



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 110 OF 2020

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

BETWEEN

YSR.....APPLICANT

VERSUS

THE KADHIS COURT NAIROBI1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AND

FA.....INTERESTED PARTY

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

1. The Applicant herein has moved this Court in an application brought by way of a Chamber Summons dated 22nd May 2020. He is seeking the following orders therein:

1. The matter be certified urgent and service be dispensed with at the first instance.

2. Leave be granted to the applicant herein to apply for Judicial Review Orders of:

a) An order of CERTIORARI to bring into Court and quash all the proceedings and orders made or issued by the Kadhi's Court of Kenya at Nairobi in Divorce Cause No. 201 of 2017 between the *ex parte* Applicant and the Interested Party in as far as they touch on the custody, control and welfare of the minor (SYS).

b) An order of PROHIBITION preventing/restraining the 1st Respondent from assuming jurisdiction regarding the custody, control and welfare of the minor (SYS).

3. Leave do operate as stay of proceedings in Nairobi Kadhi's Court Divorce Cause No. 201 of 2017 in so far as they relate to the custody, control and welfare of the minor (SYS).

4. The costs of this application abide the result of the Notice of Motion hereinafter.

5. The application is supported by a statutory statement dated 22nd May 2020, and a verifying affidavit sworn on the same date by the Applicant. The Applicant claims that the 1st Respondent has wrongly assumed jurisdiction over a child custody and welfare matter in **Kadhi's Court Divorce Cause No. 201 of 2017**, and condemned him to pay child support/maintenance without according him a fair hearing. Further, that the 1st Respondent has unilaterally convicted the Applicant for contempt of court without according him due process, and the he stands to be jailed on 28th May, 2020 in default of orders issued illegally, un-procedurally and without adherence to the rules of natural justice.

6. After a perusal of the Applicant's pleadings, I am persuaded that the applicant is urgent in light of the impending sentencing of the Applicant. However, I also note that the 1st Respondent's decision on jurisdiction that is being impugned was delivered on 19th June 2019, close to one year ago, and on a preliminary objection brought by the Applicant. In the circumstances, this Court will need to hear from the parties on two issues.

7. Firstly, on the issue of whether leave to seek an order of certiorari can be granted in light of the time limitations set in Order 53 Rule 2 of the Civil Procedure Rules; and secondly whether this Court as a judicial review Court, is the right forum to hear and determine a challenge to the 1st Respondent's ruling on jurisdiction. The orders sought by the Applicant, both as to the question of leave and stay will therefore need to be canvassed *inter partes*.

8. Lastly, I also note that the Applicant alleges that he has not been accorded due process, yet he has not attached any evidence of the process employed by the 1st Respondent to support his claim.

The Orders:

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

I. The Applicant's Chamber Summons application dated 22nd May 2020 be and is hereby certified as urgent, and is hereby admitted for hearing on a priority basis.

II. The Applicant shall file a Supplementary Affidavit annexing a certified copy of the proceedings of the 1st Respondent in Nairobi Kadhi's Court Divorce Cause No. 201 of 2017 within thirty (30) days of today's date.

III. The Applicant shall serve the Respondent and the Interested Party with (i) the Chamber Summons application dated 22nd 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 and the Interested Party shall be required to file their 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 Applicant's Chamber Summons application 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, 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 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