



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

SIAYA JUDICIAL REVIEW MISC. NO. 3 OF 2021

ORIGINATING FROM

KISUMU HC JUDICIAL REVIEW APPLICATION NO. E001 OF 2021

IN THE MATTER FOR AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

AND

IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 23, 25, 27, 47, 165(6), 258 AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 2(1), 3(1) 10(1) (2), 19 (2), 20 (2), 27 (1), 35(1), 47(1) (2), 48, 50 (1) (2), OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTIONS 4 AND 5 FAIR ADMINISTRATIVE ACTION ACT. NO. 4 OF 2015

AND

IN THE MATTER OF THE PERSON WITH DISABILITIES (INCOME TAX DEDUCTIONS AND EXEMPTIONS) ORDER, 2010

BETWEEN

REPUBLIC.....APPLICANT

- VERSUS -

CABINET SECRETARY FOR TREASURY.....1ST RESPONDENT

NATIONAL COUNCIL FOR PERSONS WITH

DISABILITY.....2ND RESPONDENT

KENYA REVENUE AUTHORITY.....3RD RESPONDENT

(EXPARTE APPLICANT - LEILA OJIAMBO)

RULING

1. I have considered the application for leave to be heard during the recess under Certificate of Urgency. I grant leave to the applicant to be heard during the recess.

2. On the Chamber summons dated 23/3/2021 I have perused the grounds, verifying affidavit and annexures thereof. I am satisfied that the application is urgent. I certify it as urgent for consideration exparte in the first instance.

3. On the merits thereof exparte, I am satisfied, on the material placed before this court that the applicant has established a prima facie case to apply for Judicial Review Orders of Mandamus. The intended application is not frivolous.

(1) I grant leave to the applicant to apply for Judicial Review Orders of Mandamus to compel the Respondents to renew her tax Exemption Certification.

(2) I further grant leave to the applicant to apply for Mandamus to compel the Respondents to refund the deductions already made by the 3rd Respondent.

4. The main motion to be filed and served on all affected parties' within ten (10) days of today.

5. On whether the leave so granted should operate as stay of any further deduction, Order 53 Rule (1)(4) provides as follows: -

(4) The grant of leave under this Rule to apply for an Order of Prohibition of an order of Certiorari shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the Judge orders otherwise.

6. From the above provision, it is clear that stay can only issue where the prayers to be made are for prohibition and or Certiorari, and not Mandamus.

7. That being the case, where, like in the instant case, the applicant only seeks for leave to apply for Mandamus, then the court is deprived of the power to order that such leave do operate as stay. Accordingly, I decline to grant stay.

8. The matter shall be mentioned on 9/4/2021 before Kisumu High Court duty Judge to confirm compliance with the orders for filing and service of the substantive Notice of motion and for further directions on the disposal of the substantive motion.

9. Applicant's counsel to pay for copy of this order and the proceedings and Ruling to be typed, certified and send to Kisumu High Court Deputy Registrar.

10. This file is closed.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 29TH DAY OF MARCH 2021

R.E. ABURILI

JUDGE