



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1111 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD.....RESPONDENT

THE ACCOUNTING OFFICER KENYATTA NATIONAL HOSPITAL....1ST INTERESTED PARTY

KENYATTA NATIONAL HOSPITAL.....2ND INTERESTED PARTY

KAMTIX CLEANERS CO. LTD.....3RD INTERESTED PARTY

EX PARTE: THE GARDENS AND WEDDING CENTRE LIMITED

RULING NO 2

1. This matter was coming up for reservation of a ruling date on prayer 3 of the *ex parte* Applicant's Chamber Summons dated 21st September 2020, that the grant of leave herein to commence judicial review proceedings operates as a stay of the procurement process of Tender No. KNH/V33/2020-2021. The *ex parte* Applicant has in this regard been directed severally to serve the Respondents and Interested Parties with his pleadings and submissions on the prayer for stay. Upon perusal of the Court record there is still no evidence of such service.

2. This Court is in the circumstances not able to confirm the status of implementation of the impugned procurement, as the Respondents and Interested Parties have not filed any response or submissions, as a result of the non-compliance by the *ex parte* Applicant. For this reason, this Court is not able to exercise its discretion in favour of the *ex parte* Applicant.

3. I accordingly order as follows:

I. Prayer 3 of the *ex parte* Applicant's Chamber Summons dated 21st September 2020 seeking orders that the grant of leave herein do operate as a stay of procurement process of Tender No. KNH/V33/2020-2021 is declined.

II. The *ex parte* Applicant is granted the last opportunity to serve the Respondent and Interested Parties with (i) the substantive Notice of Motion dated 1st October 2020 (ii) the Chamber Summons dated 21st September 2020 and its supporting documents, (iii) copy of this ruling and of the ruling delivered herein on 1st October 2020, and (v) a hearing notice, within twenty-one (21) days from today's date. Upon default, this suit shall be liable to dismissal for non-prosecution.

III. Upon being served with the said pleadings and documents, the Respondent and Interested Parties shall be required to file their responses to the substantive Notice of Motion dated 1st October 2020 within twenty-one (21) days from the date of service.

IV. This matter shall be mentioned on 16th April 2021 to confirm compliance and for further directions.

V. 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 *ex parte* Applicant's Notice of Motion dated 1st October 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VI. All the parties shall file their pleadings and submissions 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.

VII. 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.

VIII. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

IX. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 16th April 2021.

X. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Friday, 22nd January 2021.

XI. Parties shall be at liberty to apply.

4. Orders accordingly.

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

P. NYAMWEYA

JUDGE