



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 80 OF 2020**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**DIRECTOR OF CRIMINAL INVESTIGATIONS...1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT**

**NATIONAL TRANSPORT AND**

**SAFETY AUTHORITY.....3<sup>RD</sup> RESPONDENT**

**AND**

**GIDEON KIOKO MUTUNGI.....1<sup>ST</sup> INTERESTED PARTY**

**STEVEN ONYANGO ODHAO.....2<sup>ND</sup> INTERESTED PARTY**

**EX PARTE APPLICANT:**

**PEARLYNE CHIEMA EDEL OMAMO**

**RULING**

1. A ruling was delivered herein by Hon. Mr. Justice J. Mativo on 9<sup>th</sup> April 2020, in which the *ex parte* Applicant’s Chamber Summons application dated 8<sup>th</sup> April 2020, was set for ruling on 23<sup>rd</sup> April 2020. The said application was seeking leave to commence judicial review proceedings against the Respondents as well as various interim and stay orders. Unfortunately, the ruling could not be delivered on that date, due to the scaling down of court operations with effect from 16<sup>th</sup> March 2020, as a result of the COVID-19 pandemic. The matter was therefore listed for hearing on 27<sup>th</sup> April 2020.

2. I have perused the ruling given herein by Mativo J., and there appears to have been non-compliance with the directions and orders granted by the learned Judge requiring the Respondents and Interested Parties to file and serve their responses to the *ex parte* Applicant’s Chamber Summons, for the *inter partes* hearing of the application. However, I also note that the *ex parte* Applicant has not provided any evidence of service of the said Chambers and orders of the Court on the Respondent and the Interested Parties, as directed and ordered by the Judge.

3. In the premises, and to expedite the further hearing of this matter, I direct and order as follows:

**I. The Applicant is granted leave to institute judicial review proceedings for an order of Certiorari directing the Respondents by themselves, their servants and/or agents or any official acting under their authority to bring into this Court for the purpose of being quashed, the decision made on or about 14<sup>th</sup> February 2020 to seize and impound Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon and seize its original Log Book.**

II. The Applicant is granted leave to institute judicial review proceedings for an order of Mandamus directing all the Respondents by themselves, their servants and/or agents or any official acting under their authority to hereby release Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon to the *ex parte* Applicant.

III. The Applicant is granted leave to institute judicial review proceedings for an order of Mandamus directing all the Respondents by themselves, their servants and/or agents or any official acting under their authority to hereby release the original Log Book registered and issued in the name of the *ex parte* Applicant for Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon to the *ex parte* Applicant.

IV. The Applicant is granted leave to institute judicial review proceedings for an order of Prohibition prohibiting the Respondents by themselves, their servants and/or agents or any official acting under their authority from seizing and impounding Applicant for Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon.

V. Prayers 2 and 3 of the Chambers Summons application dated 8<sup>th</sup> April 2020 seeking release of the Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon and release of the original log Book of the said Motor Vehicle to the custody of the *ex parte* Applicant pending the hearing of the application and main motion are declined, and shall await the determination of the substantive Notice of Motion.

VI. The prayer that the leave granted do operate as a stay of any further action of the Respondents in relation to Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon is hereby granted only to the extent that the Respondents shall not remove from their custody or interfere in any manner with the status and ownership of the Motor Vehicle registration number KCN 116N, Subaru Legacy 2011, Station Wagon pending the hearing and determination of the substantive Notice of Motion.

VII. The costs of the Chamber Summons dated 7<sup>th</sup> April 2020 shall be in the cause.

VIII. The *ex parte* Applicant shall file and serve the Respondents and Interested Parties with substantive Notice of Motion; and shall also serve the Respondents and Interested Parties with (i) a copy of the Chamber Summons dated 7<sup>th</sup> April 2020 and its supporting documents; (ii) a copy of the ruling delivered by Hon. Mr. Justice Mativo on 9<sup>th</sup> April 2020; and (iii) a copy of this ruling, within ten (10) days from today's date.

IX. Upon being served with the said pleadings and documents, the Respondents and Interested Parties shall file their responses to the substantive Notice of Motion within seven (7) days from the date of service.

X. The *ex parte* Applicant is granted leave to file and serve any further affidavits if need be, together with skeletal submissions on its substantive Notice of Motion application, within fourteen (14) days of service of the Respondents' and Interested Parties' responses or upon default thereof.

XI. The Respondents and Interested Parties are also granted leave to file and serve any further affidavits in response to the Applicant's further affidavits if need be, together with their submissions on the substantive Notice of Motion within fourteen (14) days of service of the *ex parte* Applicant's further affidavit and submissions.

XII. 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 Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

XIII. 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 *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

XIV. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

XV. 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).

XVI. 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).

XVII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the Applicants by electronic mail by close of business on Thursday, 30<sup>th</sup> April 2020.

XVIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist on 15<sup>th</sup> June 2020 and bring it to the attention of a Judge in the Division on that date for further directions.

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

4. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL 2020**

**P. NYAMWEYA**

**JUDGE**