



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC E060 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY, MINISTRY OF

INDUSTRIALIZATION, TRADE AND

ENTERPRISE DEVELOPMENT .....1<sup>ST</sup> RESPONDENT

THE SECRETARY, PUBLIC SERVICE

COMMISSION .....2<sup>ND</sup> RESPONDENT

THE CHIEF EXECUTIVE OFFICER

MICRO AND SMALL ENTERPRISE AUTHORITY .....3<sup>RD</sup> RESPONDENT

EX PARTE APPLICANTS:

1. CHARLES MWANGI WAITHAKA

2. CHARLES KALOMBA SHIRAHU

RULING

1. The *ex parte* Applicants herein have filed an application by way of a Chamber Summons dated 22<sup>nd</sup> April 2021, seeking the following orders:

1. THAT this Application be certified urgent and service thereof be dispensed with in the first instance.
2. THAT leave be granted for the *ex parte* Applicants to apply for the following Judicial Review orders;

a) An order of CERTIORARI to remove into this court and quash the decision of the 1st and 2nd Respondents to institute disciplinary proceedings against the *ex parte* Applicants for allegedly late submission and failing to make clarifications on the 2019 Declaration of Income, Assets and Liabilities.

b) An order of PROHIBITION to remove into this court and prohibit the 1st and 2nd Respondents from instituting disciplinary proceedings against the *ex parte* Applicants for allegedly late submission and failing to make clarifications on the 2019 Declaration of Income, Assets and Liabilities.

3. THAT the grant of leave to operate as a stay of any reliance, use, implementing and/or enforcing the contents of the

letters to the *ex parte* Applicants dated 14<sup>th</sup> day of January 2020, 22<sup>nd</sup> day of February 2021 and 31<sup>st</sup> day of March 2021 from the 2<sup>nd</sup> Respondent, 2<sup>nd</sup> Respondent and 1<sup>st</sup> Respondent respectively.

**4. THAT costs of this Application be provided for.**

2. The said application is supported by a statutory statement dated 22<sup>nd</sup> April 2021, and two affidavits sworn on the same date by the *ex parte* Applicants. I have perused of the supporting documents, and in light of their content therein, and also given that there are some annexures that are missing, particularly the evidence of the impugned decisions relied upon by the 1<sup>st</sup> *ex parte* Applicant, I am of the view that the *ex parte* Applicants need to demonstrate that they have an arguable case. The question of leave to commence judicial review proceedings against the Respondents therefore requires to be canvassed *inter partes*.

3. I accordingly hereby direct and order as follows:

**I. The *ex parte* Applicants shall serve the Respondents with the Chamber Summons dated 22<sup>nd</sup> April 2021, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of these directions and (iv) a hearing notice with ten (10) days of today's date.**

**II. The Respondent and Interested Parties are granted leave to file and serve their responses to the Chamber Summons dated 22<sup>nd</sup> April 2021, and skeletal submissions thereon within ten (10) days of service by the *ex parte* Applicants.**

**III. The Chamber Summons dated 22<sup>nd</sup> April 2021 shall be heard virtually by video link on 19<sup>th</sup> May 2021 at 3 pm.**

**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 dated 22<sup>nd</sup> April 2021 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**VII. The parties shall also be required to file their respective affidavits of service evidencing service on 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 a virtual hearing on 19<sup>th</sup> May 2021 at 3pm. and shall send the parties an electronic link for the hearing.**

**IX. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicants by electronic mail by close of business on Thursday, 29<sup>th</sup> April 2021.**

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

4. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF APRIL 2021

P. NYAMWEYA

JUDGE