



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 91 OF 2020**

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

**BETWEEN**

**MUSTAFAH OTIENO OCHIENG.....APPLICANT**

**VERSUS**

**THE STATE CORPORATIONS ADVISORY**

**COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**NATIONAL WATER HARVESTING & STORAGE**

**AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**THE BOARD OF DIRECTORS NATIONAL**

**WATER HARVESTING & STORAGE AUTHORITY...3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**ERICK OKEYO.....INTERESTED PARTY**

**RULING**

**The Application**

1. The Applicant herein has moved this Court in an application brought by way of an Amended Chamber Summons dated 8<sup>th</sup> May 2020. He is seeking the following orders:

**(a) The application be certified urgent.**

**(b) Leave be granted to the Applicant to apply for judicial review by way of an order of certiorari removing into the High Court and quashing the decision contained in the Gazette Notice No.2355 dated 10<sup>th</sup> March 2020, and published on 20<sup>th</sup> March 2020 Appointing Erick Okeyo for the position of Chairman of the Board National Water and Harvesting and Storage Authority, for a period of three (3) years with effect from 20<sup>th</sup> March 2020.**

**(c) Leave be granted to the Applicant to apply for judicial review by way of an order of prohibition to issue against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent from treating or in any other way holding out or according the Interested Party any treatment as a chairman of its board of directors on the strength of Gazette Notice NO. 2355 dated 10<sup>th</sup> March 2020, and Published on 20<sup>th</sup> March 2020.**

**(d) The order granting leave do operate as a stay of the implementation of Gazette Notice No.2355 dated 10<sup>th</sup> March 2020, and published on 20<sup>th</sup> March 2020 Appointing Erick Okeyo for the position of Chairman of the Board National Water**

Harvesting and Storage Authority, for a period of three (3) years with effect from 20th March 2020.

(e) An order of status quo to issue against the Respondents on the state of affairs prior to Gazette Notice No.2355 dated 10th March 2020, and published on 20<sup>th</sup> March 2020 Appointing Erick Okeyo for the position of Chairman of the Board National Water Harvesting and Storage Authority pending the hearing and determination of the substantive Application.

(f) The costs of the application to abide the final outcome of the substantive motion.

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 Applicant.

3. After a perusal of the Applicant's pleadings, I note that his main grievance and grounds for the application are the process and qualifications and terms of appointment of the Interested Party to public office, including his qualifications. These type of dispute is ordinarily within the jurisdiction of the Employment and Labour Relations Court. In addition, the said appointment was made about two months ago on 10<sup>th</sup> March 2020, and the current obtaining status needs to be confirmed before any orders are granted.

4. Therefore, while this matter is demonstrated to be urgent as a result of the said appointment already having been made, It is for the same reason necessary to first hear all parties concerned on the orders sought by the Applicant, both as to the question of leave and stay.

#### **The Orders:**

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

i. The *ex parte* Applicant's Amended Chamber Summons application dated 8<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 shall serve the Respondents and the Interested Party with (i) the Amended Chamber Summons application dated 8<sup>th</sup> 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 for *inter partes* hearing.

iii. 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 said Amended Chamber Summons application within ten (10) days from the date of service.

iv. This matter shall be mentioned on 2<sup>nd</sup> June 2020 for further directions.

v. 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 Amended Chamber Summons application dated 8<sup>th</sup> 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com), and shall also avail the electronic copies in word format.

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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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 Friday, 8<sup>th</sup> May 2020.

x. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 2<sup>nd</sup> June 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.

6. Orders accordingly.

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

**P. NYAMWEYA**

**JUDGE**