



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E1159 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS**

**BETWEEN**

**IBRAHIM NOOR HILLOWLY.....APPLICANT**

**VER SUS**

**PRINCIPAL REGISTRAR, NATIONAL REGISTRATION BUREAU.....RESPONDENT**

**RULING**

1. The Applicant herein has filed an Amended Chamber Summons application dated 5<sup>th</sup> January 2021, seeking the following orders:

- 1. THAT the application be certified as urgent.**
- 2. THAT the Respondent produce the Applicant's Identification Report with the National Registration Bureau.**
- 3. THAT the Applicant, Ibrahim Noor Hillowly, be granted leave to apply for an order of Mandamus directed to the Respondent, the Principal Registrar, National Registration Bureau, to validate the Applicant's Registration .**
- 4. THAT the costs of this application be costs in the cause.**

2. The application is supported by an amended statement dated 5<sup>th</sup> January 2021, and an affidavit sworn on the same date by the Applicant. In summary, the grounds for the application are that the Applicant is the holder of Kenyan National Identification card number 2624126, and was acquitted under section 210 of the Criminal Procedure Code of various registration and immigration related offences in in **Criminal Case No. 191 of 2010 - Republic vs Ibrahim Noor Hillowly.**

3. The Applicant states that he has subsequently been denied key Government services including renewal of his driving licence and getting the certificate of good conduct, for reasons of his illegal registration, and instructed his counsel to write to the director, National Registration Bureau to inquire on the status of his identification with the bureau by requesting for the his identification report. However, that the said letter has not been responded to date.

4. The Applicant annexed a copy of his identity card and of an email forwarding the said letter dated 30<sup>th</sup> November 2020 to the Respondent.

5. 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.

6. 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.

7. In the present application, the Applicant has provided evidence of his identity card, and of the request made to the Respondent for his identification report. 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. I however note that the order of production he seeks is a final order that cannot be granted at this stage.

### **The Orders**

8. In light of the foregoing observations and findings, the *ex parte* Applicants' Amended Chamber Summons dated 5<sup>th</sup> January 2021 is found to be merited to the extent of the following orders:

**I. The Applicant's Amended Chamber Summons application dated 5<sup>th</sup> January 2021 be and is hereby certified as urgent, and is hereby admitted for hearing *ex parte*.**

**II. The Applicant is granted leave to apply for an order of Mandamus to compel the Respondent to produce the Applicant's Identification Report with the National Registration Bureau.**

**III. The Applicant is granted leave to apply for an order of Mandamus directed to the Respondent, the Principal Registrar, National Registration Bureau, to validate the Applicant's Registration.**

**IV. The costs of the Applicant's Amended Chamber Summons application dated 5<sup>th</sup> January 2021 shall be in the cause.**

**V. The Applicant shall file and serve the Respondent with (i) the substantive Notice of Motion and submissions thereon, (ii) the Amended Chamber Summons dated 5<sup>th</sup> January 2021 and its supporting documents, (iii) a copy of this ruling, and (v) a hearing notice, within twenty-one (21) days from today's date.**

**VI. 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 submissions within twenty-one (21) days from the date of service.**

**VII. The hearing of the substantive Notice of Motion shall be held on 15<sup>th</sup> April 2021.**

**VIII. 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.**

**IX. 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**X. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**XI. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 15<sup>th</sup> April 2021.**

**XIII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 7<sup>th</sup> January 2021.**

**XIV. Parties shall be at liberty to apply.**

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JANUARY 2021

P. NYAMWEYA

**JUDGE**