



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1102 OF 2020

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

BERNARD NJIINU NJIRAINI.....APPLICANT

VERSUS

CLERK OF THE NATIONAL ASSEMBLY.....1ST RESPONDENT

THE NATIONAL ASSEMBLY.....2ND RESPONDENT

AND

THE CABINET SECRETARY, MINISTRY OF INDUSTRIALISATION,

TRADE & ENTERPRISE DEVELOPMENT.....1ST INTERESTED PARTY

OFFICE OF DIRECTOR OF

PUBLIC PROSECUTIONS.....2ND INTERESTED PARTY

ETHICS & ANTI-CORRUPTION

COMMISSION.....3RD INTERESTED PARTY

DIRECTORATE OF CRIMINAL

PROSECUTION.....4TH INTERESTED PARTY

PUBLIC PROCUREMENT REGULATORY

AUTHORITY.....5TH INTERESTED PARTY

RULING

1. This Court delivered a ruling on 17th September 2020 in which it declined to grant orders sought by the *ex parte* Applicant that the leave granted herein to institute judicial review proceedings operate as a stay of the implementation of portions of the National Assembly’s Public Investment Committee’s (PIC) Report dated 29th May 2020 on the Pre-Export Verification of Conformity (PVoC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts, that seek to hold the said applicant liable in civil or criminal law of Kenya.

2. The *ex parte* Applicant has now filed a Notice of Motion application dated 14th October 2020, and is seeking the following orders therein:

1. THAT this application be certified urgent and be heard *ex pane*.

2. THAT leave granted by the Ruling and Order dated 17th September 2020 be and is hereby extended and the said order is

hereby reviewed to the extent that the leave granted to institute judicial review proceedings as extended herein shall operate as a stay of the implementation of portions of the National Assembly's Public Investment Committee's (PIC) Report dated 29th May 2020 on the Pre-Export Verification of Conformity (PVOC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts that seeks to hold the applicant liable in civil or criminal law of Kenya.

3. THAT Costs be to the applicant.

4. Any other order that is just and equitable.

3. The application is supported by an affidavit sworn on 14th October 2020 by the *ex parte* Applicant. The main ground for the application is that the Parliamentary Investments Committee's Report dated 29th May 2020 was subsequent to this Court's ruling adopted by the National Assembly with amendments on the 13th October 2020, but the excerpts that recommended that the *ex parte* Applicant be held personally liable were retained. Further, that the said Parliamentary Investments Committee's Report shall be implemented by the Interested Parties within 60 days of the 13th October 2020 which shall defeat the *ex parte* Applicant's rights.

4. In the circumstances I hereby direct as follows:

I. The *ex parte* Applicant shall serve the Respondents and Interested Parties with the Notice of Motion application dated 14th October 2020, skeletal submissions thereon, and a copy of these directions within seven (7) days of today's date.

II. The Respondents and Interested Parties are at liberty to file a replying affidavit and reply submissions within seven (7) days of service by the *ex parte* Applicant.

III. The hearing of the Notice of Motion dated 14th October 2020 shall take place on 9th November 2020.

IV. Pending the hearing of the said Notice of Motion on 9th November 2020, interim orders of stay are hereby granted, staying any and further implementation of the recommendations made in the National Assembly's Parliamentary Investments Committee's Report and Recommendations dated 28th May 2020 on the Pre-Export Verification of Conformity (PVOC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts as adopted on 13th October 2020, only in so far as they seek to hold the *ex parte* Applicant personally liable under the civil or criminal law of Kenya.

V. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicants and Respondent by electronic mail by close of business on Wednesday, 21st October 2020.

VI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for virtual hearing on 9th November 2020.

VII. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE