



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E056 OF 2021**

**BETWEEN**

**CITY GAS EAST AFRICA LTD.....APPLICANT**

**VERSUS**

**THE ENERGY AND PETROLEUM**

**REGULATORY AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant herein has filed an application by way of a Chamber Summons dated 30<sup>th</sup> April 2021, seeking the following orders :

1. **THAT for reasons to be recorded, this Honourable Court be pleased to certify this application as urgent and that the same be heard ex parte in the first instance.**
2. **THAT for the reason that the Energy and Petroleum Tribunal under the Energy Act has not been duly constituted, this Honourable Court be pleased to grant leave to the Applicant to institute these proceedings before it by exempting the Applicant from the obligation to exhaust the remedies under the Energy Act by filing the disputes arising herein before the Energy and Petroleum Tribunal pursuant to Section (9)(4) of the Fair Administrative Actions Act.**
3. **THAT this Honourable Court be pleased to grant leave to the Applicant herein to apply for the Judicial Review Orders of CERTIORARI to bring forth before this court and quash the 1st Respondent's decision made on the 21st April, 2021 suspending the Applicant's license and sealing its Liquefied Petroleum Gas Cylinder refilling Plant located along Shimo La Tewa road , within Nairobi's Industrial area Nairobi County .**
4. **THAT this Honourable Court be pleased to grant leave to the Applicant herein to apply for the Judicial Review Order of MANDAMUS compelling the Respondents herein to reopen the Applicant's Liquefied Petroleum Gas (LPG) Cylinder refilling Plant located along Shimo La Tewa road, within Nairobi's Industrial area Nairobi County by removing all the seals they placed on the said Plant on the 16th April 2021.**
5. **THAT this Honourable Court be pleased to grant leave to the Applicant herein to apply for the Judicial Review order of PROHIBITION prohibiting the Respondents herein from closing, sealing and or in any way interfering with the Applicant's operations in relation to the raid carried out by the Respondent's on the Applicant's premises along Shimo La Tewa road, within Nairobi's Industrial area Nairobi County on the 16th April 2021.**
6. **THAT the leave so granted do act as a STAY of the 1st Respondent's letter dated 21st April 2021 and further stays the Respondent's decision to seal and or close the Applicant's Liquefied Petroleum Gas Refilling Plant located along Shimo La Tewa road, within Nairobi's Industrial area Nairobi County, by directing it to remove any seals that might interfere with the normal operations of the Applicant's business operations within the Plant.**
7. **THAT this Honourable Court be pleased to give such further orders as it shall deem fit and just in the circumstances of this case.**

**8. THAT the cost of this application be provided for.**

2. The said application is supported by a statutory statement dated 30<sup>th</sup> April 2021, and a verifying affidavit sworn on the same date by one Hassan Adan Bare, the Applicant's Managing Director. I note that the Applicant is *inter alia* seeking to be exempted from exhausting the remedies under the Energy Act of filing the dispute arising herein before the Energy and Petroleum Tribunal pursuant to Section (9)(4) of the Fair Administrative Actions Act.

3. Section 25 of the Energy Act in this respect establishes the Energy and Petroleum Tribunal, and section 36 provides for the said Tribunal's jurisdiction as follows:

**(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.**

**(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.**

**(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.**

**(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.**

**(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.**

**(6) The Tribunal shall hear and determine matters referred to it expeditiously.**

4. The Authority referred to in section 36 is the 1<sup>st</sup> Respondent. It is consequently my view that arising from the said provisions of the Energy Act on the jurisdiction of the Energy and Petroleum Tribunal, and the provisions on exhaustion of internal remedies of appeal and review in section 9 of the Fair Administrative Action Act, the questions of exemption from the operation of the said provisions, and of leave to commence judicial review proceedings requires to be canvassed *inter partes*.

5. In the circumstances, I hereby direct and order as follows:

**I. The Applicant shall serve the Respondents with the Chamber Summons dated 30<sup>th</sup> April 2021, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of this ruling and (iv) a hearing notice with fourteen (14) days of today's date.**

**II. The Respondents are granted leave to file and serve their responses to the Chamber Summons dated 30<sup>th</sup> April 2021 and skeletal submissions thereon within fourteen (14) days of service by the Applicant.**

**III. The Chamber Summons dated 30<sup>th</sup> April 2021 shall be heard by email on 21<sup>st</sup> June 2021, and the mention date of 10<sup>th</sup> May 2021 is hereby vacated.**

**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 Applicant's Chamber Summons dated 30<sup>th</sup> April 2021 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**V. 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](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 by email on 21<sup>st</sup> June 2021.**

**IX. 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 Friday, 7<sup>th</sup> May 2021.**

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

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MAY 2021

P. NYAMWEYA

JUDGE