



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISC APPLICATION NO. E057 OF 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI, MANDAMUS AND DECLARATION**

BETWEEN

AFRISON EXPORT & IMPORT LIMITED.....1ST APPLICANT

HUELANDS LIMITED.....2ND APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

AND

MINISTRY OF INTERIOR AND COORDINATION

OF NATIONAL GOVERNMENT.....1ST INTERESTED PARTY

OFFICE OF THE PRESIDENT.....2ND INTERESTED PARTY

RULING NO 2

1. On 3rd November 2020, this Court directed that the Applicants' Chamber Summons application dated 2nd November 2020, which was seeking leave to apply for judicial review orders of mandamus compelling the Respondent to pay the Applicants the sum of Kshs 100,000,000/= be heard *inter partes*, and directed the parties to file and serve their responses to and submissions thereon.

2. Upon perusal of the Court record, I note that the Applicants have since filed another application by way of a Chamber Summons dated 13th November 2020, in which they are seeking orders that the Court reviews, varies or sets aside its orders of 3rd November 2020 and grants them leave, and that the Applicants be granted leave to file a supplementary affidavit to introduce a certificate against government.

3. The said application is supported by an affidavit sworn on 13th November 2020 by Brenda Imelda Makoha, the Applicants' advocate. The main grounds for the application are that the Applicants inadvertently failed to attach a copy of the Certificate of Order against Government in respect of the judgment in **HCCC No. 617 of 2012 - Afrison Export Imports Limited & Another vs Continental Credit Finance Limited (In liquidation) & others**, a copy of which they attached to their supporting affidavit.

1. The applicable law for setting aside or review of a judgment or decree of the court is section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. Section 80 of the Civil Procedure Act provides as follows:

“Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such

order thereon as it thinks fit.”

2. Order 45 Rule 1 of the Civil Procedure Rules elaborates on the grounds on which a judgment or decree can be set aside as follows:

“ (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

4. I note that the Certificate of Order against Government annexed by the Applicants was issued on 8th April 2013, and in light of the averments made by the Applicants that that part of the judgment has been satisfied, I will still need to hear the Respondents and Interested Parties before making any orders in the application for leave. In this respect the said Certificate of Order against Government Certificate of Order against does not qualify as new evidence in terms of the provisions of Order 45 of the Civil Procedure Rules to warrant this Court to review or set aside its previous orders, nor does its existence make the decision of this Court to hear the parties on the question of leave erroneous.

5. In the premises, I hereby order as follows:

I. The prayer in the Chamber Summons dated 13th November 2020 that this Court reviews, varies or sets aside its orders issued on 3rd November 2020 is declined.

II. The Applicants are granted leave to file and serve a supplementary affidavit within twenty-one (21) days of today’s date

III. There shall be no order as to the costs of the Chamber Summons application dated 13th November 2020.

IV. The Applicants shall serve the Respondent and Interested Parties with (i) the Chamber Summons dated 13th November 2020, (ii) the Chamber Summons dated 2nd November 2020 and skeletal submissions thereon, (iii) a copy of this ruling and of the ruling dated 3rd November 2020, and (iv) a mention notice, within twenty-one (21) days of today’s date.

V. The Respondent and Interested Parties are granted leave to file and serve their responses to, and skeletal submissions on the Chamber Summons dated 2nd November 2020 within twenty-one (21) days from the date of service.

VI. This matter shall be mentioned on 15th April 2021 to confirm compliance and for further directions.

VII. 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 Applicants’ Chamber Summons dated 2nd November 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VIII. 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.

IX. 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.

X. 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.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division’s causelist for a mention on 15th April 2021.

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicants by electronic mail by close of business on Thursday, 21st January 2021.

XIII. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE