



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E011 OF 2020

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NAIROBI CITY WATER AND SEWERAGE COMPANY

LIMITED.....RESPONDENT

EX PARTE APPLICANT: OSMAN BATUR DEDEOGLU

RULING

The Application

1. Osman Batur Dedeoglu, the *ex parte* Applicant herein, is aggrieved by the decision by the Nairobi City Water and Sewerage Company (the Respondent herein), to demand from him the sum of Kshs. 2,392,263.25/ in a letter dated 17th June 2019, alleged to be owed as water bills for meter number 1998875.

2. The *ex parte* Applicant has consequently moved this Court in an application made by way of a Chamber Summons dated 22nd July 2020, seeking the following orders:

1. That that the Applicants Chamber Summons dated 22nd day of July 2020 be certified urgent and be admitted for hearing *ex parte* in the first instance.

2. Leave be granted to the applicant to apply for judicial review by way of an order of prohibition restraining the Respondent whether by themselves, agents, servants or employees from disconnecting and interfering with the Applicant's enjoyment of water supply through meter number 1998875.

3. Leave be granted to the applicant to apply for judicial review by way of an order of certiorari quashing the decision of the respondent demanding the payment of the disputed sum of Kshs. 2,392,263.25/=.

4. That pending the hearing and determination of this suit, temporary injunction be granted restraining the Respondent whether by themselves, agents, servants or employees from disconnecting and interfering with the Applicant's enjoyment of water through meter number 1998875.

5. The costs of this application be in the cause.

3. The application is supported by a statutory statement dated 22nd July 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that the *ex parte* Applicant has requested the Respondent to issue a statement of

account which it relied upon to arrive at the demanded sum of Kshs.2,392,263.25/=, but the Respondent has failed to respond. Further, that there is no alternative remedy available to the applicant as the membership of the Water Appeals Board is currently not constituted.

4. The *ex parte* Applicant annexed a copy of the Respondent's demand letter dated 17th June 2019, as well as evidence of payment of its water bills for meter number 1998875.

The Determination

5. I have considered the application dated 22nd July 2020 and the reasons offered in support of the urgency, and I am satisfied that the *ex parte* Applicant has demonstrated that this matter is urgent as the Respondent has indicated it intends to enter the demanded amount to the *ex parte* Applicant's account, and the *ex parte* Applicant has also stated that there is the risk that his water supply for meter number 1998875 may then be disconnected for non-payment.

6. I however note that the decision sought to be quashed was given in June 2019, and the provisions of Order 53 Rule 2 of the Civil Procedure Rules as regards the circumstances when leave can be granted to apply for an order of certiorari become relevant. In addition, the *ex parte* Applicant needs to persuade the Court that the dispute herein is one that is amenable to judicial review, and the Chamber Summons application dated 22nd July 2020 therefore needs to be canvassed *inter partes*.

The Orders

1. In light of the foregoing observations and findings, I accordingly grant the following orders:

I. The *ex parte* Applicant's Chamber Summons application dated 22nd July 2020 be and is hereby certified as urgent.

II. The *ex parte* Applicant shall serve the Respondent with the Chamber Summons application dated 22nd July 2020 together with skeletal submissions thereon, a copy of this ruling, and a hearing date within fourteen (14) days of today's date.

III. The Respondent is granted leave to file and serve a response to and skeletal submission on the Chamber Summons dated 22nd July 2020 within fourteen (14) days of service by the *ex parte* Applicant

IV. The *ex parte* Applicant's Chamber Summons application dated 22nd July 2020 shall be heard on 2nd September 2020.

V. Pending the hearing on 2nd September 2020, the Respondent is restrained from disconnecting and/or interfering with the Applicant's enjoyment of water through meter number 1998875 on account of the demand made in its letter dated 17th June 2019.

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 22nd July 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VII. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

VIII. 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.

IX. 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.

X. The parties shall also be required to file and 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 with copies to asunachristine51@gmail.com.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 2nd September 2020.

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Friday, 24th July 2020.

XIII. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JULY 2020

P. NYAMWEYA

JUDGE