



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 97 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....RESPONDENT

AND

**WATER SERVICE PROVIDERS ASSOCIATION
(WASPA).....INTENDED INTERESTED PARTY/APPLICANT**

EX PARTE APPLICANTS:

- 1. NAIROBI CITY WATER AND SEWERAGE COMPANY**
- 2. NAHASHON MUGUNA MAINGI**

RULING NO. 3

Introduction

1. Nairobi City Water and Sewerage Company and Nahashon Muguna Maingi, the *ex parte* Applicants herein, filed an application by way of a Chamber Summons dated 12th May 2020, seeking leave to apply for various judicial review orders. The intended judicial review proceedings were seeking to challenge the decision by the National Environment Management Authority (hereinafter “the Respondent”), to arrest the 2nd *ex parte* Applicant on 9th May 2020 on charges of discharging pollutants into the aquatic environment. The said Chamber Summons was heard by this Court and leave granted to the *ex parte* Applicants to commence judicial review proceedings in a ruling delivered on 13th May 2020. The *ex parte* Applicants accordingly filed a substantive Notice of Motion dated 10th June 2020.
2. The Water Service Providers Association, (hereinafter “the Intended Interested Party), subsequently filed an application under Certificate of Urgency by way of a Notice of Motion dated 26th May 2020, seeking joinder in this application as an interested party. The Respondent also filed Notice of Preliminary Objection dated 23rd June, 2020, wherein it raised a preliminary legal objection based on its misjoinder in these proceedings. The *ex parte* Applicants thereupon filed a Notice of Motion dated 27th July, 2020, seeking orders that the Director of Public Prosecutions be enjoined as the 2nd Respondent in these proceedings.
3. On 28th July 2020, this Court directed that the *ex parte* Applicant’s Notice of Motion dated 27th July 2020, the Intended Interested Party’s Notice of Motion dated 26th May 2020 and the Respondent’s Notice of Preliminary Objection dated 23rd June 2020 be heard and determined together. The parties were also directed to file and serve their respective submissions on the pending applications. Their respective cases are set out in the following sections.

The *ex parte* Applicant’s case

4. The *ex parte* Applicants’ Notice of Motion dated 27th July, 2020 is supported by an affidavit sworn on 27th July 2020 by Patrick Maina, the 1st *ex parte* Applicant’s legal officer. He averred that the 1st *ex parte* Applicant is a duly registered limited liability company under the laws of Kenya and legally carrying out business in the Republic of Kenya, and that the Respondent caused the arrest of the 2nd *ex parte* Applicant on 9th May, 2020 on charges of discharging pollutants into the aquatic environment contrary to Section 72(1) of the Environment

Management and Co-ordination Act of Kenya and failing to exercise due diligence to ensure compliance contrary to section 145(1) as read with section 144 of the Environment Management and Co-ordination Act of Kenya. He also stated that the 2nd *ex parte* Applicant was released on a cash bail of Kshs. 100,000 and was scheduled to take plea on the aforementioned charges in the Chief Magistrates Court at Makadara.

5. Further, that this Court on 11th May, 2020 granted the *ex parte* Applicants leave to file its substantive application to commence judicial review proceedings against the Respondent, and that the substantive application was filed on 14th June, 2020. Further that in the course of these proceedings, the Director of Public Prosecutions (hereinafter “the intended 2nd Respondent”) acting pursuant to Article 157 of the Constitution, initiated negotiations with the *ex parte* Applicants and the Respondent to have the dispute at hand resolved in a compliance agreement.

6. According to the *ex parte* Applicants, section 118 the Environmental Management and Co-ordination Act, provides that subject to the Constitution and the directions and control of the Attorney-General, an environmental inspector institute shall undertake criminal proceedings against any person before a court of competent jurisdiction in respect of any offence alleged to have been committed by that person under the Act. They also contended that the intended 2nd Respondent is an independent office established under Article 157 of the Constitution of Kenya empowered to issue directions and control as envisioned in Section 118 of the Environmental Management and Co-ordination Act.

7. Therefore, that it is crucial that this Court has the opportunity of the benefit of full and correct facts entailing the status of the negotiations to withdraw these proceedings and enter into a compliance agreement. He asserted that unless the intended 2nd Respondent is enjoined to these proceedings, the Court risks making an uninformed decision and curtailing the success of the negotiations between the parties. The *ex parte* Applicants added that no prejudice would be occasioned to any party howsoever if the intended 2nd Respondent is enjoined to these proceedings.

The Respondent’s Case

8. The Respondent’s main ground of objection was that it is an improper party in these proceedings because it has no power or statutory authority to effect arrests; to institute and undertake criminal proceedings; and to undertake or conduct prosecutions.

9. The Respondent also filed Grounds of Opposition dated 4th August, 2020 to the *ex parte* Applicants’ Notice of Motion dated 27th July 2020, wherein it was stated that the said application is an afterthought and a fishing expedition aimed at curing the fatal defect of joined it as a Respondent. Further, that the said application should not be allowed without allowing its Preliminary Objection, as it admits the very preliminary objection on joinder and misjoinder. Lastly, that if allowed, the said application will cause prejudice to the Respondent in having it continue to appear in proceedings irrelevant to it, and where other parties are best suited.

The Intended Interested Party’s Case

10. The Intended Interested Party’s application is supported by an affidavit sworn on 26th May, 2020 by Antony Ambugo, the Intended Interested Party’s Chief Executive Officer. The main grounds for the application are that the Intended Interested Party is a necessary party in these proceedings, and has substantial interest in this matter necessitating its joinder. The Intended Interested Party contended that it is the only association of all Water Service Providers duly registered under the Societies Act, and is the main umbrella body of all Water Service Providers in Kenya, whose mandate is to advocate and undertake activities on issues pertaining to the development of its members in the water sector. Further, that the *ex parte* Applicants are a major water service provider in the country and particularly, Nairobi County, and its members.

11. According to the Intended Interested Party, the citation against the *ex parte* Applicants, which has also befallen Managing Directors of Thika Water, Mombasa Water and its other members, is a ploy to frustrate its members’ delivery of water and sanitation services as mandated, thereby leading to the said members’ dismissal from work. The Intended Interested Party contended that it has been in the forefront of ensuring that proper procedure is followed in investigating complaints of any commission and omission involving its members before any adverse action is taken against them, and intends to put evidence before this court that will materially and objectively help the court to effectively adjudicate the matter in issue on the alleged omissions by the *ex parte* Applicants.

12. It was also contended that the Constitution (Protection of Rights and Fundamental Freedoms, Practice and Procedure Rules, 2012) defines an interested party as “A person or an entity that has an identifiable stake or legal interest in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”, and that the Intended Interested Party fits this description. The Intended Interested Party detailed the matters affecting the water, sewer and sanitation services in urban areas like the capital city of Nairobi, and contended that it is the only one that can address these matters before this court without any fear of victimization. In conclusion, the Intended Interested Party averred that no party herein stands to suffer any prejudice if its application is allowed, as the same will only enhance the course of justice in this matter.

The Determination

13. The preliminary objection raised by Respondent will of necessity need to be determined first, as it have the potential of disposing of the *ex parte* Applicants’ case if found to be merited. If not merited, the Court will then proceed to consider whether the intended Respondent and Interested Party can be joined in this proceedings.

The Preliminary Objection

14. The circumstances in which a preliminary objection may be raised was in this regard explained by the Court of Appeal in the case of

Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, as follows:

“a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

15. The effect of a preliminary objection if upheld, renders any further proceedings before the court impossible or unnecessary. On the other hand, a preliminary objection cannot be raised if any fact requires to be ascertained. In the case of **Oraro vs Mbaja, (2005) 1 KLR 141**, the court held that any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. The Court of Appeal also stated in **Mukisa Biscuit Company -vs- West End Distributors Ltd (supra)** that a preliminary objection cannot be raised if what is sought is the exercise of judicial discretion.

16. Erastus K. Gitonga, the Respondent’s advocate on record, filed written submissions dated 12th July 2020 in support of the Respondent’s Preliminary Objection. The *ex parte* Applicants and Intended Interested Party did not file any submissions on the objection. The Respondent reiterated that the authority to investigate and effect arrests is not vested in the Respondent, but on the Inspector General of the Kenya Police Service and his officers. Further, that there is no law even within the Environmental Management and Coordination Act vesting the Respondent with this power, and that one cannot be stopped from exercising a power that they could not exercise in the first place.

17. The Respondent cited the provisions of Article 245(4) of the Constitution for the position that the role of investigations of crime whether environmental or otherwise is primarily on the Inspector-General of Police, and that under section 117 of the Environmental Management and Coordination Act, the role of environmental inspectors is largely monitoring and environmental auditing. Further, that while section 117(3)(h) makes mention of arrests, the Respondent had not issued arrest warrants for the *ex parte* Applicants and that none had been produced, and that the power of arrest is the prerogative of the National Police Service.

18. The Respondent further submitted that it has no authority or power to institute prosecutions whether delegated or otherwise, and that Article 157(6) of the Constitution provides that the Director of Public Prosecutions shall exercise State powers of prosecution. In addition, that the Respondent can only exercise delegated powers of prosecution under section 118 of the which are proved to exist. However, that the Respondent no longer enjoys the Director of Public Prosecution’s delegated authority to prosecute, and that all delegated powers of prosecution given to the Respondent and others was revoked by Gazette Notice 12166 of the 16th December, 2019 of Vol. CXXI No. 176. Therefore, that this judicial review must have the Director of Public Prosecution as a necessary party for it to succeed.

19. In conclusion, the Respondent submitted was that it only played the role of complainant pursuant to its statutory role, and that a complainant cannot be the prosecutor and the investigator, and that it can only be stopped from inspecting or monitoring the environment, if at all.

20. It is evident that the grounds raised as to the misjoinder of the Respondents on the grounds of their knowledge of this courts orders, but are also grounds which need evidence and further argument on the part of the parties to established the facts alleged therein. This was for example shown by the production of evidence by the Respondents of a copy of the Kenya Gazette in their submissions, to show that its delegated power of prosecution was revoked.

21. The grounds raised cannot therefore be raised in a preliminary objection as they are not pure questions of law. In addition, the legal nature of a plea of misjoinder or non-joinder was addressed by the Court of Appeal in **Republic Ex Parte the Minister for Finance & The Commissioner of Insurance as Licensing and Regulating Officers vs. Charles Lutta Kasamani T/A Kasamani & Co. Advocate & Another Civil Appeal (Application) No. Nai. 281 of 2005** as follows:

“Suffice it to say that a defect in form in the title or heading of an appeal, or a misjoinder or non-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment...Is the form of title to the appeal as adopted by the Attorney General in this matter defective or irregular? We think not, as we find that it substantially complies with the guidelines set out by this Court”.

22. This was also the position adopted in **Consolata Kihara & 21 Others vs. The Director of Kenya Trypanosomiasis Research Institute Nairobi [2003] KLR 582**, where it was held that issues of joinder and misjoinder of parties are not of significance where no miscarriage of justice or any form of injustice is alleged as a result of the choosing of parties to the litigation. In this respect, misjoinder or non-joinder cannot therefore be the basis for a preliminary objection upon which an otherwise competent application is to be dismissed, as this Court has the discretion to address this irregularity in its findings and orders.

23. To this extent, the issue of whether there has been a misjoinder of the Respondent cannot therefore be raised as a preliminary point of law. The Respondent’s Preliminary Objection is accordingly found to be without merit.

Joinder of Intended Respondent and Interested Party

24. On the joinder of the intended 2nd Respondent, the *ex parte* Applicants’ advocates on record, Irungu Kangata and Company Advocates, filed submissions dated 27th July, 2020, and averred that the test in applications for joinder is firstly, whether an intended party has an identifiable interest in the subject matter in the litigation though the interest need not be such interest as must succeed at the end of the trial. Secondly and in the alternative, that it must be shown that the intended party is a necessary party whose presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

25. Reliance was placed on the decision in **M K v M W M & Another, Cause No. 268 of 2013**, for the submission that the Court can at

any stage of the proceedings, upon application by either party or *suo moto*, order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added/joined as a party. The decision in **Civicon Limited vs Kivuwatt Limited & 2 Others [2015] eKLR** was also cited for the position that the discretion must of necessity be exercised judicially, and that the objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined without any protraction, inconvenience and to avoid multiplicity of proceedings.

26. It was contended that the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10(2). It was the *ex parte* Applicants' submission in this regard that the intended 2nd Respondent is a necessary party to these proceedings, and the circumstances justify his joinder, as he is the party empowered under Article 157 of the Constitution of Kenya to issue directions and control as envisioned in section 118 of the Environmental Management and Co-ordination Act., with respect to prosecution of environmental prosecutions. Further, that the intended 2nd Respondent has initiated negotiations to withdraw these proceedings and enter into a compliance agreement. Therefore, that there is a plan towards settling the matter and it is in the interest of justice that the application dated 27th July, 2020 is allowed.

27. On the joinder of the Intended Interested Party, Otieno Okeyo & Company Advocates who are on record for the Intended Interested Party, filed submissions dated 10th June, 2020. Reliance was placed therein on Order 53 Rule 3(2) of the Civil Procedure Rules, the law provides that all persons affected by an application must be served whether already described as parties in the filed proceedings or not. The Intended Interested Party submitted that it had demonstrated its interest in the instant application, as it is the registered and legal umbrella body of all the water service providers in Kenya with the *ex parte* Applicants being its registered members, and it is necessary that the Applicant is allowed to appear in court and bring before this court evidence of selective prosecution of its members.

28. Reliance was placed on the provisions of Order 53 Rule 3(4) of the Civil Procedure Rules, and of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, as well as on the decision of the Supreme Court in **Communications Commissions of Kenya & 4 Others Versus Royal Media Service & 7 Others, (2014) eKLR**, of the Court of Appeal in **West Kenya Sugar Co. Ltd vs Kenya Sugar Board & Another , (2014) eKLR** and of the High Court in **Republic vs The Salaries & Remuneration Commission & Others, Judicial Review case No. 686 of 2017**, for the submissions the law gives the court discretion in allowing parties to join judicial review proceedings, and they submitted that the Intended Interested Party has advanced enough grounds to demonstrate that it is a stakeholder, and has therefore met the threshold for joining these proceedings as an interested party.

29. The Respondent did not file any submissions on the applications for joinder of the Intended 2nd Respondent and Intended Interested Party.

30. I have considered the pleadings and arguments made by the parties herein. The decision whether or not to join a party is an exercise of discretion of the Court. Order 1 Rule 10 (2) of the Civil Procedure Rules provide for a party who may be enjoined in a suit as a necessary party as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

31. It has been emphasised in various decisions including **Meme v Republic, [2004] 1 EA 124** and **JMK vs MWM & Another [2015] eKLR**, that the main factor that determines if one is a necessary party or not in a cause of action, is that a question in the said action cannot be effectually and completely settled unless the party is joined, and that this factor should be interpreted liberally, and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication.

32. In addition, Order 1 Rule 3 of the Civil Procedure Rules provides as follows as who is may be joined in a suit as a defendant or respondent:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

33. The Court of Appeal discussed the guiding principles on the question of joinder of a defendant in **Civicon Limited Vs Kivuwatt Limited & 2 Others [2015] eKLR** as follows:-

“Again the power given under the Rules is discretionary, which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.....

From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the

interest need not be the kind that must succeed at the end of the trial.”

34. Specifically, with respect to judicial review proceedings, a party may be joined to proceedings under Order 53 rules (2) and (4) of the Civil Procedure Rules if it is demonstrated that he or she is a necessary party to, or is directly affected by the proceedings. Order 53 Rule 2 and 4 provide as follows:

“(2) The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all

parties to the proceedings....

(4) If on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice may be served on that person, upon such terms (if any) as the court may direct...”

35. J. Odunga in explaining how such direct effect is to be demonstrated in judicial review proceedings held as follows in Republic vs Office of the Director of Public Prosecution & 2 others Ex-Parte Sylvia Wairimu Njuguna also Known as Sylvia Wairimu Muli [2018] eKLR:

“25. Since judicial review orders are concerned with the decision making process rather than the merits of the decision, a party who contends that he or she is directly affected by the proceedings ought to bring himself or herself within the ambit of the judicial review jurisdiction and ought not to apply to be joined thereto with a view to transforming judicial review proceedings into ordinary civil litigation. In my view, for a party to be joined to the proceedings under Order 53 rule 3(2) aforesaid the applicant ought to disclose to the Court how he or she is directly affected. The Court cannot be expected to act in the dark by joining such a person with a view to satisfying itself as to the effect of the orders sought on the applicant at a later stage of the proceedings.

26. However, the decision whether or not to join a party is an exercise of discretion and if no substantial purpose or benefit will be gained by the joinder of a person to the proceedings and where the said joinder will militate against the expeditious disposal of the said proceedings which by their nature ought to be heard and determined speedily, the Court will be reluctant to join the intended party to the proceedings.

27. In an application of this nature, the applicant ought to adduce some material upon which the Court can determine whether the applicant is directly affected by the proceedings. In judicial review especially where a party’s interests can be catered for by another party participating in the proceedings, there would be no reason to join the party intending to join the proceedings as a party thereto. It is therefore upon the applicant to satisfy the Court that the issues it intends to raise, which issues are relevant to the matter for determination before the Court, cannot adequately be canvassed by any of the parties before the Court.”

36. In addition, the Supreme Court of Kenya has on several occasions ruled on the threshold required to be met by a party seeking joinder as an interested party, The Supreme Court defined an interested party in the case of Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others [2014] eKLR, as follows:

“[18] Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause *ab initio*. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

37. The considerations before a court admits a proposed interested Party were elaborated on by the Supreme Court in the case of Francis Kariuki Muruatetu and Another vs Republic, Petition No 15 of 2016 as follows:

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

ii. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not

merely a replication of what the other parties will be making before the Court.”

38. The above considerations were reiterated by the Supreme Court in Communications Commissions of Kenya & 4 Others vs Royal Media Service & 7 Others, (2014) eKLR and H.E. Raila Amolo Odinga & Another vs IEBC & 3 Others (2017) eKLR.

39. Coming to the applications for joinder in the instant applications, the main issue in this judicial review proceedings is the legality of the intended prosecution of the *ex parte* Applicants. From the charge sheets produced by the *ex parte* Applicants as evidence, it is evident that they are charged with offences under the Environmental Management and Co-ordination Act, and the Respondent submitted that it was the complainant in the intended prosecution, pursuant to the exercise of the powers of prosecution by environmental inspectors under sections 117 and 118 of the said Act. To this extent, there has been no misjoinder of the Respondent, which is a necessary party in these proceedings, as it is the instigator of the prosecution against the *ex parte* Applicants in exercise of a statutory mandate. The legality or otherwise of the exercise of the Respondent’s power may therefore also be in issue.

40. Under Article 157 of the Constitution, the Director of Public Prosecutions, the intended 2nd Respondent herein, is the constitutional office responsible for prosecution of criminal offences. Its specific mandate in this respect under Article 157 (6) is as follows:

“(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and

(c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

41. The Director of Public Prosecutions is therefore both a necessary party, and a proper party to be joined as a Respondent in the instant judicial review proceedings, for the reasons that that the intended prosecution of the *ex parte* Applicants is of criminal offences, and the legality or otherwise thereof cannot be determined without the participation of the intended 2nd Respondent, who will be prosecuting the said offences. It is also notable in this respect that the Respondent did acknowledge this fact in its submissions.

42. Lastly, the Intended Interested Party has brought evidence that is an actors and stakeholders in the water services sector, and it is not disputed that the *ex parte* Applicants are its members. It will therefore not only be directly affected, but also have a direct interest in the prosecution of its members. This Court therefore finds for these reasons, that the Intended Interested Party has an identifiable stake in the proceedings herein, and has met the threshold for joinder as an interested party.

The Disposition

43. In light of the findings made in this ruling, I hereby order as follows:

I. The Respondent’s Notice of Preliminary Objection dated 23rd June, 2020 is hereby dismissed without any order as to costs.

II. The Water Service Providers Association’s Notice of Motion dated 26th May 2020 is hereby allowed, and the Water Service Providers Association is joined in the instant judicial review proceedings and as an interested party.

III. The *ex parte* Applicants’ Notice of Motion dated 27th July, 2020 is hereby allowed, and the Director of Public Prosecutions is joined in the instant judicial review proceedings and as the 2nd Respondent.

IV. The *ex parte* Applicant is granted leave to file and serve an Amended Notice of Motion, an Amended Statutory Statement, and A supplementary affidavit of need be, within twenty-one (21) days from today’s date.

V. The *ex parte* Applicants’ shall also serve the 1st and 2nd Respondents and Interested Party with (i)the Chamber Summons dated 12th May 2020, (ii) the substantive Notice of Motion dated 10th June 2020, (iii) the Amended Notice of Motion, Amended Statutory Statement, and supplementary affidavit If need be, (iv) a copy of this ruling, and (v) a mention notice, within twenty-one (21) days from today’s date.

VI. The 1st and 2nd Respondents and Interested Party are granted leave to file and serve their responses to the *ex parte* Applicants’ substantive Notice of Motion within twenty-one (21) days from today’s date.

VII. This matter shall be mentioned on 23rd April 2020 for further directions.

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 *ex parte* Applicants’ substantive Notice of Motion on the basis of the electronic copies of the pleadings and submissions filed.

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

and 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 with copies to asunachristine51@gmail.com.

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

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 23rd April 2021.

XIII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the ex parte Applicant, Respondents and Interested Party by electronic mail by close of business on Wednesday, 17th February 2021.

XIV. Parties shall be at liberty to apply.

44. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF FEBRUARY 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

Pursuant to the Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, Other Court Users and the General Public from Risks Associated with the Global Corona Virus Pandemic dated 17th March 2020 and published 17th April 2020 in Kenya Gazette Notice No. 3137 by the Honourable Chief Justice, this ruling was delivered electronically by transmission to the email addresses of the ex parte Applicants', and Respondents' Advocates on record.

P. NYAMWEYA

JUDGE