



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW CASE NO. 84 OF 2020**

**BETWEEN**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 84 OF 2020**

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

**AND**

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET**

**DISPOSAL ACT, 2015**

**BETWEEN**

**THE ACCOUNTING OFFICER,**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....1<sup>ST</sup> APPLICANT**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**PUBLIC PROCUREMENT ADMINISTRATIVE**

**REVIEW BOARD.....RESPONDENT**

**AND**

**ROADS AND CIVIL ENGINEERING**

**CONTRACTORS ASSOCIATION (RACECA).....INTERESTED PARTY**

**FRONTIERS COUNTIES DEVELOPMENT**

**COUNCIL.....2<sup>ND</sup> PROPOSED INTERESTED PARTY/APPLICANT**

**RULING NO 2.**

**Introduction**

1. The *ex parte* Applicants herein filed an application by way of a Chamber Summons dated 20<sup>th</sup> April 2020, seeking leave to apply for various judicial review orders with respect to the Respondent's decision dated 14<sup>th</sup> April 2020 and rendered on 16<sup>th</sup> April 2020, on a Request for Review brought by the Interested Party. The said Request for Review and decision are with respect to a Request for Bids for the

Upgrading of Isiolo - Kulamawe Mogadashe (A10/ B84) Road ICB No KeNHA 2236/2019 that was made by the *ex parte* Applicants.

2. The Chamber Summons dated 20<sup>th</sup> April 2020 was heard by this Court and leave granted to the *ex parte* Applicants to commence judicial review proceedings in a ruling delivered on 24<sup>th</sup> April 2020. This Court also gave directions as to filing and service of pleadings and submissions by the parties, and that this matter be mentioned on 10<sup>th</sup> June 2020 for directions.

3. The Frontiers Counties Development Council, 2<sup>nd</sup> Proposed Interested Party has now filed an application under Certificate of Urgency by way of a Notice of Motion dated 29<sup>th</sup> April 2020 seeking joinder in this application as an interested party and for directions. The said application was sent to the Deputy Registrar of the Judicial Review Division by an email of the same date.

4. I have considered the application dated 29<sup>th</sup> April 2020 and the reasons offered in support of the urgency. I am satisfied that the 2<sup>nd</sup> Proposed Interested Party has demonstrated that the matter is urgent, and that the same ought to be heard on a priority basis. This is for the reasons that there are strict timelines that are set by this Court as to the hearing of the dispute herein.

5. In the premises, I hereby direct as follows to expedite the hearing of this matter:

**i. The Notice of Motion application dated 29<sup>th</sup> April 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis.**

**ii. The 2<sup>nd</sup> Proposed Interested Party shall serve the *ex parte* Applicants, Respondents, and Interested Party with (i) its Notice of Motion dated 29<sup>th</sup> April 2020 and skeletal submissions thereon, (ii) a copy of this ruling, and (iii) a mention notice within seven (7) days from today's date for *inter partes* hearing.**

**iii. Upon being served with the said pleadings and documents, the *ex parte* Applicants, Respondents, and Interested Party shall be required to file and serve their replies to the said Notice of Motion dated 29<sup>th</sup> April 2020 and submissions thereon within seven (7) days from the date of service.**

**iv. The ruling date for the Notice of Motion dated 29<sup>th</sup> April 2020 shall be reserved on 20<sup>th</sup> May 2020.**

**v. 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 2<sup>nd</sup> Proposed Interested Party's Notice of Motion dated 29<sup>th</sup> April 2020 on the basis of the electronic copies of the pleadings and submissions filed. In this respect, the 2<sup>nd</sup> Proposed Interested Party shall avail an electronic copy of its Notice of Motion dated 29<sup>th</sup> April 2020 and submissions thereon in word format within seven (7) days of today's date.**

**i. The parties shall avail and file their electronic pleadings, applications and written submissions in word format by sending them 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).**

**ii. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the name of the Party sending it (that is whether the Applicant, Respondent or Interested Party), and the nature of the pleading or document.**

**iii. 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).**

**iv. The parties shall also be required to send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**v. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions and the extracted orders to the 2<sup>nd</sup> Proposed Interested Party by electronic mail by close of business on Monday, 4<sup>th</sup> May 2020, as 1<sup>st</sup> May 2020 is a public holiday.**

**vi. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 20<sup>th</sup> May 2020, and bring it to the attention of a Judge in the Division for reservation of a ruling date.**

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

6. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2020**

**P. NYAMWEYA**

JUDGE