



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E059 OF 2021**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CHAIRMAN, BOARD OF DIRECTORS,**

**NATIONAL WATER HARVESTING AND STORAGE AUTHORITY .....1<sup>ST</sup> RESPONDENT**

**BOARD OF DIRECTORS, NATIONAL WATER**

**HARVESTING AND STORAGE AUTHORITY .....2<sup>ND</sup> RESPONDENT**

**AND**

**SHARON OBONYO.....INTERESTED PARTY**

**EX PARTE APPLICANT: MUSTAFAH OTIENO OCHIENG**

**RULING**

**The Application**

1. The *ex parte* Applicant herein have moved this Court in an application brought by way of a Chamber Summons dated 29<sup>th</sup> April 2021, in which he is seeking the following orders:

1. THAT this application be certified as urgent and the same be expeditiously heard and disposed of *ex parte* in the first instance.
2. THAT this Court be pleased to grant the *Ex parte* Applicant leave to apply for an order of certiorari to bring into this Court for purposes of being quashed the entire Resolutions of the 3rd Special Full Board of Directors of National Water Harvesting and Storage Authority Meeting of Held on 28th April 2021 together with extension letter of appointment as acting chief executive officer of the Interested Party dated 28th April 2021.
3. THAT the leave sought do operate as a stay of implementation of the entire Resolutions of the 3rd Special Full Board of Directors of National Water Harvesting and Storage Authority Meeting of Held on 28th April 2021 together with extension letter of appointment as acting chief executive officer of the Interested Party dated 28th April 2021.
4. THAT pending the hearing and determination of the substantive motion, there be a conservatory order prohibiting Sharon Obonyo the Interested party from occupying the office of the Chief Executive Officer and/or transacting any business of the Authority in the capacity of an Accounting Officer until a new full board meeting is convened to appoint a new Acting Chief Executive Officer.
5. THAT Such other, further order and/or incidental orders or directions as this Honorable Court shall deem just and expedient;

**6. THAT the costs of this application to provide for.**

2. The application is supported by a statutory statement dated 29<sup>th</sup> April 2021, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. After a perusal of the *ex parte* Applicant's pleadings, I note that the subject matter of the application is the Respondents decision in a letter dated 28th April 2021, to extend the appointment of the Interested Party as acting chief executive officer of the National Water Harvesting and Storage Authority for a period of (6) six months or until a substantive Chief Executive Officer is appointed.

3. The *ex parte* Applicant is therefore seeking leave to bring judicial review proceedings arising out of the Interested Party's employment. This however, is a matter which falls within the exclusive jurisdiction of the Employment and Labour Relations Court, pursuant to Articles 162(2) (a) and 165(5) of the Constitution, and section 12 of the Employment and Labour Relations Act. This Court therefore has no jurisdiction to hear and determine the Chamber Summons dated 29<sup>th</sup> April 2021.

**The Orders**

4. In the premises I direct and order that this suit be and is hereby transferred to the Employment and Labour Relations Court at Nairobi for further hearing and determination. The *ex parte* Applicants' Chamber Summons dated 29<sup>th</sup> April 2021 shall accordingly be placed before the **Duty Judge** at the **Employment and Labour Relations Court at Nairobi** on **12<sup>th</sup> May 2021** for directions.

5. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the *ex parte* Applicant, and to the Deputy Registrar of the Employment and Labour Relations Court at Nairobi, by close of business on 10<sup>th</sup> May 2021.

6. Orders accordingly.

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

**P. NYAMWEYA**

**JUDGE**