



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.....1ST INTERESTED PARTY

NAIVANA AGENCIES LIMITED.....2ND INTERESTED PARTY

POTTERMARK ENTERPRISES.....PROPOSED RESPONDENT/APPLICANT

EX PARTE: EAA COMPANY LIMITED

RULING NO. 3

1. Pottermark Limited (hereinafter “the Proposed Respondent”), has filed an application by way of a Notice of Motion dated 12th May 2020, seeking orders that it be joined as a necessary party and Respondent in the instant proceedings, and that it be allowed to respond to the *ex parte* Applicant’s substantive Notice of Motion. The application is supported by an affidavit sworn on the same date by John Kenneth Mugambi, the Proposed Respondent’s sole proprietor.

2. The main grounds for the application are that the intended Respondent was a party in the bidding process which is the subject of these proceedings and can shed some light on the procurement process herein. Furthermore, that the Proposed Respondent is closely connected with these proceedings, as it raised a complaint to the Respondent, which gave rise to the investigations that are challenged herein by the *ex parte* Applicant. The Proposed Respondent detailed out the gist of its complaint, and annexed copies of correspondence with the Respondent in this regard.

3. As this is an application that seeks to join a party who claims to be directly affected, and therefore a necessary party 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 Respondent has provided evidence of the complaints it made to the Respondent leading to the investigations that are impugned in these proceedings by the *ex parte* Applicant. Therefore, 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. However, as there is no decision or action by the Proposed Respondent that is the subject of the orders sought by the *ex parte* Applicant, it cannot be joined as a Respondent herein, and can only be joined as an Interested Party, with its participation limited as such. 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 Respondent 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 12th May 2020 is certified urgent and is admitted to hearing *ex parte*.

II. Pottermark Enterprises is hereby joined to this suit as the 3rd Interested Party.

III. The *ex parte* Applicant shall serve the 3rd 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 3rd 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 12th 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 3rd Interested Party shall serve the *ex parte* Applicant, Respondent, and 1st and 2nd Interested Parties with its Notice of Motion dated 12th May 2020, a copy of this ruling, and a 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