



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 86 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF LIVESTOCK....1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF

AGRICULTURE, LIVESTOCK, FISHERIES AND CO-OPERATIVES.....2ND RESPONDENT

THE KENYA VETERINARY BOARD.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

AND

DR. JOSIAH MACHUKI MANDIEKA.....1ST INTERESTED PARTY

DR. JOHN WILBEFORCE MUCHIBI.....2ND INTERESTED PARTY

PROF. JAMES MUCUNU MBARIA.....3RD INTERESTED PARTY

EX PARTE APPLICANTS:

1. DR. ELIZABETH OUKO

2. MR. JOHN NGIGI NYUMU

3. MR. FRANCIS MUTHURI MUTUA

RULING NO. 2

1. On 26th April 2021, this Court reserved a ruling date of 15th July 2021, on the *ex parte* Applicants' Notice of Motion application dated 20th January 2021. The *ex parte* Applicants' counsel subsequently filed an application under certificate of urgency by way of a Notice of Motion dated 28th May 2021, seeking the following orders:

1. This Honourable Court be pleased to hear this application *ex parte* or as it may otherwise direct;

2. This Honourable Court be pleased to direct that the file be placed before Hon. Lady Justice P. Nyamweya or the Duty Court for purposes of issuing appropriate directions;

3. Leave be granted to the *ex parte* applicants to file submissions in reply to the replying affidavit and submissions dated 21st

April 2021 filed by the 3rd Respondent and the Grounds of Opposition and submissions dated 15th April 2021 filed by the Interested Parties within any such reasonable timelines as the Court may impose in time for ruling reserved for 15th July 2021;

4. Dr. Benson Mutisya Muthui, the 3rd ex-parte applicant, be struck out from the proceedings.

5. This Honourable Court be pleased to make such further orders as are necessary for the ends of justice to be served.

6. Costs of this application be provided for.

2. The said application is supported by an affidavit sworn on 28th May 2021. I will reproduce the grounds for the said application verbatim which are self-explanatory and also justify the orders sought *ex parte*, and are as follows:

a) The ex parte applicants filed an application seeking certain reliefs pending the hearing of this application and their intended appeal to the Court of Appeal against the judgment delivered on 12th January 2021.

b) The matter was placed before Hon. Lady Justice P. Nyamweya and the Court issued its directions on 15th February 2021 directing that the application will be determined on the basis of electronic copies of the pleadings and submissions and proceeded to set timelines within which the parties were to file and serve submissions respectively with the Court set the matter down for hearing on 26th April 2021.

c) The Advocates for the ex parte applicants were served with the Grounds of Opposition and submissions dated 15th April 2021 filed by the Interested Parties.

d) On the scheduled hearing date of 26th April 2021, there having been no physical or virtual hearing of the application, the Court issued directions inter alia reserving a ruling date of 15th July 2021 and granting the parties liberty to apply.

e) From the said directions, it is apparent that the Respondent filed a Replying Affidavit as well as submissions on 21st April 2021 which were yet to be served despite follow up by the Advocates for the ex parte applicant.

f) The Respondents and the Interested Party from their responses have raised points of law and facts that the ex-parte Applicants seek to reply to in good time and enable the Court take the reply into account in making its decision.

g) The 3rd ex-parte applicant, Dr. Benson Mutisya Muthui is not interested in participating in the proceedings herein necessitating his request to be struck off as per his letter dated 21st May 2021.

h) The ex parte applicants are reasonably entitled to reply to any issues raised by the respondents and interested parties but can only do so with the leave of court, no directions having been issued as to their filing of any such reply.

i) The ex parte applicants are willing to abide by any timelines as the Court may impose in filing their reply

j) The Application has been brought timely.

k) It is in the interests of justice that the prayers sought be granted as there is no prejudice to the parties herein to be occasioned if the prayers sought are granted as there is no corresponding right to further reply on the part of the respondents and interested party.

3. The said application is evidently urgent in light of the pending ruling herein. Upon perusal of the Court record, I also note that the Respondent and Interested Parties did not file any affidavit of service attesting to service of their pleadings and submissions on the *ex parte* Applicants. The *ex parte* Applicants have also annexed a copy of the letter dated 21st May 2021 by the 3rd *ex parte* Applicant, indicating that he has not given any instructions in this matter. The orders sought are therefore merited, and no prejudice will be caused to the Respondent and Interested Parties if they are granted *ex parte*.

4. In the premises, I hereby direct and order as follows:

i. The *ex parte* Applicants' Notice of Motion application dated 28th May 2021 is certified urgent, and is admitted to hearing on an *ex parte* basis.

ii. The *ex parte* Applicants are granted leave to file and serve the Respondent and Interested Parties with a further affidavit and submissions in reply, which shall be strictly limited to any new facts and issues of law raised by the Respondent and Interested Party, within fourteen (14) days of today's date. The *ex parte* Applicants shall also file an affidavit of service attesting to the service within the said fourteen (14) days.

iii. Dr. Benson Mutisya Muthui, the 3rd *ex parte* applicant herein, is hereby struck out from the proceedings.

iv. There shall be no order as to the costs of the *ex parte* Applicants' Notice of Motion application dated 28th May 2021.

v. The ruling on the *ex parte* Applicants' Notice of Motion dated 20th January 2021 shall be delivered on 15th July 2021 by way of email to the parties.

vi. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicants, Respondent and Interested Party by electronic mail by close of business on Thursday, 4th June 2021.

vii. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for ruling by email on 15th July 2021.

viii. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MAY 2021

P. NYAMWEYA

JUDGE