



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 99 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA PIPELINE COMPANY LIMITED.....RESPONDENT

AND

M/S HELINT AVIATION LIMITED.....1ST INTERESTED PARTY

M/S LEVEL UP LIMITED.....2ND INTERESTED PARTY

EX PARTE:

LADY LORI (KENYA) LIMITED

RULING

1. The *ex parte* Applicant herein has filed an application by way of a Chamber Summons dated 7th May 2020, seeking leave to apply for orders of certiorari and Mandamus with respect to Tender Number KPC/PU/004-OT/19-20 for repairs and maintenance of two helicopters at Wilson Airport Nairobi. The said tender was advertised and awarded to the 1st and 2nd Interested Parties by the Respondent herein.

2. The said application is supported by a statement dated 7th May 2020, and a verifying affidavit sworn on the same date by Ian Mimano, a director of the Applicant. Upon perusal of the application and supporting documents, I note that the Applicant seeks to quash the Respondent's letter of notification dated 14th February 2020 on the award of the tender. Additionally, that after the said award, the Applicant subsequently filed a Request for Review at the Public Procurement Administrative Review Board in Application No 29 of 2020, in which a decision was rendered by the said Board on 19th March 2020.

3. It is my view that the question of leave to commence judicial review proceedings against the Respondent will require to be heard *inter partes* in light of these facts, and in light of the provisions of the Public Procurement and Disposal Act as regards this Court's jurisdiction in public procurement disputes.

4. In the circumstances, and in light of the scaling down of court operations due to the COVID-19 pandemic, I hereby direct and order as follows:

I. The Applicant shall serve the Respondent and Interested Parties with (i) the Chamber Summons dated 7th May 2020 and its supporting documents, (ii) skeletal submissions on the said Chamber Summons dated 7th May 2020, (iii) a copy of these directions and (iv) a hearing notice with thirty (30) days .

II. The Respondents and Interested Parties are granted leave to file and serve their responses to the Chamber Summons dated 7th May 2020 and skeletal submissions thereon within thirty (30) days of service by the Applicant as directed herein.

III. The Chamber Summons dated 7th May 2020 shall be heard on 13th July 2020.

IV. 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 Chamber Summons dated 7th May 2020 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 the said Chamber Summons and supporting documents without the annexures within thirty (30) days of today's date.

V. The parties shall file and avail 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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 directions.

XI. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE