



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 58 OF 2020

BETWEEN

JUDY WAIRIMU MIRANGO.....APPLICANT

VERSUS

NON-GOVERNMENTAL ORGANIZATIONS

CO-ORDINATION BOARD.....1ST RESPONDENT

ASSOCIATION FOR THE PHYSICALLY

DISABLED IN KENYA.....2ND RESPONDENT

RULING

The Application

1. Judy Wairimu Mirango (hereinafter “the Applicant”) filed an application by way of a Chamber Summons brought under Certificate of Urgency on 27th February 2020, seeking leave to institute judicial review proceedings for orders of certiorari and prohibition against the Non-Governmental Organizations Co-ordination Board (hereinafter “the 1st Respondent”), and the Association for the Physically Disabled in Kenya (hereinafter “the 2nd Respondent”). The application arose from the action of the 1st Respondent to appoint a caretaker committee to govern and oversee the affairs of the 2nd Respondent. The Applicant also sought an order that the said leave once granted, do operate as a stay of the decision of the 1st Respondent.

2. On 27th February 2020, this Court on directed that the said application be served on the Respondents, and the matter to be mentioned on 16th March 2020 to confirm compliance with section 19 of the Non-Governmental Organizations Co-ordination Act (Cap 19 of the Laws of Kenya) and for further directions. Unfortunately, the mention could not be held due to the scaling down of court operations as a result of the COVID-19 pandemic.

3. The Applicant has now filed another application by way of a Notice of Motion dated 6th April 2020 seeking directions and orders on the application. The said application is supported by an affidavit sworn on 6th April 2020 by Onsando Osiemo, the Applicant’s Advocate. The Applicant states that section 19 of the Non-Governmental Organizations Co-ordination Act does not apply to this suit as its subject matter does not touch on registration of a non-governmental organization. Furthermore, that the 1st and 2ND Respondents were served with the application and have not responded to it. Lastly, it is averred that the Applicant will continue to suffer violation of her rights and legitimate expectations if the applications are not heard urgently.

4. I have considered the application dated 6th April 2020, and note that since the application dated 27th February 2020 on the same subject matter had already been certified urgent by this Court, the two applications ought to be heard on a priority basis. However, the prayers sought therein for leave to bring judicial review proceedings, and for the said leave to operate as a stay of the 1st Respondent’s decision shall be determined after an *inter partes* hearing, which shall also address the issue of the application or otherwise of section 19 of the Non-Governmental Organizations Co-ordination Act to the two applications. The said section provides as follows in this regard:

(1) Any organization which is aggrieved by the decision of the Board made under this Part may, within sixty days from the date of the decision, appeal to the Minister.

(2) On request from the Minister, the Council shall provide written comments on any matter over which an appeal has been submitted to the Minister under this section.

(3) The Minister shall issue a decision on the appeal within thirty days from the date of such an appeal.

(3A) Any organization aggrieved by the decision of the Minister may, within, twenty-eight days of receiving the written decision of the Minister, appeal to the High Court against that decision and in the case of such appeal-

(a) The High Court may give such direction and orders as it deems fit; and

(b) The decision of the High Court shall be final. ’

5. Lastly, the *Practice Directions for the Protection of Judges, Judicial Movement of Persons and Related Measures) Officers, Judiciary Staff, Other Court Users and the General Public From Risks Associated with the Global Corona Virus Pandemic* by the Honourable Chief Justice and President of the Supreme Court of Kenya dated 20th March, 2020 and published as Gazette Notice No 3137 in the **Kenya Gazette Vol. CXXII —No. 67** on 17th April, 2020 now provide as follows in Practice Note 6:

“6. Civil appeals, civil applications, judicial review and constitutional petitions may be canvassed through written submissions: The Court may, in accordance with these Practice Directions and the provisions of Order 42 Rules 13 and 16, and Order 52 Rule 16 of the Civil Procedure Rules, 2010, direct that the final address after the hearing shall be made and that the appeal, application, judicial review or constitutional petition shall be canvassed through written submissions in such format and length as the Court may direct taking into account the nature of the case.”

The Orders

6. In light of the foregoing observations and findings, I accordingly order as follows:

I. The Notice of Motion application dated 6th April 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis.

II. The Notice of Motion dated 6th April 2020 and Chamber Summons dated 27th February 2020 shall be heard and determined together by way of written submissions.

III. The Applicant shall serve the 1st and 2nd Respondents with (i) the Notice of Motion dated 6th April 2020, (ii) the Chamber Summons dated 27th February 2020 and its supporting documents, (iii) skeletal submissions on the said Notice of Motion and Chamber Summons, and (iv) a copy of this ruling, within fourteen (14) days from today's date.

IV. Upon being served with the said pleadings and documents, the 1st and 2nd Respondents shall be required to file and serve their replies to the Notice of Motion dated 6th April 2020 and Chamber Summons dated 27th February 2020, and skeletal submissions thereon, within fourteen (14) days from the date of service.

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 Applicant's Notice of Motion dated 6th April 2020 and Chamber Summons dated 27th February 2020 on the basis of the electronic copies of the pleadings and submissions filed.

VI. In this regard the Applicant shall also avail electronic copies of the Chamber Summons dated 27th February 2020 and supporting documents to the Court, by sending them by email to the Deputy Registrar of this Court at milimani.judicialreview@court.go.ke with copies to ceciliakithinji@yahoo.co.uk and asunachristine51@gmail.com, within 14 days of today's date.

VII. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the name of the Party sending it (that is whether it is the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleadings or document.

VIII. The Deputy Registrar of this Court shall send a copy of this ruling and the extracted orders to the Applicant by electronic mail by close of business today.

IX. 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 send a copy of documents so served to the Deputy Registrar of this Court at milimani.judicialreview@court.go.ke with copies to ceciliakithinji@yahoo.co.uk and asunachristine51@gmail.com.

X. The Deputy Registrar of this Court shall bring this matter to the attention of the duty Judge for further directions on 21st May 2020.

XI. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF APRIL 2020

P. NYAMWEYA

JUDGE