



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 16 OF 2020

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

BETWEEN

HOUSEFARM.....APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES.....RESPONDENT

RULING

The Application

1. The *ex parte* Applicant herein has moved this Court in an application brought by way of Amended Chamber Summons dated 28th January 2020, wherein it is seeking leave to apply for judicial review orders of certiorari, prohibition, mandamus and a declaration in relation to a decision by the Respondent dated 16th September 2019 to change its company name within 30 days.

2. The application is supported by a statutory statement dated 4th December 2019, and a verifying affidavit and supporting affidavit both sworn on the same date by John Kuria Muhia, the Applicant's Managing Director. The main ground for the application is that the *ex parte* Applicant was registered and incorporated in its name after following the requisite procedures. It annexed copies of its registration forms, certificate of incorporation and the letter by the Respondent dated 16th September 2019.

The Determination

3. I have considered the application dated 28th January 2020 and 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 reason for the leave was 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** as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be

obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full *inter partes* hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially".

4. It is 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. In the present application, the *ex parte* Applicant has provided evidence of its incorporation and procedures employed in the approval of its name, and the reasons it is impugning the decision by the Respondent in the letter dated 19th September 2019.

5. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

The Orders:

6. In the premises I direct and orders as follows:

I. The *ex parte* Applicant is granted leave to apply for an order of Certiorari, to quash the decision of the Registrar of Companies dated 16th September 2019 to strike off and/or remove from its register the name House Farm Limited registered in the name of the Applicant.

II. The Applicant is granted leave to apply for an order of Prohibition, prohibiting the Registrar of Companies from further removing, striking off suspending the said name being House Farm Limited from its Company names register.

III. The *ex parte* Applicant is granted leave to apply for a Declaration that the Registrar of Companies' notice to strike off and/or remove from its register the Applicant's name House Farm Limited is invalid and void and of no effect.

IV. The Applicant is granted leave to apply for an order of Mandamus compelling the Registrar of Companies to reinstate the Applicant's registered name House Farm Limited in its register of names.

V. The costs of the Amended Chamber Summons dated 28th January 2020 shall be in the cause.

VI. The Applicant shall file the substantive Notice of Motion within fourteen (14) days of today's date.

VII. The Applicant shall serve the Respondent with (i) the Amended Chamber Summons dated 28th January 2020, (ii) the substantive Notice of Motion and submissions thereon, (iii) a copy of this ruling, and (iii) a hearing notice within thirty (30) days from today's date.

VIII. Upon being served with the said pleadings and documents, the Respondent shall be required to file its responses to, and submissions on the substantive Notice of Motion application within thirty (30) days from the date of service.

IX. This matter shall be mentioned on 13th July 2020 to reserve a judgment date.

X. 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 substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties. In this respect the Applicant shall avail an electronic copy in word format of its Amended Chamber Summons dated 28th January 2020 within fourteen (14) days of today's date.

XI. All the parties shall file their pleadings, applications and written submissions electronically, by sending them to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com, and shall also avail the electronic copies in word format.

XII. 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 the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

XIII. 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.

XIV. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

XV. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the Applicant by electronic mail by close of business on Thursday, 14th May 2020.

XVI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 13th July 2020, and bring it to the attention of a Judge in the Division on that date for reservation of a judgment date.

XVII. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE