



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. MISC E008 OF 2020**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**FIREARMS LICENSING BOARD.....RESPONDENT**

**EX PARTE:**

**STEVE MBOGO NDWIGA**

**RULING**

1. The Applicant herein, Steve Mbogo Ndwiga has brought an application by way of a Chamber Summons dated 17<sup>th</sup> July 2020 seeking the following orders:

**a) THAT the Application be certified urgent and be heard ex-parte in the first instance for the reasons of urgency set out in the Certificate of Urgency.**

**b) THAT the Ex- Parte Applicant be granted leave by this Court to institute judicial review proceedings against the Respondent in terms of Section 9(4) of the Fair Administrative Action and be exempted from exhausting the internal remedy available under the Firearms Act.**

**c) THAT the Ex-Parte Applicant be granted leave to apply for an order of CERTIORARI to move into this Court for purposes of being quashed, a decision of the Firearms Licensing Board to detain the Ex parte Applicant's Firearm Certificate No. 006001 communicated to the Ex Parte Applicant orally on the 5<sup>th</sup> February 2019.**

**d) THAT the Ex-Parte Applicant be granted leave to apply for an order of CERTIORARI to move into this Court for purposes of being quashed, a decision of the Firearms Licensing Board through its agents to confiscate and detain the following guns and ammunition belonging to the Ex Parte Applicant;**

**i. Smith and Wesson SINO. LDL 6866**

**ii. Auto Pistol QB s/No. A496041**

**iii. Taurus Shot gun SINO. 51-IY 175941**

**iv. Anakon Shot gun SINO. 1<0039**

**v. 22 Rounds of 9mm**

**vi. 16 rounds of 2.0 mm**

**e) THAT the Ex Parte Applicant be granted leave to apply for an order of MANDAMUS to compel the Respondent to return**

and hand over to the Ex Parte Applicant his Firearms Certificate Number 006001, guns and ammunition to wit; Smith and Wesson SINO. LDL 6866; Auto Pistol QB SINO. A496041; Taurus Shot gun s/No. 51-IY 175941; Anakon Shot gun SINO. K0039; 22 Rounds of 9mm; 16 rounds of 2.0 mm.

- f) THAT the grant of leave to operate as a stay to stop the implementation of the impugned decision.
- g) THAT the Court be pleased to grant such other or further relief as it may deem fit in the circumstances.
- h) THAT the cost of this Application be provided for

2. The application is supported by a statutory statement dated 17<sup>th</sup> July 2020 and a verifying affidavit sworn by the Applicant on the same date. Upon perusal of the said pleadings, I note that the Applicant states that he had previously instituted proceedings in this Court in JR. Miscellaneous Application No. 52 of 2019. I have perused the judgment by Hon. Mr. Justice Mativo delivered in the said case, and note that the *ex parte* Applicant sought similar orders therein.

3. I am therefore of the view that in the circumstances the Applicant's Chamber Summons dated 17<sup>th</sup> July 2020 requires to be served and canvassed *inter partes*, to address *inter alia* the issue whether it is in abuse of the process of court.

4. In the circumstances I hereby direct and order as follows:

**I. The Applicant shall serve the Respondent with (i) the Chamber Summons application dated 17<sup>th</sup> July 2020 and skeletal submissions thereon, (ii) a copy of this ruling, and (iii) a hearing notice, within fourteen (14) days from today's date.**

**II. Upon being served with the said pleadings and documents, the Respondent shall be required to file their responses to, and submissions on the said Chamber Summons application within fourteen (14) days from the date of service.**

**III. The Applicant's Chamber Summons application dated 17<sup>th</sup> July 2020 shall be heard on 1<sup>st</sup> September 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 the Applicant's Chamber Summons application dated 17<sup>th</sup> July 2020 on the basis of the electronic copies of the pleadings and written submissions filed by the parties.**

**V. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com)**

**VI. The electronic copies of pleadings and documents filed and sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the description 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 parties shall also be required to send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).**

**VIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 1<sup>st</sup> September 2020.**

**IX. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant by electronic mail by close of business on Thursday, 23<sup>rd</sup> July 2020.**

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

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JULY 2020

P. NYAMWEYA

JUDGE