



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 113 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PERMANENT SECRETARY,

STATE DEPARTMENT FOR CORRECTIONAL SERVICES.....RESPONDENT

EX PARTE APPLICANT:

DANIEL NG'ANGÁ WANYOIKE

RULING

1. The *ex parte* Applicant herein initially filed the application that is before this Court for consideration in Kiambu High Court on 22nd May 2020. The application was subsequently transferred to this Court on account of the Respondent being based in Nairobi, and the cause of action having arisen in Nairobi.

2. The subject application is a Chamber Summons dated 22nd May 2020, seeking leave to apply for orders of certiorari and mandamus with respect to an advertisement made by the Respondent for bids for tenders for the year 2019 -2022. The main ground appears to be that there is already an invitation to tender made by the Respondent for the year 2019 -2020 in which awards have been made that have been appealed against.

3. The application is supported by a statutory statement dated 22nd May 2020, and a verifying affidavit sworn on 21st May 2020 by the *ex parte* Applicant. The *ex parte* Applicant has also annexed copies of the impugned advertisement, notification of the awards by the Respondent, and newspaper reports on the said awards.

4. Upon perusal of the application and supporting documents, I note that the *ex parte* Applicant seeks to quash the Respondent's advertisement for new tenders, and is also challenging its awards of past tenders. It is my view that the question of leave to commence judicial review proceedings against the Respondent will require to be heard *inter partes* in light of these facts, and in taking into account the provisions of the Public Procurement and Disposal Act on appeals against public tenders, and this Court's jurisdiction in that regard.

5. In the circumstances, and in light of the scaling down of court operations due to the COVID-19 pandemic, I hereby direct and order as follows:

I. The *ex parte* Applicant shall serve the Respondent with (i) the Chamber Summons dated 22nd May 2020 and its supporting documents, (ii) skeletal submissions on the said Chamber Summons dated 22nd May 2020, (iii) a copy of these directions and (iv) a hearing notice within fourteen (14) days of today's date.

II. The Respondent is granted leave to file and serve its response to the Chamber Summons dated 22nd May 2020 and skeletal submissions thereon within fourteen (14) days of service by the *ex parte* Applicant.

III. The Chamber Summons dated 22nd May 2020 shall be heard on 6th July 2020.

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 22nd May 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties. In this respect, the *ex parte* Applicant shall avail an electronic copy in word format of the said Chamber Summons and supporting documents without the annexures within fourteen (14) days of today's date.

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

VI. 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 description of the party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

VII. 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.

VIII. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

IX. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the *ex parte* Applicant by electronic mail by close of business on Friday, 29th May 2020.

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 6th July 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XI. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE