



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 109 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

EX PARTE APPLICANT:

EDWARD SAMUEL NGUGI

CORRIGENDA TO RULING DATED 26TH MAY 2020

1. The ruling delivered herein on 26th May 2020 is hereby corrected and varied with regards to orders V and XI thereof as regards the mention date, as follows:

“V. This matter shall be mentioned on 20th July 2020 for further directions.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division’s causelist for mention on 20th July 2020, and bring it to the attention of a Judge in the Division on that date for directions.”

2. The Deputy Registrar of the Judicial Review Division shall send a copy of this corrigenda to the Applicant by electronic mail by close of business on Thursday, 28th May 2020, and the Applicant shall serve the Respondent and the Interested Party with a copy of this corrigenda within thirty (30) days of today’s date.

3. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE

REPUBLIC OF KENYA

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RULING

The Application

4. The Applicant herein has moved this Court in an application brought by way of a Chamber Summons dated 21st May 2020. He is seeking the following orders therein:

(a) THAT this application be certified urgent and heard *ex-parte* at the first instance.

(b) THAT leave be granted to the *ex-parte* Applicant to apply for a judicial review order of certiorari to remove to this Court to quash the proceedings of *Criminal Case No.3105 of 2017 at the Chief Magistrates Court at Thika* commenced against the *ex-parte* Applicant.

(c) THAT leave granted herein do operate as a stay of all the proceedings in *Criminal Case No. 3105 of 2017 at the Chief Magistrates Court at Thika*, to the extent of the *ex-parte* Applicant pending the hearing and determination of this application and the Notice of Motion hitherto .

(d) Costs be provided for.

5. The application is supported by a statutory statement dated 21st May 2020, and a verifying affidavit sworn on the same date by the Applicant. The *ex parte* Applicant's main ground for the application is that he was arrested together with one James Thendu Gitau, and arraigned in court for prosecution on matters that are purely of a civil nature in Criminal Case No. 3105 of 2017 at Thika Chief Magistrates Courts at Thika.

6. After a perusal of the Applicant's pleadings and annexures, I note that the criminal prosecution against the *ex parte* Applicant is in relation to a parcel of land known as RUIRU KIU/BLOCK 2/(GITHUNGURI) 3758 which he states was the subject of civil suits at the Chief Magistrates Court at Thika Civil Case No. 879 of 2010 and E.L.C. Case No .234 of 2017, that have been concluded and judgment made in favour of one Livingstone Wanyoike Kinyanjui. However, the annexures he has provided in this regard are not clear as to his participation in the said suits, or relation thereto.

7. In addition, the Applicant avers that the proceedings in Criminal Case No. 3105 of 2017 at Thika Chief Magistrates Courts at Thika have been the subject of proceedings and orders issued by Hon. Mr. Justice Mativo in Judicial Review Case No. 420 of 2018, with respect to James Thendu Gitau. The *ex parte* Applicant however did not annex a copy of the said judgment nor of the said orders. The judgments and orders issued in all these decisions, and their relation to the *ex parte* Applicant will need to be confirmed by this Court first, before the issuance of any orders in this matter, in light of the possibility and risk of issuing conflicting orders.

8. Lastly, I note from the *ex parte* Applicant's annexures that the prosecution sought to be quashed was commenced against him in May 2017, over three years ago. The Court will therefore also need to hear the parties on the issue of whether leave to seek an order of certiorari can be granted in the circumstances, light of the time limitations set in Order 53 Rule 2 of the Civil Procedure Rules. The orders sought by the Applicant, both as to the question of leave and stay will therefore need to be canvassed *inter partes* for these reasons.

The Orders:

9. In the premises I direct and orders as follows:

I. The *ex parte* Applicant's Chamber Summons application dated 21st May 2020 be and is hereby certified as urgent, and is hereby admitted for hearing on a priority basis.

II. The *ex parte* Applicant shall file a Supplementary Affidavit annexing certified copies of the judgments and orders granted in Chief Magistrates Court at Thika Civil Case No. 879 of 2010, E.L.C. Case No .234 of 2017 and Judicial Review Case No. 420 of 2018, within thirty (30) days of today's date.

III. The Applicant shall serve the Respondent with (i) the Chamber Summons application dated 21st May 2020 and skeletal submissions thereon, (ii) the aforesaid supplementary affidavit, (iii) a copy of this ruling and orders therein, and (iv) a mention notice, within thirty (30) days from today's date.

IV. Upon being served with the said pleadings and documents, the Respondent shall be required to file its responses to, and

submissions on the said Chamber Summons application within twenty-one (21) days from the date of service.

V. This matter shall be mentioned on 19th July 2020 for further directions.

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 application dated 21st May 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties. In this respect, all the parties shall file 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, and shall also avail the electronic copies in word format.

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

VIII. 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.

IX. 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.

X. 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 Tuesday, 26th May 2020.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 19th July 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XII. Parties shall be at liberty to apply.

10. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE