



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E144 OF 2020**

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

**BETWEEN**

**REPUBLIC .....APPLICANT**

**VERSUS**

**JOMO KENYATTA UNIVERSITY OF**

**AGRICULTURE AND TECHNOLOGY.....RESPONDENT**

**EX-PARTE:**

**ELIJAH KAMAU MWANGI**

**RULING**

1. Elijah Kamau Mwangi, the *ex parte* Applicant herein, was admitted by the Jomo Kenyatta University of Agriculture and Technology, the Respondent herein, for a PHD in project management course, and states that he has successfully completed his course work and examination. The *ex parte* Applicant has now moved this Court in an application brought by way of Chamber Summons dated 23<sup>rd</sup> June 2020, wherein he is seeking leave to apply for an order of mandamus to compel the Jomo Kenyatta University of Agriculture and Technology to accept his intent to submit PHD Thesis for examination.
2. The said application is supported by a statutory statement dated 23<sup>rd</sup> June 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that the applicant submitted intent to submit the PHD thesis for examination which was rejected on the unreasonable demand that he submits letters appointing his supervisors, copy of research proposal and school BPS committee meeting minutes that approved the same. He gave reasons why the said demands are unreasonable, and unlawful, and further stated that he was not given an opportunity to be heard, make representations, or seek a review or appeal against the decision. The *ex parte* Applicant annexed copies of his PHD proposal and thesis, as well as a copy of a letter dated 7<sup>th</sup> March 2019 from the Respondent's Board of Postgraduate Studies rejecting his intent to submit his PHD thesis for examination.
3. The applicable law on leave to commence judicial review proceedings 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 main reason for the leave as 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 ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.
4. It is also 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 his PHD thesis and impugned decision by the Respondent dated 7<sup>th</sup> March 2019 rejecting his intent to the PHD thesis for examination. Lastly, the *ex parte* Applicant has also averred as to the grounds and reasons why it considers the 1<sup>st</sup> Respondent's action and decision to be illegal.
5. 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.
6. In light of the foregoing findings, the *ex parte* Applicant's Chamber Summons dated 23<sup>rd</sup> June 2020 is found to be merited. I accordingly grant the following orders:

I. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to compel the Jomo Kenyatta University of Agriculture and Technology to accept his intent to submit PHD Thesis for examination.

II. The costs of the Chamber Summons dated 23<sup>rd</sup> June 2020 shall be in the cause.

III. The *ex parte* Applicant shall file and serve the Respondents and Interested Parties with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 23<sup>rd</sup> June 2020 and its supporting documents, a copy of this ruling, and a mention notice, within twenty-one (21) days from today's date.

IV. Upon being served with the said pleadings and documents, the Respondent shall be required to file its response to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the *ex parte* Applicant.

V. This matter shall be mentioned on 22<sup>nd</sup> September 2020 for further directions.

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 substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VII. All the parties shall file their pleadings 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).

VIII. 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 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.

IX. 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).

X. 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).

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Friday, 10<sup>th</sup> July 2020.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 22<sup>nd</sup> September 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XIII. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2020

P. NYAMWEYA

JUDGE