



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC EO21 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE

FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

JOSEPH KARANJA NGÁNGÁ T/A SIMKEL TRADERS.....APPLICANT

VERSUS

THE ENERGY AND PETROLEUM REGULATORY AUTHORITY.....RESPONDENT

RULING

1. The Applicant herein has filed an application by way of a Chamber Summons dated 17th February 2021, seeking the following orders:
 - a) **That the application be certified as urgent and heard on an ex-parte basis, for the reasons of urgency stated in the certificate herein.**
 - b) **That the Applicant, Joseph Karanja Ng'ang'a, be granted leave to apply for an order of mandamus compelling the Respondent, whether by itself, its agents, workers or servants to forthwith release, handover, deliver back, restore possession use and control of the Petroleum Tanker Registration Number KAS 231B.**
 - c) **That the costs of this application be in the cause.**
2. The said application is supported by a statutory statement dated 17th February 2021, and a verifying affidavit sworn on the same date by the Applicant. Upon perusal of the application and supporting documents, I note that the *ex parte* Applicant states that it is the registered owner of a Petroleum Tanker Registration Number KAS 231B which transports fuel and dry cargo, and that on or about 7th May 2019, the said tanker was intercepted and detained by the Respondent through its officers, on allegations that it had traces of 'Export Product'. According to the Applicant, subsequent tests done by the Respondent revealed the presence of "Export Product", and the matter was escalated to the Commissioner of Investigations and Enforcement at the Kenya Revenue Authority for imposition of penalties against the Applicant .
3. The Applicant further states that it gave an explanation of the circumstances surrounding the said traces of Export Product found on the tanker, and that to date no communication has been made to the Applicant of any outcome of the investigations and the Respondent has not released the tanker back to the Applicant, or taken any further action.
4. In light of the foregoing facts, I note that section 25 of the Energy Act establishes the Energy and Petroleum Tribunal, and section 36 provides for the said Tribunal's jurisdiction as follows:
 - (1) **The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.**
 - (2) **The jurisdiction of the Tribunal shall not include the trial of any criminal offence.**
 - (3) **The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.**

(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

(6) The Tribunal shall hear and determine matters referred to it expeditiously.

5. The Authority referred to in section 36 is the Respondent. It is consequently my view that arising from the said provisions of the Energy Act on the jurisdiction of the Energy and Petroleum Tribunal, and the provisions of section 9 of the Fair Administrative Actions Act, the question of leave to commence judicial review proceedings against the Respondent require to be heard *inter partes* before any orders can be granted by this Court. In addition, I also note that the Kenya Revenue Authority was involved in the dispute herein at some point, and has not been joined as a party herein.

6. In the circumstances, I hereby direct and order as follows:

i. The Applicant shall serve the Respondent with the Chamber Summons dated 17th February 2021, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of these directions and (iv) a hearing notice with twenty-one (21) days of today's date.

ii. The Respondent is granted leave to file and serve its response to the Chamber Summons dated 17th February 2021 and skeletal submissions thereon within twenty-one (21) days of service by the *ex parte* Applicant.

iii. The Chamber Summons dated 17th February 2021 shall be heard on 26th April 2021.

iv. 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 Chamber Summons on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

v. 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.

vi. 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.

vii. The parties shall also be required to file their respective affidavits evidencing service in the Judiciary's e-filing system.

viii. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 26th April 2021.

ix. 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 Thursday, 18th February 2021.

x. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF FEBRUARY 2021

P. NYAMWEYA

JUDGE