



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. E 052 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

REPUBLICAPPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

EX-PARTE APPLICANT:

JACQUELINE WANGUI NDIRANGU

RULING NO 2

1. This Court delivered a ruling on 28th October 2020, wherein it granted the *ex parte* Applicant herein leave to apply for an order of mandamus against the Respondent, and directed the *ex parte* Applicant to file and serve the substantive Notice of Motion within twenty-one (21) days. The *ex parte* Applicant subsequently filed the substantive Notice of Motion dated 10th November 2020.

2. The *ex parte* Applicant has now filed an application by way of a Notice of Motion dated 17th November 2020, seeking the following orders:

1. THAT this application be certified as urgent and service be dispensed with at the first Instance and thereafter be heard on a priority basis.

2. THAT the *ex parte* Applicant be granted leave to amend the Notice of Motion dated 10th November 2020 as set out in the Draft Amended Notice of Motion hereto annexed.

3. THAT the Draft Amended Notice of Motion be deemed as duly filed and served.

4. THAT the time within which the *ex parte* Applicant is to file and serve upon the Respondent the substantive Notice of Motion and written submissions be extended for a period of seven (7) days.

3. The said application is supported by the grounds thereon and an affidavit sworn on 17TH November 2020 by Mumbi Mwangi, the *ex parte* Applicant's advocate on record. The main ground for the application is that the *ex parte* Applicant inadvertently erred in the description of the parties in the substantive Notice of Motion dated 10th November 2020 that it filed on 11th November 2020, and wishes to amend the Notice of Motion to reflect as follows:

a) The Republic as the Applicant.

b) Jacqueline Wangui Ndirangu as the ex-parte Applicant.

4. Further, that the twenty-one (21) days' leave granted to the *ex parte* Applicant to file its Notice of Motion and written submissions is yet to expire, and the Respondent shall not be prejudiced as it is yet to file a Response to the Notice of Motion.

The Disposition

5. I have considered the application dated 17th November 2020, and note that the *ex parte* Applicant had already complied with the directions of this Court as regards the filing of the substantive Notice of Motion and within the required timelines, and that the amendments sought therein are as regards the form of the said application in terms of the description of the parties. There will therefore be no prejudice caused if the said application is heard and allowed *ex parte*.

6. I accordingly allow the Notice of Motion application dated 17th November 2020, and grant the following orders:

- I. The Notice of Motion dated 17th November 2020 is certified urgent and is hereby admitted to hearing on an *ex parte* basis.
- II. The *ex parte* Applicant is granted leave to amend the Notice of Motion dated 10th November 2020, and shall file the Amended Notice of Motion within seven (7) days of today's date.
- III. There shall be no order as regards the costs of the Notice of Motion dated 17th November 2020.
- IV. The *ex parte* Applicant shall serve the Respondent with (i) the Notice of Motion dated 17th November 2020, (ii) a copy of this ruling, and (iii) the Amended Notice of Motion and submissions thereon, within twenty-one (21) days from today's date.
- V. Upon being served with the said pleadings and documents, the Respondent shall be required to file its response to, and submissions on the Amended Notice of Motion within twenty-one (21) days from the date of service.
- VI. This matter shall be mentioned on 20th January 2021 to confirm compliance and for further directions.
- VII. 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 Amended Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.
- VIII. 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.
- 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 mention on 20th January 2021.
- XII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 19th November 2020.
- XIII. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17th DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE