



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW CASE NO. 156 OF 2019

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CABINET SECRETARY OF FINANCE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AND

LOCAL GOVERNMENT PROVIDENT FUND.....INTERESTED PARTY

EX PARTE:

KENYA COUNTY GOVERNMENT WORKERS UNION

AND

LAWRENCE GITONGA KABURUAPPLICANT

HASSAN ADEN OSMAN.....APPLICANT

RULING

The Application

1. Lawrence Gitonga Kaburu and Assan Aden Osman (hereinafter “the Applicants”) filed an application by way of a Notice of Motion dated 5th February 2020, seeking orders joining them as interested parties in this suit, for review and variation of orders issued herein by Mativo J. on 23rd September 2019, and further orders regarding the operations of the Local Authorities Provident Fund, which is an Interested Party herein. The orders sought to be varied had been granted by Mativo J. upon institution of the present judicial review proceedings by the Kenya County Government Workers Union, which is the *ex parte* Applicant herein.
2. On 11th March 2020, the application of 5th February 2020 came up for mention before Mativo J., whereupon the counsel for the Cabinet Secretary for Finance and the Attorney General, who are the 1st and 2nd Respondents respectively, indicated that he would be opposing the application. The learned Judge then directed the Respondents to file their reply to the said application within 5 days, and that the application would be argued orally on 27th March 2020.
3. Unfortunately, the hearing did not proceed on 27th March 2020, due to the scaling down of court operations with effect from 16th March 2020, as a result of the COVID-19 pandemic. The Applicants have now filed another application by way of a Notice of Motion dated 14th April 2020 under Certificate of Urgency, seeking leave for the hearing of the application of 5th February 2020 before Hon. Justice Mativo during the suspension of court sittings, and for appropriate directions and orders on the said hearing.
4. The said application is supported by an affidavit sworn on 14th April 2020 by Henry Kurauka, the Applicants’ Advocate. The Applicants

aver that the Notice of Motion of 5th February 2020 was already certified urgent, and state that the Interested Party's Board and the Applicants will be adversely affected if it is not heard expeditiously, as they cannot transact urgent and mandatory duties due to stay orders in force preventing the Applicants from serving as Board members.

5. I have considered the application dated 14th April 2020, and note that since the application dated 5th February 2020 on the same subject matter had already been certified urgent by Mativo J., the two applications ought to be heard on a priority basis. However, in light of the current scaled down operations of the court and suspension of open court hearings aimed at preventing the spread of the COVID-19 pandemic, it will no longer be possible for the parties to be heard orally as earlier directed by Mativo J. The said applications shall therefore have to proceed to hearing by way of written pleadings and submissions.

6. It is notable in this regard that 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

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

I. The Notice of Motion application dated 14th April 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis.

II. The Notices of Motion dated 14th April 2020 and 5th February 2020 shall be heard and determined together by way of written submissions.

III. The Applicants shall serve the *ex parte* Applicant, 1st and 2nd Respondents and Interested Party with the Notice of Motion dated 14th April 2020, and a copy of this ruling, within seven (7) days from today's date.

IV. Upon being served with the said pleadings and documents, the *ex parte* Applicant, 1st and 2nd Respondents and Interested Party shall be required to file and serve their replies to the Notices of Motion dated 5th February 2020 and 14th April 2020 within seven (7) days from the date of service.

V. Upon receipt of the *ex parte* Applicant's, Respondents' and Interested Party's replies or upon default of service, the Applicants are granted leave to file and serve any further pleadings if need be, together with skeletal submissions on the two Notices of Motion application within fourteen (14) days.

VI. The *ex parte* Applicant, Respondents and Interested Party shall also be required to file and serve any further pleadings if need be, together with its submissions on the said Notices of Motion within fourteen (14) days of service of the Applicants' submissions.

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 Applicant's Notices of Motion dated 5th February 2020 and 14th April 2020 on the basis of the electronic copies of the pleadings and submissions filed.

VIII. In this regard the *ex parte* Applicant (Kenya County Government Workers Union) shall avail electronic copies of its Chamber Summons dated 14th May 2019 and supporting documents, and its Notice of Motion dated 22nd May 2019; and the Applicants shall also avail electronic copies of their Notice of Motion dated 5th 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.

IX. 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.

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

XI. 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.

XII. The Deputy Registrar of this Court shall bring this matter to the attention of the Hon. Mativo J. for further directions on 8th June 2020.

XIII. Parties shall be at liberty to apply.

8. Orders accordingly.

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

P. NYAMWEYA

JUDGE