



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 93 OF 2020

REPUBLIC.....APPLICANT

VERSUS

THE CABINET SECRETARY, NATIONAL TREASURY AND PLANNING.....1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF THE ATTORNEY GENERAL....2ND RESPONDENT

EX PARTE APPLICANT: OKIYA OMTATAH OKOITI

RULING

The Application

1. The *ex parte* Applicant, Okiya Omtatah Okoiti, is aggrieved by a decision made and published in Gazette Notice No. 3234 of 17th April 2020 which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII -No. 72* by the Cabinet Secretary, National Treasury and Planning, the 1st Respondent herein. According to the Applicant, the said decision authorized the importation into Kenya of substandard and poisonous maize which does not meet the East African Community Standard for dry maize.

2. The *ex parte* Applicant consequently filed an application by way of a Chamber Summons dated 7th May 2020, seeking the following orders:

- 1. That this Court certifies the application to be extremely urgent, and to hear it *ex parte* at the earliest opportunity**
- 2. That leave be granted to the *ex parte* Applicant to seek by way of judicial review, that an order of certiorari do issue to bring to this Court for purposes of being quashed, Gazette Notice No. 3234 of 17th April 2020 by the 1st Respondent which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII - No. 72*.**
- 3. That leave be granted to the *ex parte* Applicant to seek by way of judicial review, that an order of Prohibition do issue prohibiting the Respondents herein, and any other person howsoever acting, from implementing, giving effect to, or enforcing Gazette Notice No. 3234 of 17th April 2020 by the 1st Respondent which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII - No. 72*.**
- 4. That leave be granted to the *ex parte* Applicant to seek by way of judicial review, that an order of Mandamus do issue to compel the 1st Respondent to issue a new gazette notice on the importation of maize, wherein:**
 - a. The standards of maize to be imported will strictly adhere to the East African Community Standard on maize (EAS 2:2013)**
 - b. The Strategic Food Reserve Trust Fund to be the sole agent to import the relief maize.**
- 5. That pending the filing hearing and the final determination of the substantive judicial review Notice of Motion herein, or until further court orders, the leave so granted do operate as a stay or suspension of Gazette Notice No. 3234 of 17th April 2020 by the 1st Respondent which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII - No. 72*.**

6. That consequent to the grant of the prayers above, the Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

7. That costs be in the cause

3. The grounds for the application are stated in the *ex parte* Applicant's Statutory Statement dated 7th May 2020, and a verifying affidavit he swore on the same date. The *ex parte* Applicants also annexed copies of the Gazette Notice No. 3234 dated 17th April 2020 which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII -No. 72*, the East African Standard EAS 2: 2013, the Kenya Port Authority Advisory Procedures to Shipping Lines/Agents on Coronavirus (COVID-19) for the Port of Mombasa dated 17th April 2020, and the East African Community Customs Management Act of 2004.

4. A perusal of the Gazette Notice No. 3234 dated 17th April 2020 shows that the 1st Respondent gives a concessional import duty rate to specified millers importing white and yellow maize between 20th April 2020 and 30th May 2020, and sets out the conditions and standards to be met with respect to the said maize, arising from the COVID -19 pandemic.

The Orders

5. Upon careful consideration of the Chamber Summons application dated 7th May 2020, I am satisfied that the *ex parte* Applicant has demonstrated that this matter is urgent, and that the same ought to be heard on a priority basis. This is for the reason that there is imminent importation and consumption of maize as specified in Gazette Notice No. 3234 of 17th April 2020, and which is published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII -No. 72*.

6. A number of factors however make it necessary for this matter to be heard *inter partes*. Firstly, I am aware of the publication of Legal Notice No. 61 of 14th April 2020 (The Public Finance Management (Strategic Food Reserve Trust Fund) (Revocation) Regulations, which may have a bearing on this application.

7. Secondly, I note that the Gazette Notice No. 3234 dated 17th April 2020 which was published on 20th April 2020 was with respect to the importation of white and yellow maize by specified millers between 20th April 2020 and 30th May 2020, which period has already commenced, and it is necessary to confirm the status as regards the said importation before any orders are made in this matter.

8. Lastly, the specified millers required to import the maize who are listed in the Schedule in Gazette Notice No. 3234 dated 17th April 2020 will be affected by any orders given herein, but have not been joined in this suit as parties. Being so directly affected, they are necessary parties in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules, and will therefore require to be heard on the *ex parte* Applicant's application.

The Orders

9. In light of the foregoing observations and findings, I accordingly direct and order as follows:

I. The *ex parte* Applicant's Chamber Summons application dated 7th May 2020 be and is hereby certified as urgent, and is hereby admitted for hearing on a priority basis.

II. All the millers specified and listed in Gazette Notice No. 3234 dated 17th April 2020 which is published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII -No. 72* are hereby joined in this suit as the 2nd to 42nd Interested Parties, which description shall accord with their order of listing in the said Schedule.

III. The *ex parte* Applicant shall serve the Respondents and all the Interested Parties with (i) the Chamber Summons application dated 7th May 2020 and submissions thereon, (ii) a copy of this ruling and orders therein, and (iii) a mention notice within ten (10) days from today's date.

IV. Upon being served with the said pleadings and documents, the Respondents and Interested Parties shall be required to file their responses to, and submissions on the said Chamber Summons application within ten (10) days from the date of service.

V. This matter shall be mentioned on 2nd June 2020 for further directions. In the interim period and pending the hearing and determination of the said application, the 2nd to 42nd Interested Parties are hereby restrained from releasing, distributing, selling or in any manner facilitating the use and consumption of any maize imported pursuant to Gazette Notice No. 3234 dated 17th April 2020 published by the 1st Respondent, and which was published on 20th April 2020 in a special issue of *Kenya Gazette Vol. CXXII - No. 72*.

VI. 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 Chamber Summons application 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, 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.

VII. 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.

VIII. 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.

IX. 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.

X. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the ex parte Applicants by electronic mail by close of business on Friday, 8th May 2020.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 2nd June 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XII. Parties shall be at liberty to apply.

10. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE