



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1123 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

HIMATLAL LAKHAMSHI RAJSHI SHAH.....APPLICANT

VERSUS

CABINET SECRETARY FOR THE MINISTRY OF INTERIOR AND CO-ORDINATION OF

NATIONAL MANAGEMENT SERVICES.....1ST RESPONDENT

DIRECTOR GENERAL, KENYA CITIZENS & FOREIGN

NATIONALS MANAGEMENT SERVICES.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. This matter was coming up for hearing of the Applicant’s Chamber Summons application dated 27th October 2020. The Applicant had in this regard been granted leave to file his statutory statement which was missing from his pleadings, and a perusal of the Court records shows that he has since filed the said statement which is dated 27th October 2020.

2. The Applicant is seeking the following orders in his application:

a) Leave be granted for the Applicant to apply for an order of Mandamus be issued directed jointly and severally to the Cabinet Secretary, Ministry of Interior and Co—ordination of National Government, the Director General, Kenya Citizens and Foreign Nationals Management Services and the Attorney General commanding them to issue to the Applicant a certificate of Kenya Citizenship and all relevant and necessary documents for registration of the applicant as a Kenyan Citizen forthwith in respect of the applicant’s application (Immigration File Number R. 155982) applied on 6th February 2013;

b) Costs of and incidental to the application be provided for;

c) Such further and other reliefs that the Court may deem just and expedient to grant.

3. The grounds for the application as stated in the verifying affidavit and statement dated 27th October 2020 are that on 6th February 2013, the Applicant made an application to be registered as a Kenyan citizen by virtue of being a spouse of a Kenyan citizen, and having fulfilled the conditions required for registration as a citizen of Kenya set out in section 11 of the Kenya Citizenship and Immigration Act. However, that since his application on 6th February 2013, no response has been forthcoming from the 2nd Respondent in terms of approval or rejection, and neither have any reasons for the undue delay been furnished to the Applicant.

4. 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.

5. 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.

6. In the present application, the Applicant has provided evidence of his entry and work/residence permits, marriage certificate, academic certificates, citizenship applications, and letters to the 2nd Respondent on the application. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

7. In light of the foregoing findings, the Applicant's Chamber Summons dated 27th October 2020 is found to be merited. I accordingly grant the following orders:

I. The Applicant is granted leave to apply for an order of Mandamus be issued directed jointly and severally to the Cabinet Secretary, Ministry of Interior and Co—ordination of National Government, the Director General, Kenya Citizens and Foreign Nationals Management Services and the Attorney General, commanding them to issue to the Applicant a certificate of Kenya Citizenship and all relevant and necessary documents for registration of the applicant as a Kenyan Citizen forthwith in respect of the Applicant's application (Immigration File Number R. 155982) applied on 6th February 2013.

II. The costs of the Chamber Summons dated 27th October 2020 shall be in the cause.

III. The Applicant shall file and serve the Respondents with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 27th October 2020, 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 Respondents shall be required to file its response to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the Applicant.

V. This matter shall be mentioned on 16th April 2021 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 16th 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 Friday, 22nd January 2021.

XII. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE