



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E054 OF 2021**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**BETTING CONTROL AND LICENSING BOARD.....1<sup>ST</sup> RESPONDENT**

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

**CABINET SECRETARY MINISTRY OF INTERIOR & COORDINATION OF**

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

**DIRECTOR GENERAL KENYAN CITIZENS & FOREIGN NATIONALS**

**MANAGEMENT SERVICES.....4<sup>TH</sup> RESPONDENT**

**EX PARTE: STANDARD GLOBAL EAST AFRICA LIMITED**

**RULING NO.2**

**The Application**

1. On 28<sup>th</sup> April 2021, this Court granted the *ex parte* Applicant herein, Standard Global East Africa Limited, leave to commence judicial proceedings against the Respondents, and directed them *inter alia* to file and serve a substantive Notice of Motion. The *ex parte* Applicant duly filed the said Notice of Motion dated 30<sup>th</sup> April 2021. The *ex parte* Applicant has now filed another application by way of a Notice of Motion dated 4<sup>th</sup> May 2021, seeking the following orders:

- 1. THAT this Application be certified urgent and be heard ex-parte in the first instance for the reasons of urgency set out in the Certificate of Urgency.**
- 2. THAT Applicant be granted leave to Amend the Notice of Motion dated 30th April 2021 at prayer 3 to read to apply for an order of MANDAMUS to compel the 1st Respondent to issue the Ex Parte Applicant with a GAMING LICENSE.**
- 3. THAT the cost of this Application be provided for.**

2. The grounds for the application are stated in a verifying affidavit sworn on 5<sup>th</sup> May 2021 by Vasisht Metodieff, the *ex parte* Applicant's director and shareholder. The *ex parte* Applicant avers that it inadvertently used the term bookmakers license when the actual license sought is a Gaming License, and seeks leave to amend the Notice of Motion dated 30<sup>th</sup> April, 2021 to correct and delete the term bookmakers license and to replace it a gaming license. Further, that the amendments sought will not be prejudicial to the Respondent as they have not been served with any pleadings and orders of the court herein, and it is in the interest of justice and to correct the apparent anomaly on the face of the pleading.

**The Determination**

3. I have considered the application dated 4<sup>th</sup> May 2021, and note that provisions of Order 53 Rule 4(2) Civil Procedure Rules state as follows as regards to amendments of pleadings in judicial review proceedings:

**“4. (2) The High Court may on the hearing of the motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the affidavits of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of any proposed amendment of his statement, and shall supply on demand copies of any such further affidavits.”**

4. While a plain reading of the rule indicates that only a statement may be amended, if a relief sought in the statutory statement is amended, then the substantive notice of motion will also require to be amended as well. This Court therefore has power and discretion to allow an amendment of a substantive Notice of Motion in judicial review proceedings in light of the foregoing provisions of the law.

5. This purposive interpretation is favoured by the Courts and has been adopted in various decisions including **Republic vs Commissioner of Lands and 2 others ex-parte Jimmy Mutinda, Nairobi H.C. JR ELC No.9 of 2012**, **Republic v Permanent Secretary, Ministry of Planning & National Development ex-parte Mwangi S. Kimenyi [2006] eKLR** and **Resley v Nairobi City Council [2002] 1 EA 241**.

6. In addition, in light of the fact that no further steps have been taken by the ex parte Applicant in this matter, this Court will consider the prayer for amendment of the substantive Notice of Motion *ex parte*. This Court is in this regard guided by the overriding objectives in sections 1A and 1B of the Civil Procedure Act, including the just, expeditious and efficient disposal of disputes, and facilitated by the inherent powers in section 3A of the Act to make such orders as may be necessary for the ends of justice.

7. Lastly, no prejudice will be caused to the Respondents by the requested amendment, as they will be accorded opportunity to respond to the new pleadings filed by the *ex parte* Applicant.

### **The Disposition**

8. In light of the foregoing observations and findings, the *ex parte* Applicants' Notice of Motion dated 4<sup>th</sup> May 2021 is found to be merited to the extent of the following orders:

**I. The *ex parte* Applicant is granted leave to amend the Notice of Motion dated 30<sup>th</sup> April 2021 and Chamber Summons dated 27<sup>th</sup> April 2021 in prayer 3 and prayer 4 thereof respectively, to read “an order of MANDAMUS to compel the 1st Respondent to issue the Ex Parte Applicant with a GAMING LICENSE”.**

**II. The *ex parte* Applicant shall file the Amended substantive Notice of Motion and Amended Chamber Summons, within five (5) days of today's date.**

**III. There shall be no order as to the costs of the *ex parte* Applicant's Notice of Motion dated 4<sup>th</sup> May 2021.**

**IV. The *ex parte* Applicant shall serve all the Respondents and with (i) the Amended substantive Notice of Motion and Amended Chamber Summons (ii) the Notice of Motion dated 4<sup>th</sup> May 2021 (iii) the substantive Notice of Motion dated 30<sup>th</sup> April 2021 (iv) the Chamber Summons dated 27<sup>th</sup> April 2021 and its supporting documents, (v) a copy of this ruling and of the ruling delivered herein on 28<sup>th</sup> April 2021, and (vi) a hearing notice, within fourteen (14) days from today's date.**

**V. Upon being served with the said pleadings and documents, the Respondents shall be required to file their responses to the Amended substantive Notice of Motion within fourteen (14) days from the date of service.**

**VI. A virtual mention of the *ex parte* Applicant's Amended substantive Notice of Motion shall be held on 24<sup>th</sup> June 2021 at 3.00pm.**

**VII. 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 Amended substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**VIII. 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).**

**IX. 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).**

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

**XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for a virtual mention on 24<sup>th</sup> June 2021 at 3.00pm and shall send the parties an electronic link for the mention.**

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

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

9. Orders accordingly.

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

**P. NYAMWEYA**

**JUDGE**