



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 88 OF 2020

JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PUBLIC PROCUREMENT REGULATORY

AUTHORITY.....RESPONDENT

AND

KENYA BUREAU OF STANDARDS.....INTERESTED PARTY

NAIVANA AGENCIES

LIMITED.....PROPOSED INTERESTED PARTY/APPLICANT

EX PARTE:.....EAA COMPANY LIMITED

RULING NO. 2

1. Naivana Agencies Limited (hereinafter “the Proposed Interested Party”) has filed an application by way of a Notice of Motion dated 14th May 2020, seeking orders that it be joined as an Interested Party in the instant proceedings, and that the *ex parte* Applicant herein be directed to serve it with the substantive Notice of Motion. The application is supported by an affidavit sworn on the same date by Benedict Kabugi Ndungu, the Proposed Interested Party’s Managing Director.

2. The main grounds for the application are that the instant judicial review proceedings are challenging investigations carried out by the Respondent, pursuant to a complaint submitted by the Proposed Interested Party, and it therefore has a direct interest in the instant proceedings as contemplated under Order 53 Rule 3(2) of the Civil Procedure Rules. Furthermore, that the *ex parte* Applicant seeks to rely on proceedings in Public Procurement Administrative Review Board in Application No. 18 of 2020, and High Court Judicial Review Application No. 66 of 2020, which were commenced by the Proposed Interested Party. Lastly, the Proposed Interested Party also set out the arguments it wishes to advance at the hearing of the *ex parte* Applicant’s substantive application, and sought to be joined and served with the said application so that it is not prejudiced.

3. As this is an application that seeks to join a party who claims to be directly affected, and therefore a necessary parties in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules, I find that the application can be heard *ex parte*. In addition, the Proposed Interested Party has provided evidence that it was a party in Public Procurement Administrative Review Board in Application No. 18 of 2020, and High Court Judicial Review Application No. 66 of 2020 which the *ex parte* Applicant has relied upon it its judicial review proceedings against the Respondent, which is also borne out by the *ex parte* Applicant’s pleadings. In addition, to the extent that it has a grievance and interest in the investigations by the Respondent having been the complainant therein, it is a necessary party in the instant proceedings.

4. Lastly, as court operations have now been scaled down due to the COVID-19 pandemic, and cases are now being heard remotely by way of electronic means, the joinder of the Proposed Interested Party at this stage shall expedite the hearing of this matter.

5. In the circumstances, I hereby direct and order as follows:

I. The Notice of Motion application dated 14th May 2020 is certified urgent and is admitted to hearing *ex parte*.

II. Naivana Agencies Limited is hereby joined to this suit as the 2nd Interested Party.

III. The *ex parte* Applicant shall serve the 2nd Interested Party with the substantive Notice of Motion, and the Chamber Summons dated 28th April 2020 and its supporting documents within seven (7) days of service of this ruling.

IV. Upon being served with the said pleadings, the 2nd Interested Party shall be required to file its response to the substantive Notice of Motion within seven (7) days from the date of service.

V. This matter shall be mentioned on 8th June 2020 for further directions.

VI. The costs of the Notice of Motion dated 14th May 2020 shall be in the cause.

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 the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and written submissions filed by the parties.

VIII. 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 avail electronic copies thereof in word format.

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

X. 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.

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

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions and the extracted orders to the *ex parte* Applicant and Respondent's counsel by electronic mail by close of business on Monday, 18th May 2020.

XIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 8th June 2020 and bring it to the attention of a Judge in the Division on that date for directions.

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

XV. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE