



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 72 OF 2020**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**ENERGY AND PETROLEUM**

**REGULATORY AUTHORITY.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**EX PARTE:**

**HON. JUDE NJOMO AND**

**ANTHONY KURIA**

**(Suing as Officials of**

**KENAPEDE ASSOCIATION)**

**RULING**

**The Application**

1. This Court on 9<sup>th</sup> June 2020 directed the Respondent to file and serve their responses and submissions on the *ex parte* Applicant's Notice of Motion dated 15<sup>th</sup> May 2020 within fourteen (14) days of service. Subsequent to the said directions, the advocates on record for the 2<sup>nd</sup> Respondent filed an application by way of a Notice of Motion dated 11<sup>th</sup> June 2020, which is the subject of this ruling. The 2<sup>nd</sup> Respondent is seeking orders that the its application be heard before the *ex parte* Applicants' substantive Notice of Motion dated 15<sup>th</sup> May, 2020, and that the 2<sup>nd</sup> Respondent's Notice of Preliminary Objection dated 8<sup>th</sup> June, 2020 be heard first and before the *ex parte* Applicants' Substantive Notice of Motion dated 15<sup>th</sup> May, 2020.

2. The Notice of Motion is supported by an affidavit sworn on 11<sup>th</sup> June 2020 by Grishon Ngángá Thuo, the 2<sup>nd</sup> Respondent's advocate. The 2<sup>nd</sup> Respondent annexed copies of the following Documents which it states it sent to the Court on 8<sup>th</sup> June 2020 for e-filing:-

a) Notice of Appointment of Advocates dated 8<sup>th</sup> June, 2020

b) Notice of Preliminary Objection dated 8<sup>th</sup> June, 2020

c) List & Bundle of Authorities dated 8<sup>th</sup> June, 2020

d) Letter dated 8<sup>th</sup> June, 2020 seeking directions from the Court on extension of time within which to file a response to the Substantive Notice of Motion dated 15<sup>th</sup> May, 2020 and that the 2<sup>nd</sup> Respondent's Notice of Preliminary Objection dated 8<sup>th</sup> June, 2020 be heard first as it had potential to dispose of the entire proceedings.

3. However, that due to what appears to be logistical or technological challenges on the part of the Court, the 2<sup>nd</sup> Respondent's Notice of Appointment was placed before the Judge but the Preliminary Objection and the Letter Requesting Directions were not. As a result, that . Consequently, that in its directions on 9<sup>th</sup> June, 2020 the Court observed that the 2<sup>nd</sup> Respondent had not filed any response to the Substantive Notice of Motion and proceeded to give directions on the said Application without considering the 2<sup>nd</sup> Respondent's Preliminary Objection dated 8<sup>th</sup> June, 2020. Further, that the Court directed that the matter be mentioned on 21<sup>st</sup> July, 2020 for purposes of reserving Judgment date in respect of the substantive Notice of Motion dated 15<sup>th</sup> May, 2020.

4. The 2<sup>nd</sup> Respondent is therefore apprehensive that the Court will proceed to reserve a Judgment date without hearing its Preliminary Objection on jurisdiction, which has the potential to dispose of the entire proceedings, and would violate the 2<sup>nd</sup> Respondent's right to a fair hearing under Article 50 of the Constitution of Kenya, 2020.

#### **The Determination**

5. I have considered the 2<sup>nd</sup> Respondent's application, and note that it is evident from the record that the directions given by this Court on 9<sup>th</sup> June 2020, were made without the knowledge and awareness of the 2<sup>nd</sup> Respondent's Notice of Preliminary Objection dated 8<sup>th</sup> June 2020. As this new evidence has now come to light, there is justifiable ground to review and vary the said directions pursuant to the provisions of section 80 and Order 45 Rule 1 of the Civil Procedure Rules.

6. Section 80 of the Civil Procedure Act provides as follows:

**“Any person who considers himself aggrieved—**

**(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or**

**(b) by a decree or order from which no appeal is allowed by this Act,**

**may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”**

7. Order 45 Rule 1 of the Civil Procedure Rules elaborates on the grounds on which a judgment or decree can be reviewed or set aside as follows:

**“ (1) Any person considering himself aggrieved—**

**(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or**

**(b) by a decree or order from which no appeal is hereby allowed,**

**and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”**

8. In the premises, the directions given by this Court on 9<sup>th</sup> June 2020 are hereby reviewed and varied to the extent of the following orders:

**I. The 2<sup>nd</sup> Respondent's Notice of Preliminary Objection dated 8<sup>th</sup> June 2020 shall be heard first, before the *ex parte* Applicant's Notice of Motion dated 15<sup>th</sup> May 2020.**

**II. The 2<sup>nd</sup> Respondent shall file and serve the *ex parte* Applicants with its submissions on the Notice of Preliminary Objection dated 8<sup>th</sup> June 2020, together with a copy of this ruling and a mention notice within fourteen (14) days of today's date.**

**III. The *ex parte* Applicants are granted leave to file and serve their reply submissions on the said Notice of Preliminary Objection within fourteen (14) days of service of the 2<sup>nd</sup> Respondent's submissions.**

**IV. This matter shall be mentioned on 21<sup>st</sup> July 2020 to reserve a ruling date on the Notice of Preliminary Objection dated 8<sup>th</sup> June 2020 .**

**V. 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 the Notice of Preliminary Objection dated 8<sup>th</sup> June 2020 on the basis of the electronic copies of the pleadings and written submissions filed by the parties.**

**VI. The parties shall file their pleadings, applications and written submissions electronically and avail electronic copies in**

word format, 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).

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 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.

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

IX. 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).

X. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicants and Respondents by electronic mail by close of business on Friday, 19<sup>th</sup> June 2020.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 21<sup>st</sup> July 2020 and bring it to the attention of a Judge in the Division on that date for reservation of a ruling date.

XII. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JUNE 2020

P. NYAMWEYA

JUDGE