



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1133 OF 2020

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA MEDICAL PRACTITIONERS AND DENTIST BOARD.....1ST RESPONDENT

KISUMU SPECIALISTS HOSPITAL.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

EX PARTE APPLICANT: MARTIN OTIENO NGAYO

RULING

1. Martin Otieno Ngayo, the *ex parte* Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 2nd April 2020 and filed on 16th November 2020, wherein it is seeking leave to commence proceedings in the nature of judicial review against the Respondents for an order of mandamus to compel the Respondent to compel the Respondents to furnish the Applicant with a certified copy of the treatment file of the late Nicholas Odhiambo Ngayo. The *ex parte* Applicant also seeks an order that the costs of this application be provided for.

2. The said application is supported by a statutory statement dated 2nd April 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 is the brother to the Nicholas Odhiambo Ngayo (Deceased), and raised a complaint as to the cause of death of his brother with the 2nd Respondent but was not given a satisfactory report, and proceeded to lodge a complaint with the 1st Respondent concerning the negligence and mismanagement of his brother by the 2nd Respondent. Further, that he requested the 1st Respondent to compel the 2nd Respondent to produce a certified copy of the deceased's medical file but to no avail.

3. The applicable law on leave to commence judicial review proceedings is *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

4. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before it and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

5. In the present application, the *ex parte* Applicant has provided evidence of the complaint lodged with the 1st Respondent, and correspondence with the said Respondent on the subject matter herein. To this extent I find that the *ex parte* Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

6. In light of the foregoing findings, the Applicant's Chamber Summons dated 2nd April 2020 is found to be merited. I accordingly grant the

following orders:

I. The *ex parte* Applicant is granted leave to commence proceedings in the nature of judicial review against the Respondents for an order of mandamus to compel the Respondent to compel the Respondents to furnish the Applicant with a certified copy of the treatment file of the late Nicholas Odhiambo Ngayo.

II. The costs of the Chamber Summons dated 2nd April 2020 shall be in the cause.

III. The *ex parte* Applicant shall file and serve the Respondents with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 2nd April 2020, a copy of this ruling, and a mention notice, within twenty-one (21) days from today's date.

IV. Upon being served with the said pleadings and documents, the Respondents shall be required to file their responses to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the *ex parte* Applicant.

V. This matter shall be mentioned on 26th January 2021 for further directions.

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 substantive Notice of Motion 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 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 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.

IX. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 26th January 2021.

XI. 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.

XII. The parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE