



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 104 OF 2020

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

ORDERS OF PROHIBITION AND CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

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

THE NATIONAL ASSEMBLY.....2ND RESPONDENT

OKIYA OMTATAH OKOITI.....3RD RESPONDENT

EX PARTE APPLICANT:.....EAA COMPANY LIMITED

RULING

1. This Court delivered a ruling on 6th July 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 adoption and implementation of the Parliamentary Investments Committee’s Report and Recommendations on the consideration of the Auditor General’s Special Audit Report dated 10th July 2019, insofar as it touches on, refers to, relates to and make recommendations respecting and regarding tender no. KEBS/T010/2019-2021 and the contract entered into by the *ex parte* Applicant upon participating in the said tender.

2. The *ex parte* Applicant has now filed a Notice of Motion application dated 15th October 2020, and is seeking the following orders therein:

1. **THAT this application be certified urgent and heard ex parte.**
2. **THAT the Ruling and Order dated 6th July 2020 on the issue of leave operating as a stay to suspend the implementation of the PIC Report dated 29th May 2020, which was adopted on the 13th October 2020 by the 2nd Respondent, be and is hereby reviewed in the exercise of this Court’s discretion and inherent powers by setting aside the order declining stay.**
3. **THAT leave to institute these judicial review proceedings granted on the 20th May 2020 shall henceforth operate as a stay to suspend the implementation of the Parliamentary Investments Committee’s Report and Recommendations on the consideration of the Auditor General’s Special Audit Report dated 10th July 2019 only insofar as it touches on, refers to, relates to and make recommendations respecting and regarding tender no. KEBS/T010/2019-2021 and the contract entered into by the applicant upon participating in the said tender.**
4. **THAT Costs be to the applicant.**
5. **Any other order that is just and equitable.**

3. The application is supported by an affidavit sworn on 15th October 2020 by Wycliffe Muga, the *ex parte* Applicant’s agent in Kenya. The

main ground for the application is that the Parliamentary Investments Committee's Report dated 29th May 2020 on the Special Auditor's Report dated 10th July 2020, was subsequent to this Court's ruling adopted by the National Assembly on the 13th October 2020. Further, that unless its implementation is halted or suspended by this Court, the *ex parte* Applicant's rights shall to be violated.

4. In the circumstances I hereby order as follows:

I. The *ex parte* Applicant shall serve the Respondents with the Notice of Motion application dated 15th October 2020, skeletal submissions thereon, and a copy of these directions within seven (7) days of today's date.

II. The Respondents 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 15th 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 Parliamentary Investments Committee's Report and Recommendations dated 28th May 2020 as adopted on 13th October 2020, only in so far as they touch on and affect tender no. KEBS/T010/2019-2021 and the contract entered into thereto by the *ex parte* Applicant.

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