedurally incorrect. I will consider all these reliefs claimed in the context of the grounds of "illegality", "procedural impropriety" and "irrationality" as argued by the parties.

The underlying objective of the remedy of judicial review is the power of the Courts to ensure that the exercise of administrative authority by public officers is done within the confines of the law.

Order 53 of the White Book, pursuant to which these proceedings have been brought reads:

'The rules in this order were introduced ... for the exercise by the Court of its supervisory jurisdiction by way of judicial review over the proceedings and decisions of inferior courts, tribunals, or other persons or bodies which perform public duties or functions.'

The procedure of judicial review enables one seeking to challenge an administrative act or omission to apply to the High Court for one of the prerogative orders of mandamus, certiorari or prohibition, or inappropriate circumstances for declaration, injunction and damages.'

Numerous celebrated cases on the subject have set out the basis upon which the Courts can enforce a claim for the remedy of judicial review.

Citing from the words of Lord Diplock in the leading case of Council of Civil Service Unions who summarized the basis of judicial review as follows:

'Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds.....

By illegality as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial review of the state is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness (see Associated Provincial

Picture Houses Ltd v Wednesbury Corp (1947) 2 All ER 680, (1948) 1 KB 223). It applies to a decision, which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within the category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instruments by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.'

Having clarified the grounds of 'illegality', 'irrationality' and 'procedural impropriety' as aptly summarized by Lord Diplock, I now turn to consider whether the Applicant has proved its case. The first ground relates to 'illegality' and the contention that the Chief Registrar's decision made on the 1st August, 2012 to deregister the Applicant's society is illegal.

Counsel for the Applicant contends that the Chief Registrar's decision contravenes the provisions of **Section 13 (2) of the Societies Act**, which prescribe the grounds upon which the Registrar may cancel the registration of a Society.

The Respondents contend on the other hand that the Chief Registrar's decision did not exceed or contravene the above provisions. In the centre of this issue, are the grounds advanced by the 1st Respondent for deregistration of the Applicant society and whether the Registrar of Societies acted within his powers in exercising his discretion. The evidence before me, exhibit 'HMM5' is a press statement issued by the Chief Registrar of Societies on the 1st August, 2012 in which he announced the deregistration of the Applicant's society. The Statement does not specify the grounds upon which the decision is based but the Chief Registrar does make the following comments after stating the names of the societies that had been deregistered:

'Furthermore, I want to inform the nation through you that the department of Registrar of Societies is saddened by the increased number of registered societies allegedly engaged in criminal activities particularly most times.'

It is from this press statement, that the Applicant contends that it is evident that the Applicant's society was deregistered on account of alleged involvement in criminal activities. The Applicant argued that deregistration of their society by the 1st Respondent on the basis of this allegation and the failure to remit statutory fees to the Office of the Registrar of Societies is illegal. Although the Applicant maintains that the 1st Respondent deregistered its society on account of alleged criminal activity, a perusal of the press statement issued by the Registrar of Societies, indicates that it does not specify the deregistration of the Applicant's society as being on account of the alleged involvement in criminal activity.

Conversely, the Respondent contends, in the affidavit in support, that the Applicant's society was deregistered due to the several violations of the Societies Act.

The following are the reasons cited by the Respondents for deregistration of the Applicant's society, namely:

1. **Failing to remit statutory fees to the office of the Registrar of Societies;**
2. **Failing to furnish the Office of the Registrar of Societies with audited accounts and annual returns;**
3. **Failing to comply with an Order of the Registrar of 10th January, 2012; and**
4. **Failing to notify the Registrar of the Societies of the status of its Society.**

From the reasons alluded to above, it is clear that the alleged involvement in criminal activity is not one of the grounds cited by the 1st Respondent for deregistration of the Applicant's society as asserted by the Applicant. I find therefore that the Applicant's contention that the Registrar acted illegally by deregistering its society on this ground is misconceived and fails accordingly.

Addressing the reasons cited by the 1st Respondent upon which the Registrar exercised his powers to deregister the Applicant's society, the question arising is whether the Registrar of Societies is empowered to deregister a society based on the grounds cited therein or whether the Registrar of Societies acted contrary to the law when he deregistered the Applicant's society.

The powers of the Registrar of Societies as contained in **Section 13 (2) of the Societies Act**, provides that,

'The Registrar may, in his discretion, cancel at any time the registration of any society effected under the provisions of section seven if he is satisfied that it is expedient to do so on the ground that:

- a) the terms of the constitution or rules of such society are, in his opinion, in any respect repugnant with the provisions of any law for the time being in force in Zambia;*
- b) the society concerned has in contravention of the provisions of section seventeen, altered its objects or pursues objects other than its declared objects; or*
- c) the society concerned has failed to comply with an order made under the provisions of Section nineteen or twenty within the time stated in such order; or*
- d) he has reason to believe that any such society has ceased to exist as a society; or*
- e) The society has changed its name.....'*

As stated by the Supreme Court of Zambia in the Frederick Chiluba case cited above, for a party to succeed under *illegality* as a ground, the Applicant has to prove that the decision contravened or exceeded the terms of law, which authorized the making of that decision.

Their Lordships stated further in the Fredrick Chiluba case that the Court's ultimate function is to ensure that the exercise of power is within the law. According to the provisions stated above, **Section 13 (2) (c) of the Act**

empowers the Registrar of Societies to deregister a society for failing to comply with an order made under the provisions of Section nineteen or twenty within the time stated in such order. One of the grounds cited by the 1st Respondent for deregistering the Applicant was on account of the failure by the Applicant to comply with the Order made by the 1st Respondent on the 10th January, 2012. It is evident from the provisions of the law stated above, that the Registrar is empowered to deregister an erring society for failing to comply with an order made by the Registrar. However, for the Registrar to utilize **Section 13 (2) (c) of the Act**, it must be read with **Section 13 (3) of the Societies Act**, which sets out the prerequisites to be satisfied by the Registrar before exercising the powers under S.13 (2) (c) of the Act.

Section 13 (3) of the Act states as follows:

'Prior to cancelling any registration under the provisions of this section, the Registrar shall notify his intentions to the society concerned and shall give such society an opportunity to submit reasons why the registration should not be cancelled.'

According to these provisions, the Registrar is required to give notice, to the society concerned, of his intention to cancel any registration and such society must be given an opportunity to submit reasons why the registration should not be cancelled. Therefore, prior to the Registrar exercising his discretion to deregister a society on the grounds of it having failed to comply with an Order issued by the Registrar, it is the duty of the Registrar to ensure that the erring society is given notice and an opportunity to respond.

Therefore the issue is whether the Applicant was notified of the 1st Respondent's intentions to deregister its society and whether the Applicant was afforded a fair opportunity to submit reasons why the registration should not be cancelled. This issue overlaps with the allegation of '*procedural impropriety*' on the part of the Registrar of Societies and I propose to deal with that ground here.

When considering what constitutes '*procedural impropriety*,' Lord Diplock in the *Council of Civil Service Unions* case opined thus:

'I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instruments by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.'

In addressing this issue, I am also guided by the words of Lord Hailsham, L.C. in the case of *Chief Constable of North Wales Police v Evans (1982) 1 W.L.R 1155*, where he stated that,

'It is important to remember in every case that the purpose of (the remedy of judicial review) is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the

judiciary or of individual judges for that of the authority constituted by law to decide the matters in question.'

Therefore the question is whether, in exercising his powers, the 1st Respondent observed the rules as expressly laid down in the Act or whether there was any *procedural impropriety* on the part of the 1st Respondent. The 1st Respondent contends that he did on the 10th January, 2012 issue the Applicant with a Notice of Default and that it did on the 4th July, 2012 issue to the Applicant, a Notice of Intention to cancel its society in accordance with the Societies Regulations.

Counsel for the Applicant argued that the Societies Act places a mandatory obligation upon the 1st Respondent to notify the Applicant and to give the Applicant an opportunity to be heard, prior to deregistering its society but that the Registrar of Societies did not do so in the present case and as such there was *procedural impropriety*.

The evidence before me in the affidavit in opposition marked as exhibit 'CA 4' is a Notice of Intention to cancel certificate of registration, which was purportedly issued by the 1st Respondent to the Applicant on the 4th July, 2012. The said notice reads as follows,

**'The Societies Rules
Societies Regulations, Rule No. 13 (3)**

**Notice of Intention to Cancel
Certificate of Registration**

**To: The Secretary General
House of Joy International, Pendela Road, Garden Park
Lusaka**

I hereby give you 28 days notice of my intention to cancel your Certificate of Registration in accordance with:

Section 13 (2) (b) (c) (d) of the Societies Act, Chapter 119 of the laws of Zambia.

I have this 4th day of July, 2012 issued you with Notice of Intention to cancel the certificate of your society on the following grounds:

- (i) The society concerned has failed to comply with an order made under the provisions of section nineteen or twenty within the times stated in my order dated 10th January, 2012;
- (ii) Failure to notify the Registrar of Societies of the status of your organization;
- (iii) Failure to remit statutory fees to the Department of Registrar of Societies;
- (iv) Failure to furnish my office such audited accounts, Annual Returns and statutory fees as required by law; and
- (v) I have reason to believe that your organization has ceased to exist as a society

By copy of this letter, you are being requested to show cause as to why your Society must not be deregistered on the above stated grounds.

Yours faithfully

Clement Andeleki
Chief Registrar of Societies
Ministry of Home Affairs'

Although, it appears that a Notice of intention to cancel the certificate of registration was issued by the 1st Respondent, the Applicant however disputes that the Notice was issued by the 1st Respondent on the 4th July, 2012 as the Applicant did not receive it. The Applicant therefore argues that it was not given an opportunity to submit reasons to the 1st Respondent as to why it should not be deregistered. The provisions of **Section 13 (3) of the Societies Act**, places an obligation on the 1st Respondent to treat the Applicant fairly and in line with the rules of nature justice and to ensure that the society is not only given notice of the intention to cancel their registration but also given a fair opportunity to submit reasons as to why it should not be deregistered. The 1st Respondent has simply indicated that it did give the Applicant notice of his intentions to cancel its registration but he has not shown when or how the Notice of Intention was served upon the Applicant. The 1st Respondent has also not provided any proof of service of the Notice upon the Applicant.

From the above, there is doubt in my mind as to whether or not the notice of intention to cancel Certificate of Registration was served on the Applicant. I have also observed that deregistration of the Applicant's society was carried out less than 30 days from the date of issuance of the Notice of intention to cancel. In view of the obligation placed on the 1st Respondent, I am of the view that he has not discharged this burden as he ought to have made certain that the Applicant was aware of the Notice of intention to cancel its registration. He also ought to have ensured that the Applicant was given an opportunity to submit its response thereto but he did not adequately do so in this case.

In view of the foregoing, I am not satisfied that the Applicant was duly notified of the Registrar's intentions to cancel its society or that it was given a fair opportunity to submit reasons why its certificate should not be registered.

For the reasons above, I find that that there was a breach of statutory procedure and the rules of natural justice as the Applicant was not afforded a fair and reasonable opportunity to respond to the allegations that gave rise to the Registrar's decision to deregister the society. The contention of *procedural impropriety* on the part of the 1st Respondent succeeds.

Going back to the allegation premised on *illegality*, the remaining grounds cited by the 1st Respondent for deregistering the Applicant society particularly failing to remit statutory fees, failing to submit audited accounts and annual returns and failing to notify the Registrar of the status of the society.

What is at issue here therefore is whether the 1st Respondent's action was excessive in deregistering the Applicant for failing to submit annual returns, accounts and remitting the prescribed statutory fees. The argument being that, the penalties provided by law for breaches of the requirement to remit statutory fees, to submit audited accounts and annual returns is provided under the Act as being a fine or term of imprisonment of the officers of the society.

According to the Applicants, in view of the above provisions, recourse to deregistration was excessive and irrational in the circumstances of the case.

The arguments under this head therefore overlap with the allegation of '*irrationality*'. Whether the decision was excessive and irrational in light of the provisions of the law is to be decided. Regarding '*irrationality*' or commonly known as '*wednesbury unreasonableness*' the allegation in the present case, is the excessiveness of the Registrar's decision to deregister the Applicant on the grounds stated earlier. As stated by their Lordships of the Supreme Court in the *Derrick Chitala* case, on irrationality, that it applies to a decision which is such '*that no person properly directing itself on the law or acting reasonably could have arrived at that decision.*'

From the provisions of the **Section 13 (2) of the Societies Act**, the failure to remit statutory fees, failure to submit audited accounts and annual returns are not grounds upon which the Registrar may deregister a society. The relevant provision in the Societies Act and Rules prescribe a penalty as a fine or term of imprisonment of the officers of the society for failing to submit annual returns or audited accounts or remit statutory fees.

In spite of this, the Registrar decided to deregister the society in 2012 for the purportedly failure of the Applicant to submit annual returns, audited accounts or remit statutory fees. Although the Applicant flouted the Societies Act by not submitting the statutory returns, I have considered the fact that the Applicant was a new society having only been registered on 13th May, 2010 and the requisite returns or accounts were only for a two year period. The period not being so inordinate or the breach not being so severe to warrant deregistration of the society, the Registrar had the option to impose a fine on the society for these violations prior to exercising his discretion to deregister. However, the Registrar proceeded to cancel the registration of the Applicant, citing these grounds amongst others as the reason for deregistration. In view of the fact that the Registrar did have an alternative sanction, that the society was a fairly new society and that the Registrar had not engaged the Applicant as to the reasons for the default, I am of the considered view that the Registrar's decision to cancel the registration of the Applicant's society was excessive and that no person or body properly directing itself on the relevant law and acting reasonably on the facts of this particular case could have reached that decision.

Having found that the Registrar's decision to cancel the registration of the Applicant's society was excessive or '*Wednesbury unreasonable*' in the circumstances of this case, the order of certiorari sought is granted and the said deregistration of the Applicant society by the 1st Respondent on the 1st

August, 2012 is hereby quashed. The Applicant is directed to submit the relevant annual returns and audited accounts for the requisite periods and to pay the statutory fees required by the Office of the Registrar of Societies. Thereafter the 1st Respondent is directed to re-register the Applicant's society accordingly.

With regard to the Applicant's claim for damages for malfeasance in public office, the Applicant has not specified the provisions under which this claim is being made. A brief perusal of **Order 53 of the White Book** pursuant to which this action has been brought, shows that under judicial review proceedings, this Court generally has powers to grant an order for certiorari, mandamus, prohibition and injunctions. There are no specific provisions under which this application has been brought empowering the Court to award exemplary damages for malfeasance in public office.

The Applicant has referred the Court to the learned authors of *De Smith, Woolf and Jowell: Judicial Review of Administrative Action* and argued that the authors recognize that a court has power to award damages for malfeasance in public office in judicial review proceedings where there is an exercise or non-exercise of public power, which is either affected by malice towards the Plaintiff or which the decision maker knows is unlawful. Counsel submitted that in the present case, there was an exercise of public power, which the 1st Respondent knew was unlawful and which resulted in damages to the Applicant. In any case, notwithstanding my position on this claim stated above, I am not satisfied from the evidence before me that the Applicant has demonstrated that there was malice towards to the Applicant or that the 1st Respondent knew his decision was unlawful. In view of the foregoing this claim therefore fails.

As the Applicant has substantially succeeded with the remedies sought, they are entitled to the costs of this action, to be agreed between the parties and in default to be taxed.

DELIVERED AT LUSAKA THIS 17th DAY OF SEPTEMBER 2013.


N.A Sharpe-Phiri
HIGH COURT JUDGE

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