



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 13 OF 2019**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**KENYA NATIONAL EXAMINATIONS COUNCIL.....RESPONDENT**

**AND**

**THE TEACHERS SERVICE COMMISSION.....INTERESTED PARTY**

**EX PARTE APPLICANTS:**

**IDRIS GARAT NOOR**

**ABDULLAHI OMAR HASSAN**

**ABDIRASHID ORE AHMED**

**ORAN ADAN HUSSEIN**

**ABDI SHEIKH HASSAN**

**IBRAHIM ALI**

**HASSAN ADO ABDI**

**MOHAMMED NOOR BARE**

**FARAH ADAN ALI**

**ISSACK MUHAMED MOHAMUD**

**ABDI AHMED ALI**

**ABDIRIZAK ADAN IBRAHIM**

**ABDIRIZAK ABDIRAHMAN**

**ABDULLAHI MUHAMMED**

**YSSUF KILAS ADEN**

**ALINOOR M. ABDI**

**ABDI DUBOW IBRAHIM**

**ALI ABDI HUSSEIN**

**ADAN EDIN HUSSEIN**

**RULING**

1. On 7<sup>th</sup> December 2020 directed the parties to file and exchange submissions on the *ex parte* Applicant's Notice of Motion dated 21<sup>st</sup> January 2019, and this matter was coming up for reserving of judgment of today. The 1<sup>st</sup> Respondent has now filed an application by way of a Notice of Motion dated 2<sup>nd</sup> February 2021, seeking the following orders:

1. **THAT the court be pleased to grant leave to the 1<sup>st</sup> Respondent to file written submissions out of the prescribed time.**
2. **THAT the Court be pleased to enlarge time by thirty (30) days for the 1<sup>st</sup> Respondent to file and serve written submissions.**
3. **THAT the costs of this Application be provided for.**

2. The said application is supported by an affidavit deposed to on 2<sup>nd</sup> February 2021 by Nicholas Weru Munyoro, the 1<sup>st</sup> Respondent's advocate. The main grounds for the application are that upon the issuance of this Court's directions of 6<sup>th</sup> October 2020, the 1<sup>st</sup> Respondent moved the Court of Appeal seeking a stay of proceedings pending appeal, and that the Court of Appeal is yet to issue a determination on the application. The 1<sup>st</sup> Respondent also informed that it had already filed its response to the substantive Notice of Motion on 11<sup>th</sup> February 2019.

3. In addition, that the 1<sup>st</sup> Respondent's intended submissions raise substantial issues of determination whose non-consideration would be highly prejudicial to the Defendant, while the *ex-parte* Applicant would suffer no prejudice if the application is allowed, as judgement is yet to be delivered in this matter.

4. The 1<sup>st</sup> Respondent annexed a copy of its replying affidavit.

**The Orders**

5. In order to expedite the hearing of this matter, and as the *ex parte* Applicants are also unlikely to be prejudiced as their submissions are not on record, I will consider and determine the 1<sup>st</sup> Respondent's Notice of Motion *ex parte*.

6. The 1<sup>st</sup> Respondent's Notice of Motion dated 2<sup>nd</sup> February 2021 is accordingly allowed to the extent of the following orders:

**I. The *ex parte* Applicant is granted leave to file and serve the Respondent and Interested Party with its submissions on the Notice of Motion dated 21<sup>st</sup> January 2019 within twenty- one (21) days of today's date.**

**II. The 1<sup>st</sup> Respondent is granted leave to file and serve its reply submissions on the *ex parte* Applicant's Notice of Motion dated 21<sup>st</sup> January 2019 within thirty (30) days of today's date.**

**III. There shall be no order as to the costs of the 1<sup>st</sup> Respondent's Notice of Motion dated 2<sup>nd</sup> February 2021.**

**IV. Judgment on the *ex parte* Applicant's Notice of Motion dated 21<sup>st</sup> January 2019 shall be reserved at a hearing to be held on 21<sup>st</sup> 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 and determine the *ex parte* Applicant's substantive Notice of Motion dated 21<sup>st</sup> January 2019 on the basis of the electronic copies of the pleadings and the 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 in word format 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).**

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

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

**IX. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant,**

**Respondent and Interested Party by electronic mail by close of business on Thursday, 4th February 2021.**

**X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing by email on 21<sup>st</sup> April 2021.**

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

7. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY 2021**

**P. NYAMWEYA**

**JUDGE**