



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 80 OF 2018**

**KHUHAFA F. S. HABIB.....APPLICANT**

**VERSUS**

**1. THE REGISTRAR OF PERSONS**

**2. HON. ATTORNEY GENERAL.....RESPONDENTS**

**RULING**

1. The Notice of Motion herein dated 29/11/2018 prays for the following orders:

(i) That an order of mandamus be issued directed to the Registrar of Persons compelling him to issue the Applicant herein with a National Identification Card.

(ii) That an order of mandamus be issued directed to the Registrar of Persons or any person/party acting/dealing as such to proceed and expunge the Applicant's name from the register as refugee and proceed to register him as a Kenyan and issue him with National Identity Card forthwith.

(iii) That an order of mandamus be issued directed/ordering the Registrar of Persons to proceed and register the Applicant forthwith and further proceed to issue him with a National Identity Card upon payment of the statutorily payments.

2. The motion is premised on grounds set out therein and is supported by affidavit of the Applicant sworn on 20/11/2019.

3. The Applicant's case is that he was born in Tudor within Mombasa County on 1/10/1998 to his parents Said Habib (birth certificate serial number 593617) and Fatuma Saidi Kassalimu ID No. 1593308; that he joined Madrassa School at Ridhwan Mosque in Kingorani area, Mombasa County but unfortunately was not able to go to school due to financial difficulties; that he moved to Nairobi at the age of 15 years to his relatives who were living in Eastleigh Estate, Nairobi County, where he made friends who were refugees; that while there, there was a directive that all refugees be registered and unknowingly he registered as one; that on realizing that he had been registered as a refugee, he declined to go pick the alien certificate; that when he attained the age of 18 years in 2006 he made his first application to be issued with National Identification Card but the same was declined; that he re-applied again in 2014 where he was issued with a waiting card and instructed to keep on checking for the same but none was issued to him to date; that he is married to a Kenyan one Fatma Abdilahi Said under Islamic Law and that it is in the interest of justice that the orders sought be issued as he is truly a Kenyan.

**The Response**

4. The motion is opposed by both Respondents vide a Replying Affidavit sworn by A. C. Masai on 11/11/2019.

5. The deponent is the Deputy Director Registrar of Persons currently based at the Mombasa National Registration Bureau Office and performing duties on behalf of the 1<sup>st</sup> Respondent herein. The Respondent's case is that the Applicant Khuhafa Faki Said was registered as a refugee vide application serial number 0601903547 in the name Said Kwafa Faki in the year 2006; that the application was processed and ID Number 311537 allocated to him. However, the ID Card was not produced as the photograph was missing; that in the year 2014, he applied for a national ID card vide application serial No. 239083188 in Kisauni Registration Office without disclosing to the registration officer that he had been previously registered as a refugee; that the national ID could not be produced as his fingerprints were found in the refugee database; that the Applicant is among thousands of such persons who claim to be Kenyans who registered themselves as refugees to benefit from access to free food rations and resettlement out of Kenya; that as a result of the above, the Government directed that all Kenyans who had registered themselves as refugees to present themselves before their respective Sub County Commissioner for profiling and at the end of the exercise over 14,000 persons had been profiled; that the Government has now established a Task Force vide NRB/CON/OPS/2/25/VOL VI/6 dated 2/9/2019 to vet the double registered persons (those found to have registered or attempted to register

as refugees and as Kenyan citizens) with a view of issuing the bonafide Kenyan citizens with identification documents after the exercise and that the Applicant should therefore wait for the vetting exercise to be undertaken.

### **Submissions**

6. Mr. Shimaka learned counsel for the Ex parte Applicant recounted the facts of the case, and the response of the Respondent, and submitted that the Applicant ever since being issued with the national identity waiting card, has never received the national identity card or any communication on the reason for the delay or refusal to be given the Kenyan national identity card. Counsel submitted that the allegation that the Respondent is verifying double registration applications through the alleged task force is not correct since there is no such evidence of a task force dealing with the matter. Counsel submitted that main issue for determination in this case is whether this court should exercise its oversight powers in favour of the Applicant and grant the mandamus orders being sought to compel the 1<sup>st</sup> Respondent to deregister the Applicant as a refugee and issue him with a Kenyan national identification card. Mr. Shimaka submitted that the Applicant has demonstrated by documentary evidence that he is a Kenyan citizen by birth and was mistakenly registered as a refugee and has made efforts to have his name deregistered from the refugee's register and should be now properly registered as a Kenyan citizen and have national identity card issued to him. Counsel relied on **Judicial Review Application No. 251 of 2015 Republic vs. Principal Registrar of Persons & Another Ex parte Suada Dahir Hussein [2016] eKLR** Justice Odunga noted that:

**“It is therefore clear every Kenyan citizen is entitled to a Kenyan passport and any document of registration or identification and once a person proves that he or she is a Kenyan citizen the State is under a constitutional obligation to issue him or her with the said documents free of charge unless the limitations contemplated in Article 23 of the constitution apply. To do otherwise would amount to a violation of the person’s constitutional rights by the State. However, once a person proves that he or she is entitled to issuance of the said documents, Article 24 (30 of the constitution provides that: The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.”**

8. Mr. Mwanjeje, Learned Counsel for the Respondent on his part submitted that the issue to be addressed is whether the court should proceed to expunge the Applicant's name from the refugee register and order the Respondent to issue him with a national ID card. The Applicant registered as a refugee in 2006 and proceeded to apply for a national ID in 2014 without disclosing to the registration officer that he had previously been registered as a refugee. Counsel referred court to the Replying affidavit which counsel stated is clear that the Applicant is among thousands of people who have registered as refugees and are now applying for national identity cards. Mr. Mwanjeje' submitted that the Government has however noted this and issued a directive requiring all those who have registered themselves as refugees to appear before their respective sub county offices for profiling in which a total number of 14,000 individuals were profiled. After the profiling the Government proceeded to set up a Task Force whose main purpose will be to vet the double registered persons with a view of issuing the bonafide Kenyans with national identity cards. Counsel submitted that the Government has the mandate of issuing registration documents to all citizenry, and that they should be granted the time to proceed with the vetting of these individuals.

### **Determination**

9. In **Republic vs. Principal Registrar of Persons & another Ex- Parte Abdikadir Salat Gedi [2012] eKLR JR Misc. Application No. 15 of 2012** Mutuku J stated:

**“In my view the discretion to register and issue applicants with identity cards is left with the relevant authorities. They receive applications, screen applicants and ascertain that the set criteria for issuing identity cards are met. This court cannot tell them how to exercise that discretion.”**

10. Issuance of an identity card is therefore a discretion which must be exercised judiciously. In this case, that discretion is exercisable as soon as the Applicant proves that he is a citizen entitled to registration. In this matter, the Applicant agrees that he had registered as a refugee. Now he wants to revert back to a citizen of Kenya. It is not that easy, however. An identity card can only be issued to proven Kenyan citizens. The process to verify whether or not the Applicant is a bona fide Kenyan citizen is said to be ongoing via a task force constituted for that process.

11. That being so, I agree with Mr. Mwanjeje that this application is premature. The Applicant should wait for the verification process to conclude and see its results. After that, he may then take appropriate action.

12. For these reasons, the application before the court is dismissed with costs.

**Dated, Signed and Delivered at Mombasa this 30<sup>th</sup> day of July,**

**2020.**

**E. K. OGOLA**

**JUDGE**

Ruling delivered via MS Teams in the presence of:

Mr. Mwanjeje for Respondent

No appearance for Applicant

Mr. Kaunda Court Assistant