



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 212 OF 2014**

**REPUBLIC .....APPLICANT**

**VERSUS**

**CABINET SECRETARY FOR MINISTRY OF INTERIOR & COORDINATION OF**

**NATIONAL GOVERNMENT .....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF IMMIGRATION SERVICES .....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

**RANA SHOUKHAT ALI.....Ex-parte**

**JUDGEMENT**

1. Through the notice of motion application dated 23<sup>rd</sup> June, 2014 the ex-parte Applicant Rana Shoukhat Ali Waryan prays for a declaration that he is a Kenyan citizen. He also prays for an order of mandamus directed jointly and severally to the 1<sup>st</sup> Respondent, Cabinet Secretary for Ministry of Interior and Coordination of National Government and the 2<sup>nd</sup> Respondent, the Director of the Department of Immigration Services to issue all relevant and necessary documents for his registration as a Kenyan citizen in accordance with his application for citizenship made on 6<sup>th</sup> March, 2012. The Applicant further prays for the costs of the application.

2. The Attorney General is the 3<sup>rd</sup> Respondent.

3. Briefly, the Applicant's case is that he is a Pakistani national married to a Kenyan citizen for over twelve years. On 6<sup>th</sup> March, 2012 he formally applied for Kenyan citizenship vide Immigration File Number R. No. 1429575. As at the time of filing these proceedings he had not received any communication on the status of his application.

4. The Applicant asserts that the delay by the respondents in addressing his application is a breach of his legitimate expectation that administrative action will be executed within a reasonable timeline. The Applicant's view is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents' inaction amounts to arbitrary and inefficient exercise of administrative power and discretion.

5. The respondents opposed the application through the replying affidavit of Alfred Abuya Omangi a

Chief Immigration Officer filed on 4<sup>th</sup> March, 2015. In brief, the respondents' case is that the Applicant's application is pending a clarification of his names. A request for clarification had been made to the Pakistani High Commission in Nairobi but no response had been received. It is also their case that an order of declaration is not available in judicial review proceedings. Further, that issuance of an order compelling the registration of the Applicant as a Kenyan citizen will amount to the Court usurping the functions of the respondents.

6. The Applicant replied to the respondents' replying affidavit by swearing a further affidavit on 8<sup>th</sup> April, 2015. The Applicant's case is that the issue surrounding his names was clarified in 2013 and the clarification had led to his being issued with a work permit in his current names: Rana Shoukat Ali.

7. A perusal of the pleadings herein clearly shows that the Applicant seeks an order to compel the 1<sup>st</sup> and 2<sup>nd</sup> respondents to perform their duty. He made an application for Kenyan citizenship on 6<sup>th</sup> March, 2012 and by the time he filed these proceedings on 4<sup>th</sup> June, 2014 he had not been favoured with a reply.

8. Article 47 of the Constitution provides:

**“47. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**

**(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**

**(3) .....**”

9. Sometimes it escapes public officers' attention that administrative action has to be expeditious. Expeditious means quick and effective and I do not think that a wait for over two years for an application for citizenship when all the documents have been provided by an applicant can be said to be quick and effective.

10. The respondents are correct that this Court should not grant the prayers as sought by the Applicant as that would amount to the Court taking over their functions. There is, however, a remedy for moving state organs to action. Where a public officer refuses, fails or neglects to perform a statutory duty, an order of mandamus will issue, on the application of the affected person, to propel such an officer into action.

11. The reach of the remedy of mandamus was succinctly expressed by the Court of Appeal in **Kenya National Examinations Council v Republic, exparte Geoffrey Gathenji Njoroge & 9 others, Civil Appeal No. 266 of 1996** as follows:

**“The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again we turn to HALSBURY'S LAW OF ENGLAND, 4<sup>th</sup> Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-**

**“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”**

**At paragraph 90 headed “the mandate” it is stated:**

**“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”**

**What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”**

An order of mandamus is therefore available where a state organ has refused to discharge its duty to the detriment of the applicant.

12. In this case, the Applicant was entitled to a response to his application within a reasonable time. That has not happened. In the circumstances of this case an order of mandamus is issued to compel the respondents to make and communicate a decision to the Applicant, within sixty (60) days from the date of the delivery of this judgement, in respect of his application for Kenyan citizenship made on 6<sup>th</sup> March, 2012. In my view, this is one case in which the Applicant has suffered unnecessarily in the hands of the respondents. As such, the Applicant shall have costs of these proceedings from the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

Dated, signed and delivered at Nairobi this 21<sup>st</sup> day of July , 2015

**W. KORIR,**

**JUDGE OF THE HIGH COURT**