



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E1147 OF 2020**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CHIEF REGISTRAR OF**

**THE JUDICIARY.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY**

**NATIONAL TREASURY.....2<sup>ND</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY**

**NATIONAL TREASURY.....3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**EX PARTE APPLICANT:**

**NK BROTHERS LTD**

**RULING NO 2**

1. NK Brothers, the *ex parte* Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 2<sup>nd</sup> December 2020, wherein it is seeking the following orders:

**A. THAT leave be granted to the Ex-parte Applicant to apply for an order of mandamus to compel the Respondents to pay to the Ex-parte Applicant the sum of Kshs. 532,590,842.74/=, being the principal amount of Kshs. 380,000,000/= plus interest at the applicable rate and the administration cost from the 30<sup>th</sup> June, 2018 when the 1st installment became due and owing up to the date of the determination of this proceedings as per the order in Nairobi Commercial and Tax Division Misc. Application No. E010 of 2018 - N.K Brothers Limited Vs The Chief Registrar of the Judiciary.**

**B. THAT this Court be pleased to give such further Orders and directions as it may deem fit and just to grant.**

**C. THAT the costs of this application be provided for.**

2. The said application is supported by a statutory statement dated 2<sup>nd</sup> December 2020, and a verifying affidavit sworn on the same date by the Pravinchandra Mavji Khoda, the *ex parte* Applicant's Managing Director. The main ground for the application is that on 21st October 2004 the Applicant and the 1st Respondent entered into a written agreement for the conversion of the Income Tax House to Law Courts at the Nairobi Milimani. That a dispute subsequently arose between the *ex parte* Applicant and the 1<sup>st</sup> Respondent, which was referred for arbitration.

3. Thereafter, that the *ex parte* Applicant being the beneficiary of the Final Award in the arbitration, moved to the High Court and sought recognition of the Arbitral award, and a decree was issued on 24<sup>th</sup> October 2018. However, that the 1st Respondent has to date not honoured payment of the first installment of Kshs.50,000,000/= being part of the total decretal sum, and the principal sum has already attracted interest

of Kshs. 152,590,842.74/- The *ex parte* Applicant in this regard annexed copies of several correspondences between it and the 1<sup>st</sup> Respondent on payment of the decretal sum.

4. 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.

5. 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 court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

6. In the present application, I note that while the *ex parte* Applicant annexed copies of letters exchanged with the 1<sup>st</sup> Respondent on payment of the decretal sum, it has not provided any evidence of compliance with the Government Proceedings Act, and in particular, they have not provided any evidence of a Certificate of Order Against the Government issued to them or service thereof in respect of the decree they seek to enforce against the Respondents.

7. In the circumstances, I am of the view that the Respondents need to be given an opportunity to respond to the Chamber Summons dated 2<sup>nd</sup> December 2020.

8. I accordingly order as follows:

**i. The *ex parte* Applicants shall serve the Respondents with (i) the Chamber Summons dated 2<sup>nd</sup> December 2020, (ii) skeletal submissions thereon, (iii) a copy of this ruling, and (iv) a mention notice within twenty-one (21) days of today's date.**

**ii. The Respondents are granted leave to file and serve their responses to, and skeletal submissions on the Chamber Summons dated 2<sup>nd</sup> December 2020 within twenty-one (21) days from the date of service.**

**iii. The Chamber Summons dated 2<sup>nd</sup> December 2020 shall be heard on 22<sup>nd</sup> April 2021.**

**iv. 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* Applicants' Chamber Summons dated 2<sup>nd</sup> December 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**v. 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**vi. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

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

**viii. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 22<sup>nd</sup> April 2021.**

**ix. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Monday, 8<sup>th</sup> February 2021.**

**x. Parties shall be at liberty to apply.**

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY 2021

P. NYAMWEYA

JUDGE