



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 87 OF 2020

REPUBLIC.....APPLICANT

VERSUS

THE CHIEF OFFICER ROADS, TRANSPORT, AND

PUBLIC WORKS, NAIROBI CITY COUNTY.....1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT.....2ND RESPONDENT

EX PARTE APPLICANT: IMPRESSIONS ADVERTISING

RULING

The Application

1. The *ex parte* Applicant, Impressions Advertising, (hereinafter “the *ex parte* Applicant”), is aggrieved by a decision made by the Chief Officer, Roads, Transport and Public Works of Nairobi City County, who is the 1st Respondent herein, in a letter dated 28th January 2020. He has also sued the Nairobi City County as the 2nd Respondent. The *ex parte* Applicant claims that the said decision revokes approvals made to it by the Respondents to undertake roadworks on Pokomo Lane.
2. The *ex parte* Applicant has therefore filed a Chamber Summons application dated 28th April 2020, seeking orders that the said application be certified urgent, and for leave to apply for orders of certiorari to quash the said decision in the letter dated 28th January 2020, and of prohibition to stop the Respondents completing the road works on Pokomo Lane. It also seeks an order that the grant of leave operates as a stay of implementation of the decision in the impugned letter dated 28th January 2020.
3. According to the *ex parte* Applicant, the impugned letter is illegal as it does not conform with constitutional values and principles, and the requirements of various legislation on undertaking such construction. Further, that it also infringes on the *ex parte* Applicant’s fundamental rights. The grounds are detailed out in the *ex parte* Applicant’s statutory statement dated 28th April 2020, and a verifying affidavit sworn on the same date by Peter Andala, a director of the Applicant.
4. *Order 53 Rule 1* of the Civil Procedure Rules provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The reason for the leave was explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full *inter partes* hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.

5. It is trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant’s case is sufficiently meritorious

to justify leave. In the present application, the *ex parte* Applicant has provided evidence of the impugned decision in the 1st Respondent's letter dated 28th January 2020, and of correspondence between it and the Respondents of approvals to undertake construction of Pokomo Lane.

6. I have perused the said letter and note that its subject and content is the award of a contract to one M/S Noordin Enterprises Limited to connect sections of Pokomo Road with a bridge, among other activities, and seeks cooperation from the persons addressed, including the *ex parte* Applicant's Director. I am of the view that while this matter is urgent given the imminent construction and roadworks on Pokomo Lane arising from the impugned decision, the *ex parte* Applicant needs to demonstrate that the 1st Respondent's decision is one that is amenable to judicial review, and that it meets the necessary legal threshold for leave to be granted. The Chamber Summons application dated 28th April 2020 will therefore require to be heard *inter partes* for the questions of leave to commence judicial review proceedings, and whether such leave can operate as a stay to be determined.

7. In addition, the orders sought by the *ex parte* Applicant will affect the said M/S Noordin Enterprises Limited which has been awarded the contract, yet it has not been joined as a party in these proceedings. Being so directly affected, it is a necessary party in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules, and needs to be heard on the *ex parte* Applicant's application.

The Orders

8. In light of the foregoing observations, I hereby direct and order as follows:

I. The *ex parte* Applicants' Chamber Summons application dated 28th April 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis.

II. M/S Noordin Enterprises Limited be and is hereby joined in this suit as an Interested Party.

III. The *ex parte* Applicant shall serve the Respondents and Interested Party with the Chamber Summons dated 28th April 2020 and skeletal submissions thereon, a copy of this ruling, and a hearing notice within fourteen (14) days from today's date for *inter partes* hearing.

IV. Upon being served with the said pleadings and documents, the Respondents and Interested Party shall be required to file and serve their reply to the said Chamber Summons and skeletal submissions thereon within fourteen (14) days from the date of service.

V. The ruling date for the said Chamber Summons dated 28th April 2020 shall be reserved on 3rd June 2020.

VI. 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 28th April 2020, on the basis of the electronic copies of the pleadings and submissions filed. In this respect, the Applicant shall avail an electronic copy of its Chamber Summons dated 28th April 2020 in word format within fourteen (14) days of today's date.

VII. 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.

VIII. The parties shall avail and file their electronic pleadings, applications and written submissions by sending them to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

IX. 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.

X. 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 with copies to asunachristine51@gmail.com.

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions and the extracted orders to the *ex parte* Applicant by electronic mail by close of business on Thursday, 30th April 2020.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 3rd June 2020, and bring it to the attention of a Judge in the Division on that date for reservation of a ruling date.

XIII. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL 2020

P. NYAMWEYA

JUDGE