



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E057 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF

MANDAMUS AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

THE DIRECTOR NATIONAL COUNCIL OF PERSONS

WITH DISABILITIES.....2ND RESPONDENT

THE POLICY UNIT TECHNICAL MANAGER

KENYA REVENUE AUTHORITY.....3RD RESPONDENT

EX PARTE APPLICANT:

EDIN HASSAN IBRAHIM

RULING NO. 2

1. Edin Hassan Ibrahim, the *ex parte* Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 24th April 2021, in which he is seeking the following orders against the Respondents herein:

1. This application be certified urgent and be heard on a priority basis dispensing with service in the first instance due to its urgency.
2. Leave be granted to the Applicant to apply for: -
 - a. an ORDER OF MANDAMUS to compel the Director National Council of Persons With Disabilities and the Policy Unit Technical Manager Kenya Revenue Authority Nairobi Station to restore and or reinstate the applicant to his previous position as a member of the National Council Of Persons With Disabilities, and further exempt him from paying any accrued Income Tax, and to compensate the Applicant from the day of his removal in the Council to date.
 - b. an ORDER OF PROHIBITION against the Respondents from interdicting, suspending or interfering, harassing, intimidating removing the Applicant name from the National Council of Persons With Disabilities and further subjecting the applicant any payment income tax.
 - c. Damages arising from the matters herein and interest thereon.
3. If leave is granted, a direction that the hearing of the judicial review be expedited.
4. Costs of this Application and the entire proceedings be awarded to the Applicant.

2. The said application is supported by a statutory statement dated 24th April 2021, and a verifying affidavit and supporting affidavit both deposed to by the *ex parte* Applicant on the same date. The grounds for the application are that the *ex parte* Applicant has been a member of National Council of Persons with Disabilities with a membership number of NCPWD/P/177604, after he was involved in an accident and developed a physical permanent disability.

3. Further, that he was subsequently accorded an exemption of income tax as enshrined in the Income Tax Deduction and Exemption Order (2010). However, that in the year 2019, the Respondents refused to continue renewing the *ex parte* Applicant's annual income tax Exemption, and did not provide reasons as why they opted to do so, and have continued to do so despite the *ex parte* Applicant incurring further disability.

4. The *ex parte* Applicant annexed copies of his medical reports and disability card, and a letter written to the 2nd Respondent on his exemption.

The Determination

5. 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.

6. 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.

7. In the present application, the *ex parte* Applicant has provided evidence of his disability registration and correspondence with the 2nd Respondent on his application for income tax exemption. He has also averred as to why he considers the Respondents' actions to be illegal. To this extent I find that the *ex parte* Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondents.

The Disposition

8. In the premises I hereby direct as follows:

I. The Applicant's Chamber Summons dated 24th April 2021 is hereby admitted to hearing on an *ex parte* basis in the first instance.

II. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to compel the Director National Council of Persons with Disabilities and the Policy Unit Technical Manager Kenya Revenue Authority Nairobi Station to restore and or reinstate the applicant to his previous position as a member of the National Council Of Persons With Disabilities, and further exempt him from paying any accrued Income Tax, and to compensate the Applicant from the day of his removal in the Council to date.

III. The *ex parte* Applicant is granted leave to apply for an order of Prohibition against the Respondents from interdicting, suspending or interfering, harassing, intimidating removing the Applicant name from the National Council of Persons with Disabilities and further subjecting the applicant any payment income tax.

IV. The *ex parte* Applicant is granted leave to apply for damages and interest thereon.

V. The costs of the Chamber Summons dated 24th April 2021 shall be in the cause.

VI. The *ex parte* Applicant shall file and serve the Respondents with (i) the substantive Notice of Motion and submissions thereon, (ii) the Chamber Summons dated 24th April 2021 and its supporting documents, (iii) a copy of this ruling, and (v) a hearing notice, within twenty-one (21) days from today's date.

VII. Upon being served with the said pleadings and documents, the Respondents shall be required to file their responses to the substantive Notice of Motion and reply submissions within twenty-one (21) days from the date of service.

VIII. A virtual hearing of the substantive Notice of Motion shall be held on 29th June 2021 at 3 p.m.

IX. 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 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

X. 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.

XI. 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.

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

XIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for virtual hearing 29th June 2021 at 3 p.m., and shall avail the parties the electronic link for the hearing.

XIV. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 13th May 2021.

XV. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF MAY 2021

P. NYAMWEYA

JUDGE