**Republic and others v Attorney General and another**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 4 March 2005

**Case Number:** 769/04

**Before:** Nyamu and Ibrahim JJ

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Judicial review – Grounds for judicial review – Procedural fairness – Legitimate expectation –*

*Irrelevant consideration – Illegality – Unreasonableness – Bias – Abuse of Power – Bad Faith –*

*Procedural Impropriety – Duty to act fairly.*

**Editor’s Summary**

The applicants sought orders of Judicial Review to remove into the court for purposes of being quashed the decision made by the Registrar of Societies on 6 February 2004 under section 12 of the Societies Act Chapter 108 cancelling the registration of the applicants’ Certificate of Registration and registering in their place the Kenya Schools Head Teachers Association. On 12 June 2003, the applicants had founded the Kenya National Association of Primary Schools Head Teachers and applied for registration. On 11 December 2003, the society had been registered under the Societies Act. On 6 February 2004, the Registrar of Societies in purported exercise of power vested under section 12 of the Societies Act cancelled the registration of the society by a notification of cancellation. At no time prior to the cancellation was any communication made to the applicants of the intended cancellation nor were the applicants given any notice calling upon it to show cause why it should not be deregistered. In addition, at no time prior to the said cancellation were the applicants afforded an opportunity to be heard or to make any representations on the issue of recognition by the Ministry of Education, Science and Technology which was the basis for the deregistration of the applicants’ society and the registration of a rival organization by the name of Kenya Primary Schools Head Teachers Association which the applicants and their members were advised to join. The applicants claimed that the decision to deregister them was arbitrary, unfair, unreasonable and without any basis in law or fact.

**Held** – The registration and the award of a certificate of registration did create a protected interest in favour of the applicants to remain a registered society and, therefore, the applicants were perfectly entitled to safeguard that interest. Section 12 of the Societies Act did not exclude the application of rules of natural justice and in particular the *audi alteram partem* rule. *Ridge v Baldwin* [HL 1964] followed. The Registrar of Societies should have given reasons for his action and was under a duty to do so, more so because the applicants after registration had also acquired a legitimate expectation duly induced by the Registrar by virtue of the issue to them of a certificate of registration. There is an implied duty of fairness attached to all administrative acts. *CCSU v The Minister for Civil Service* [HL 1984] and *Doody v The Home Secretary* [HL 1993] followed. Taking into account an irrelevant consideration invites the court’s intervention in Judicial Review. *Associated Provincial Picture Houses Limited v Wednesbury COP* civil appeal 1948 and *Padfield v Minister of Agriculture and Fisheries* [HL 1968] followed. Unlawful behaviour might be constituted by: (*a*) An outright refusal to consider the relevant matter; (*b*) A misdirection on a point of law; (*c*) Taking into account some wholly irrelevant or extraneous consideration; (*d*) Wholly omitting to take into account a relevant consideration. In the development of Judicial Review bias and unreasonableness have been recognised as grounds which stand alone in assisting the courts to deal with challenged decisions. Failure to give reasons for what is patently lack of evenhandedness on the part of the decision maker does constitute procedural impropriety. Courts will not in cases where bad faith is proven to exist in influencing a decision, hesitate to take up the same as a valid ground of argument in quashing the decision. A legitimate expectation arises where a person responsible for taking a decision has induced in someone who may be affected by the decision a reasonable expectation that he will receive or retain a benefit or that he will be granted hearing before the decision is taken. *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 14 and *Council of Civil Services Unions v Minister for Civil Service* 1985 AC

374 followed.

A duty to give reasons would be implied in the following situations:

(*a*) Where the decision involved an interest which was highly regarded in law;

(*b*) Where the nature of the process required reasons to be given;

(*c*) From the circumstances of the individual case.

***Obiter*** – The court would be prepared to extend the ground of intervention to decisions made under the shadow of corruption or abuse of office. Absence of reasons or irrationality of a decision could suggest

such a conclusion.

The very act of registration and the issue of a certificate of registration by the decision maker, namely

the Registrar gave the applicant a legitimate expectation to a hearing which is not to be thwarted.

Application allowed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Associated Provincial Picture Houses Limited v Wednesbury Cop* civil appeal 1948 – **F**

*CCSU v The Minister For Civil Service* [HL 1984] – **F**

*Doody v The Home Secretary* [HL 1993] – **F**

*Padfield v Minister of Agriculture and Fisheries* [HL 1968] – **F**

*R v Higher Education Funding Council ex parte Institute of Dental Surgery* civil appeal 1994

*Ridge v Baldwn* [HL 1964] – **F**

***United Kingdom***

*Council of Civil Services Unions v Minister For Civil Service* 1985 AC 374