



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 49 OF 2020**

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

**BETWEEN**

**VIVO ENERGY LIMITED**

**(Formerly Known as KENYA SHELL LIMITED).....APPLICANT**

**VERSUS**

**THE NATIONAL LAND COMMISSION.....RESPONDENT**

**RULING**

**The Application**

1. The Applicant herein has moved this Court *ex parte*, in an application brought by way of Chamber Summons dated 29<sup>th</sup> January 2020, wherein it is seeking orders of mandamus directed at the Respondent to compel it to settle the decretal sum of Kenya Shillings Seven Hundred and Twenty Four Thousand Seven Hundred and Eighty One Shillings and Sixty Cents (Kshs 724,781.60) being the costs of the suit as taxed on 28<sup>th</sup> March 2018.
2. The said application is supported by a statutory statement dated 29<sup>th</sup> January 2020, and a verifying affidavit sworn on the same date by Naomi Assumani, the Applicant's Company Secretary.
3. The main ground for the application is that judgment was delivered in favour of the Applicant in **Judicial Review Case No 383 of 2014 - Republic vs National Land Commission & 2 Others *ex parte* Vivo Energy Kenya Limited**, wherein it was awarded costs, which were taxed at Kshs 724,781.60 on 28<sup>th</sup> March 2020. The Applicant annexed copies of the judgment delivered in on 18<sup>th</sup> February 2015 in **Judicial Review Case No 383 of 2014 - Republic vs National Land Commission & 2 Others *ex parte* Vivo Energy Kenya Limited**, the consequent decree issued therein on 19<sup>th</sup> March 2015.
4. A certificate of taxation issued therein on 12<sup>th</sup> April 2018 for Kshs 724,781.60, as well as a Certificate of Order against the Government for the same amount issued on 17<sup>th</sup> July 2019, were also annexed as evidence. Lastly, the Applicant annexed copies of various letters it wrote to the Respondent forwarding the above-mentioned documents, and requesting for payment of the costs.

**The Determination**

5. I have considered the application dated 6<sup>th</sup> May 2020 and the applicable law on leave to commence judicial review proceedings, which is *Order 53 Rule 1* of the Civil Procedure Rules. The reasons 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** is to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless, and 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.
6. It is also trite that in an application for leave such as the present one, the Court ought not to delve into the arguments of the parties, but should make cursory perusal deeply 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 Applicant has provided evidence of costs awarded and certified in its favour in **Judicial Review Case No 383 of 2014 - Republic vs National Land Commission & 2 Others *ex parte* Vivo Energy Kenya Limited**, against the Respondent, and demands made for payment of the said costs. 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 Chamber Summons application dated 29<sup>th</sup> January 2020 is hereby admitted for hearing *ex parte* at the first instance.

II. The Applicant is granted leave to apply for an order of Mandamus of mandamus directed at the Respondent to compel it to settle the decretal sum of Kenya Shillings Seven Hundred and Twenty Four Thousand Seven Hundred and Eighty One Shillings and Sixty Cents (Kshs 724,781.60) being the costs of the suit in Judicial Review Case No 383 of 2014 - Republic vs National Land Commission & 2 Others ex parte Vivo Energy Kenya Limited, as taxed on 28<sup>th</sup> March 2018..

III. The costs of the Chamber Summons dated 29<sup>th</sup> January 2020 shall be in the cause.

IV. The Applicant shall file the substantive Notice of Motion, and shall serve the Respondent with (i) the Chamber Summons application dated 29<sup>th</sup> January 2020, (ii) the substantive Notice of Motion and submissions thereon, (iii) a copy of this ruling, and (iii) a mention notice, within twenty-one (21) days from today's date.

V. Upon being served with the said pleadings and documents, the Respondent shall be required to file its response to, and submissions on the substantive Notice of Motion application dated 29<sup>th</sup> January 2020 within thirty (30) days from the date of service.

VI. This matter shall be mentioned on 14<sup>th</sup> July 2020 for further directions.

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 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, the Applicant shall avail an electronic copy in word format of its Chamber Summons dated 29<sup>th</sup> January 2020 and supporting documents (without the annexures), at the time of filing its substantive Notice of Motion and submissions.

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](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 Applicant by electronic mail by close of business on Thursday, 21<sup>st</sup> May 2020.

XIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 14<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 19<sup>TH</sup> DAY OF MAY 2020

P. NYAMWEYA

JUDGE