



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC. APPLICATION NO. 194 OF 2019

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF BIRTHS AND DEATHS.....RESPONDENT

EX PARTE APPLICANT: GRACE WAIRIMU NDUNGU

RULING

1. On 30th September 2020, this Court allowed the Respondent's counsel request for more time and another mention date to confirm final settlement. Upon perusal of the Court record, I note that there is no consent filed by the parties as directed by the Court, in the event of a settlement.

2. It is also notable that this matter is still at leave stage, and the Chamber Summons application dated 11th June 2019 seeking leave to apply for an order of mandamus directing the Registrar of Births and Deaths to issue a Certificate of Death in respect of Bernard Gitau Njoroge, the *ex parte* Applicant's deceased husband is still pending hearing. The Chamber Summons is supported by a statutory statement dated 11th June 2019 and verifying affidavit sworn on the same date by the Applicant. The *ex parte* Applicant also filed two supplementary affidavits dated 12th September 2019 by herself and Simon Mwangi, her brother –in-law, who was also examined by the Court to verify the contents therein.

3. The applicable law on leave to commence judicial review proceedings is Order 53 Rule 1 of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

4. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

5. The *ex parte* Applicant has in this regard brought evidence in her verifying affidavit and supplementary affidavits of her husband's death and burial, and filed submissions dated 18th November 2019 setting out the grounds why she considers the delay by the Respondent to issue his death certificate to be unfair and unreasonable. Lastly, the *ex parte* Applicant's application is not opposed by the Respondent.

6. I therefore find that the threshold of an arguable case has been met by the *ex parte* Applicant for the grant of leave.

7. The *ex parte* Applicant's Chamber Summons dated 11th June 2019 is accordingly found to be merited, and I hereby grant the following orders:

i. The *ex parte* Applicant is granted leave to apply for an order of Mandamus directing the Registrar of Births and Deaths to issue a Certificate of Death in respect of Bernard Gitau Njoroge.

ii. The costs of the Chamber Summons dated 11th June 2019 shall be in the cause.

iii. The *ex parte* Applicant shall file and serve the Respondent with the substantive Notice of Motion and submissions

thereon, a copy of this ruling, and a mention notice, within twenty-one (21) days from today's date.

iv. Upon being served with the said pleadings and documents, the Respondent shall be required to file its response to the substantive Notice of Motion and reply submission within twenty-one (21) days from the date of service by the *ex parte* Applicant.

v. This matter shall be mentioned on 19th April 2021 to confirm compliance for further directions.

vi. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

vii. All the parties shall file their pleadings electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

viii. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

ix. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

x. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 19th April 2021.

xi. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Thursday, 28th January 2021.

xii. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE