



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 94 OF 2020**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CABINET SECRETARY FOR TREASURY.....1<sup>ST</sup> RESPONDENT**

**NATIONAL COUNCIL FOR PERSONS WITH DISABILITY....2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA REVENUE AUTHORITY.....INTERESTED PARTY**

**EX- PARTE APPLICANT: THERESA ONGORE AUMA**

**RULING**

**The Application**

1. The *ex parte* Applicant herein has moved this Court in an application brought by way of Chamber Summons dated 6<sup>th</sup> May 2020, wherein she is seeking the following orders:

**a. That this application be certified urgent and heard ex-parte at the first instance.**

**b. That leave be granted to the Ex-parte Applicant to apply for the judicial review order of Mandamus to compel the Respondents to renew her Tax Exemption Certificate.**

**c. Costs are provided for.**

2. The application is supported by a statutory statement dated 6<sup>th</sup> May 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that the *ex parte* Applicant was issued with an Income Tax Exemption Certificate of persons with Disabilities under the Persons with Disabilities Act, yet the Respondents have refused failed and /or neglected to renew her tax exemption certificate. The Applicant annexed copies of her medical reports, here membership card with the National Council for Persons with Disability, her tax exemption certificate issued to her on 7<sup>th</sup> October 2013, and correspondence with the Respondents on renewal of the said tax exemption.

**The Determination**

3. I have considered the application dated 6<sup>th</sup> May 2020 and the reasons offered in support of the urgency, and I am satisfied that the *ex parte* Applicant has demonstrated that this matter is urgent. This for reasons that there is the likelihood that she could suffer prejudice if this matter is not heard expeditiously.

4. On the orders sought by the *ex parte* Applicant for leave to commence judicial review proceedings, the applicable law on leave 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”.**

5. 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 her disability, her tax exemption status, the engagement with the Respondents on the renewal of the said status, and cited the legal provisions relied upon.

6. To this extent I find that the *ex parte* 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:**

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

**I. The *ex parte* Applicant’s Amended Chamber Summons application dated 6<sup>th</sup> May 2020 be and is hereby certified as urgent, and is hereby admitted for hearing on a priority basis.**

**II. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to compel the Respondents to renew her Tax Exemption Certificate.**

**III. The costs of the Chamber Summons dated 6<sup>th</sup> May 2020 shall be in the cause.**

**IV. The *ex parte* Applicant shall file the substantive Notice of Motion within within twenty-one (21) days of today’s date.**

**V. The *ex parte* Applicant shall serve the Respondents and the Interested Party with (i) the Chamber Summons application dated 6<sup>th</sup> May 2020, (ii) the substantive Notice of Motion and submissions thereon, (iii) a copy of this ruling, and (iii) a mention notice within thirty (30) days from today’s date for *inter partes* hearing.**

**VI. Upon being served with the said pleadings and documents, the Respondents and the Interested Party shall be required to file their responses to, and submissions on the substantive Notice of Motion application within thirty (30) days from the date of service.**

**VII. This matter shall be mentioned on 8<sup>th</sup> July 2020 for further directions.**

**VIII. 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 *ex parte* 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, 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com), and shall also avail the electronic copies 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**XI. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**XII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the *ex parte* Applicant by electronic mail by close of business on Friday, 8<sup>th</sup> May 2020.**

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

**XIV. Parties shall be at liberty to apply.**

8. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2020**

**P. NYAMWEYA**

**JUDGE**