



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E017 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

ARR.....APPLICANT

VERSUS

THE KADHI'S COURT AT UPPER HILL NAIROBI.....RESPONDENT

AND

UI.....INTERESTED PARTY

RULING

The Application

1. The Applicant herein has moved this Court in an application brought by way of a Chamber Summons dated 4th February 2021. He is seeking the following orders therein:

- 1. THAT this application be certified urgent and be heard ex-parte in the first instance for the reason of urgency set out in the certificate of urgency.**
- 2. THAT the Applicant be granted leave to apply for an order of CERTIORARI to move into this court for purposes of being quashed, a decision by the Respondent communicated on the 2nd February 2021 denying the Applicant an opportunity to be heard in the divorce petition KCDC 96 OF 2020**
- 3. THAT the grant of leave to operate as a stay to stop the implementation of the decision communicated by the Respondent on the 2nd February 2021.**
- 4. THAT the Applicant be granted leave to apply for an order of PROHIBITION to prevent the respondent from pronouncing the judgement in divorce KCDC 96 OF 2020 scheduled for 10th February 2021 at 9.00 am.**
- 5. THAT the honorable court do give orders for the recall of the original file at kadhis court divorce petition no 96 of 2020 together with a certified copy of the proceedings.**
- 6. THAT the Honorable court be pleased to grant such other or further reliefs as it may deem fit and just in the circumstances.**
- 7. THAT the cost of this application be borne by the respondent**

2. The application is supported by a statutory statement dated 4th February 2020, and a verifying affidavit sworn on the same date by the Applicant. The Applicant claims that he is the Respondent in the **Divorce Petition KCDC 96 of 2020** in the Kadhi's court at Upper Hill, Nairobi which was filed by the Interested Party. Further, that the Respondent in an order made on the 2nd February 2021 denied the Applicant an opportunity to respond to the divorce petition and proceeded to set the judgment date for 10th February 2021.

3. After a perusal of the Applicant's pleadings, I note that the Applicant alleges that he has not been accorded an opportunity to be heard, and that judgment in the divorce case is set for 10th February 2021, yet he has not attached any evidence of the process employed by the Respondent nor of the decision as regards the judgment date to support his claim. In addition, I am also of the view that the Applicant needs to address the issue as to whether he has exhausted all available statutory remedies. In the circumstances, the orders sought by the Applicant, including on the question of leave and stay will therefore need to be canvassed *inter partes*.

The Orders:

4. In the premises I direct and orders as follows:

I. The Applicant shall file a Supplementary Affidavit annexing a certified copy of the proceedings of the 1st Respondent in Divorce Petition KCDC 96 of 2020 within thirty (30) days of today's date.

II. The Applicant shall serve the Respondent and the Interested Party with (i) the Chamber Summons application dated 4th February 2021 and skeletal submissions thereon, (ii) the aforesaid supplementary affidavit, (iii) a copy of this ruling and orders therein, and (iv) a mention notice, within thirty (30) days from today's date.

III. Upon being served with the said pleadings and documents, the Respondent and the Interested Party shall be required to file their responses to, and submissions on the said Chamber Summons application within twenty-one (21) days from the date of service.

IV. This Chamber Summons application dated 4th February 2021 shall be heard on 22nd April 2021.

V. 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 the Chamber Summons application dated 4th February 2021 on the basis of the electronic copies of the pleadings and written submissions filed by the parties.

VI. 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.

VII. 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.

VIII. The parties shall also be required to file their respective affidavits evidencing service in the Judiciary's e-filing system.

IX. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 22nd April 2021.

X. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant by electronic mail by close of business on Monday, 8th February 2021.

XI. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2021

P. NYAMWEYA

JUDGE