



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 104 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR

JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CLERK OF THE NATIONAL ASSEMBLY.....1ST RESPONDENT

THE NATIONAL ASSEMBLY.....2ND RESPONDENT

OKIYA OMTATAH OKOITI.....3RD RESPONDENT

EX PARTE APPLICANT:

EAA COMPANY LIMITED

RULING

The Applications

1. This ruling is on two prayers made by the *ex parte* Applicant herein, EAA Company Limited. The first prayer is in its Chamber Summons application dated 15th May 2020, in which the *ex parte* Applicant is seeking orders that the leave granted to institute judicial review proceedings shall operate as a stay to suspend the adoption and implementation of the Parliamentary Investments Committee's Report and Recommendations on the consideration of the Auditor General's Special Audit Report dated 10th July 2019, insofar as it touches on, refers to, relates to and make recommendations respecting and regarding tender no. KEBS/T010/2019-2021 and the contract entered into by the *ex parte* Applicant upon participating in the said tender.

2. The said prayer was supported by the *ex parte* Applicants' Statutory Statement dated 15th May 2020, and a verifying affidavit sworn on the same date by Wycliffe Muga, the *ex parte* Applicant's manager, who annexed copies of the reports of the Hansard proceedings of the Public Investment Committee hearing for 13th November 2019, and of the Progress Report by the Public Investment Committee dated February 2020.

3. The court in a ruling delivered on 20th May 2020 directed that the said prayer would be canvassed *inter partes*, and parties were to file and exchange submissions on the same. While the ruling on the prayer was pending, the *ex parte* Applicant filed another application by way of a Notice of Motion dated 22nd June 2020 seeking orders on the second prayer, namely that new and additional evidence in the form of a letter dated 18th June 2020 from the 1st Respondent and the Parliamentary Investment Committee's Report on the Special Audit dated 10th July 2019 that was presented to the National Assembly on the 2nd June 2020, be admitted for purposes of these judicial review proceedings and the matter of stay. The *ex parte* Applicant annexed the said documents to a Further Verifying Affidavit sworn by Wycliffe Muga on the 22nd June 2020.

4. The *ex parte* Applicant in its supporting affidavit and further affidavits have argued that it was invited to appear before the 1st and 2nd

Respondents' Parliamentary Investment Committee on 3rd March 2020 for hearing on the Auditor General's Special Audit Report dated 10th July 2019 on previous tenders, and that at the time the current tender no. no. KEBS/T010/2019-2021, was still being evaluated and was facing a challenge before the Review Board. Therefore, that the *ex parte* Applicant could not raise any issue on the current tender before the Parliamentary Investment Committee as it was precluded from doing so by the procurement law, and it is a denial of the *ex parte* Applicant's rights for the Parliamentary Investment Committee to make adverse recommendations on the current tender.

5. In addition, the *ex parte* Applicant contended that Parliamentary Investment Committee's Report presented on the 2nd June 2020 has made far reaching recommendations regarding the tender no. KEBS/T010/2019-2021 despite the Parliamentary Investment Committee admitting in its introduction to that report that it never considered the merits of that tender.

The Responses

6. The 1st and 2nd Respondents filed a Notice of Preliminary Objection dated 27th May 2020 in response to the *ex parte* Applicant's Chamber Summons, and a replying affidavit sworn by Michael Sialai, the Clerk of the National Assembly. The 1st and 2nd Respondents object to the proceedings on the ground that are entitled to the protection of Parliamentary privilege under Article 117 of the Constitution and Section 12 of the Parliamentary Powers and Privileges Act No. 29 of 2017. Further, that the attempt by the *ex parte* Applicant to come to court amounts to interference with the on-going proceedings before the Public Investment Committee of the 2nd Respondent on the examination of the Auditor General's Special Report on "Procurement of Pre- Export Verification of Conformity (PVOC) to Standard Services- Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards Tender No. KEBS/T019/2017-2020" dated 10th July 2019, and violates the provisions of Article 117 of the Constitution.

7. Mr. Sialai explained in his replying affidavit that the Auditor- General conducted a special audit at Kenya Bureau of Standards (KEBS) with focus on "the procurement of Pre- Export Verification of Conformity (PVOC) to Standards Service — For used Motor Vehicles, Mobile Equipment and Used spare Parts by KEBS - Tender Number: KEBS/TO 19/2017-2020", pursuant to Articles 252 1 (a), (d) and 229 (6) of the Constitution. He annexed a copy of the Special Audit Report. It was further deponed that on 13th November 2019, the National Assembly Leader of Majority tabled the Special Audit Report in the National Assembly, and that pursuant to Standing Order No. 206 of the National Assembly, the Special Audit Report was forwarded to the Public Investment Committee of the National Assembly by the Speaker of the National Assembly for consideration.

8. The 1st and 2nd Respondent stated that the *ex parte* Applicant was invited to respond to the audit reservations in the special report as was the Managing Director of Kenya Bureau of Standards and also the Regional Manager of M/S Auto Terminal Japan on 4th February, 2020 and 6th February, 2020 respectively. They also detailed the correspondence engaged between the *ex parte* Applicant's advocates on their participation in the committee hearings.

9. According to the 1st and 2nd Respondents, any person aggrieved by any contents of a report adopted by a House Committee has the right in the first instance to appeal against the recommendations, to the House under Article 125 of the Constitution. That in this case, the matter is at the inquiry stage and no prejudice will be suffered by the *ex parte* Applicant who can exercise their right of appeal when the report is finalized and tabled for adoption. Further, that the jurisdiction of this Court can only be invoked in the event of an excess of jurisdiction by way of breach of the Constitution and there has been no violation of the Constitution. Lastly, that the question as to whether the Special Audit Report is validly before the 2nd Respondent is among the matters the Committee will be considering after taking into account all the evidence submitted before it and the law, and the arguments by the Applicant are therefore premature and preemptive of the Committee deliberations and recommendations to the House.

10. The 3rd Respondent on his part also filed a Notice of Preliminary Objection dated 7th June 2020 objecting to the *ex parte* Applicant's Chamber Summons on the following grounds:

a) There is no legal authority by way of a lawful resolution under the lawful seal of the EAA Company Limited duly executed by its known directors and accompanied by the requisite minutes that has been availed before this Court authorizing the institution of the Chamber Summons Application against the Respondents herein

b) There is no legal authority by way of a lawful resolution under the lawful seal of the EAA Company Limited duly executed by its known directors and accompanied by the requisite minutes that has been availed before this Court authorizing Wycliffe Muga and M/s Andrew Ombwayo & Company Advocates or any other person to swear an affidavit or sign any pleading for and on behalf of the *ex-parte* applicant.

c) Pursuant to Order 4 Rule 1(4) of the Civil Procedure Rules, 2010, Wycliffe Muga and M/s Andrew Ombwayo & Company Advocates (the Advocates purportedly on record for the *ex-parte* applicant herein) lack the requisite legal authority to sign any pleading for or swear any affidavit in support of the application on behalf of the EAA Company Limited

d) There is no legal authority by way of a resolution or any other legal instrument under the lawful seal of EAA Company Limited duly executed by its known directors and accompanied by the requisite minutes that has been availed before this Court authorizing or instructing the firm of EAA Company Limited, anybody or any firm of advocates to file the application for and on behalf of EAA Company Limited.

e) The instant application for joinder is *res sub judice* as the same issues are pending determination by this Court in **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties.**

11. These grounds were reiterated in the 3rd Respondent's replying affidavit sworn on 5th June 2020, and in which he averred that the *ex*

parte Applicant ought to have raised the issues in the present application by way of its reply to **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties.**

The Determination

The Preliminary Objections

12. The preliminary objections raised by the 1st, 2nd and 3rd Respondents will of necessity need to be determined first, as they have the potential of disposing of the *ex parte* Applicant's case if found to be merited. The circumstances in which a preliminary objection may be raised was in this regard explained by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, as follows:

“a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

13. The effect of a preliminary objection if upheld, renders any further proceedings before the court impossible or unnecessary. On the other hand, a preliminary objection cannot be raised if any fact requires to be ascertained. In the case of **Oraro vs Mbaja, (2005) 1 KLR 141**, the court held that any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. The Court of Appeal also stated in **Mukisa Biscuit Company -vs- West End Distributors Ltd (supra)** that a preliminary objection cannot be raised if what is sought is the exercise of judicial discretion.

14. The issues for determination herein therefore are whether the grounds raised in 1st, 2nd and 3rd Respondents' preliminary objections raise pure points of law, and if so, whether the said preliminary objections have merit and should be upheld. The 1st and 2nd Respondents have alleged that the proceedings of the Parliamentary Investment Committee are protected by parliamentary privilege, and cannot be interfered with by this Court. The 1st and 2nd Respondents cited various case law in their pleadings in support of this position that Courts should exercise restraint in this regard, including **Justus Kariuki Mate & Another vs Martin Nyaga Wambora & Another, (2017) eKLR, Pevans East Africa Limited and another vs Chairman, Betting Control and Licensing Board and 7 others, Civil Appeal No. 11 of 2018** and **Speaker of the Senate & Another v Attorney General & 4 others (2013) eKLR**.

15. It is however settled law that the Courts are competent and have jurisdiction to inquire whether a privilege exists and to determine its scope or extent. The principle that the courts have the authority to determine the scope of a privilege was confirmed by the Supreme Court of Canada in **Canada (House of Commons) v Vaid, (2005) 1 S.C.R. 667**. This principle is reflected in the doctrine of necessity, elaborated by the Supreme Court of Canada in the said case, under which courts preserve their jurisdiction to inquire into the existence and scope of privilege, but once a privilege has been found to exist, and its scope is considered appropriate, it will not question how Parliament exercises or applies a privilege.

16. In a unanimous decision, the said Court held as follows:

“ Accordingly, to determine whether a privilege exists for the benefit of the Senate or House of Commons, or their members, a court must decide whether the category and scope of the claimed privilege have been authoritatively established in relation to our own Parliament or to the House of Commons at Westminster. If so, the claim to privilege ought to be accepted by the court. However, if the existence and scope of a privilege have not been authoritatively established, the court will be required to test the claim against the doctrine of necessity — the foundation of all parliamentary privilege. In such a case, in order to sustain a claim of privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their legislative work with dignity and efficiency. Once a claim to privilege is made out, the court will not enquire into the merits of its exercise in any particular instance.”

17. Therefore, whereas Courts will exercise caution not to unduly interfere with, or micromanage Parliamentary proceedings, it is the duty and the obligation of this Court to ensure that Parliament and Parliamentary Committees conduct their proceedings in accordance with the Constitution and the law, under its judicial review jurisdiction. Put differently, the existence of the law on privilege in Article 117 of the Constitution and section 12 of the Parliamentary Powers and Privileges Act does not oust this Court's supervisory jurisdiction granted by under Article 165 (3) and (6) of the Constitution, to review decisions and actions undertaken by Parliamentary bodies.

18. This position was reiterated by the Supreme Court of Kenya in **Speaker of National Assembly vs. Attorney General and 3 Others (2013) eKLR** where the Court expressed itself as follows:

“Parliament must operate under the Constitution which is the supreme law of the land. The English tradition of Parliamentary supremacy does not commend itself to nascent democracies such as ours. Where the Constitution decrees a specific procedure to be followed in the enactment of legislation, both Houses of Parliament are bound to follow that procedure. If Parliament violates the procedural requirements of the supreme law of the land, it is for the courts of law, not least the Supreme Court, to assert the authority and supremacy of the Constitution. It would be different if the procedure in question were not constitutionally mandated. This Court would be averse to questioning Parliamentary procedures that are formulated by the Houses to regulate their internal workings as long as the same do not breach the Constitution. Where however, as in this case, one of the Houses is alleging that the other has violated the Constitution, and moves the Court to make a determination by way of an Advisory Opinion, it would be remiss of the Court to look the other way. Understood in

this context therefore, by rendering his Opinion, the Court does not violate the doctrine of separation of powers. It is simply performing its solemn duty under the Constitution and the Supreme Court Act.”

19. To this extent, the issue of whether, and to what extent the 1st and 2nd Respondents are protected by parliamentary privilege is one of fact and legal argument, and on which the Court is given express powers and discretion to decide upon, and cannot therefore be raised as a preliminary point of law.

20. The 3rd Respondent on his part raises the issue of the lack of legal authority given by the *ex parte* Applicant to bring the present proceedings, and that this matter being *sub judice* the proceedings in **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties**.

21. I will first dispose of the arguments made as regards the lack of legal authority on the part of the *ex parte* Applicant's advocate and officials to bring the current proceedings. The issue of whether or not there is legal authority by the *ex parte* Applicant to commence legal proceedings is one of fact. It is therefore not a pure question of law that can be raised in a preliminary objection. In any event this Court has discretion to allow the *ex parte* Applicant to provide such legal authority upon application.

22. As regards the ground raised by the 3rd Respondent that the present application is *sub judice* **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties**, section 6 of the Civil Procedure Act provides as follows in this regard:

“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”

23. The purpose of the principle of *sub judice* is to avoid instances where multiple suits are filed by the same parties on the same issues before Courts of competent jurisdiction. In **Standard Chartered Bank Limited vs Jenipher Atieno Odok, HCCC No. 120 of 2003**, Warsame J. (as he then was), had the following to say about the doctrine of *sub judice*:

“It is not within the rights of parties to engage in multiplicity of suits as the multiplicity of suits is meant to obstruct due process of law, and when a party shows design to abuse the powers of the Court, such actions must be stopped to avoid unnecessary costs and waste of judicial time.”

24. If indeed a matter is found to be *sub judice*, the effect is to oust the jurisdiction of a Court to deal with the same issue. The test to be utilized to determine if a matter is *sub judice*, is whether the parties in the two suits are the same; whether the issues raised or subject matters of the suits are the same; and whether the matter is pending before a Court clothed with appropriate jurisdiction.

25. The 3rd Respondent referred the Court to the parties in **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties**, and the fact that the *ex parte* Applicant is the 1st Interested Party therein. Further, the 3rd Respondent stated that he has challenged the validity of the award of Tender No. KEBS/T010/2019-2021 to the *ex parte* applicant in **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties**.

26. Upon a perusal of the pleadings in the two cases, this Court notes firstly, that there are parties in **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties** that are not parties in the present application, particularly the Respondents therein. Secondly, it is also notable that the subject matter in issue is different in the two cases, as **JR No. 90 of 2020 - Republic vs. Kenya Bureau of Standards & Another and EAA Company and 3 Other Interested Parties** is challenging the award of a tender to the *ex parte* Applicant, while the present application is challenging the 1st and 2nd Respondent's Parliamentary Investment Committee report on the said tender. This matter is thus not *sub judice* as alleged by the 3rd Respondent, and his preliminary objection fails for the foregoing reasons.

The Issue of Stay

27. The substantive issue that therefore remains to be decided is whether the leave granted herein can operate as a stay of the 1st and 2nd Respondent's Parliamentary Investment Committee report on the Auditor General's Special Audit Report dated 10th July 2019, insofar as it touches on, refers to, relates to and make recommendations respecting and regarding tender no. KEBS/T010/2019-2021. The prayer for stay was canvassed by way of written submissions. The *ex parte* Applicant's Advocates, Ombwayo & Company Advocates, filed submissions dated 29th May 2020, while the 3rd Respondent filed submissions dated 7th June 2020. The 1st and 2nd Respondents did not file any submissions.

28. Before making a determination on the issue of stay, this Court has also considered it in the interests of justice and expeditious hearing of this matter to admit the letter dated 18th June 2020, and report on the Special Audit report presented by the Parliamentary Investment Committee on 2nd June 2020, which were annexed by the *ex parte* Applicant to its Notice of Motion dated 22nd June 2020. The main reasons for the Court's decisions are that the said document are new and relevant evidence that was not in existence at the time the *ex parte* Applicant filed the Chamber Summons seeking stay dated 15th May 2020, and secondly, such evidence would in any event ordinarily be considered *ex parte* at the time of making a determination on stay. The said documents are accordingly admitted to the record.

29. On the applicable principles as regards the grant of stay, the same is discretionary, but the Court should exercise such discretion

judiciously. Order 53 Rule 1(4) of the Civil Procedure Rules provides as follows in this respect:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”

30. In **R (H). vs Ashworth Special Hospital Authority (2003) 1 WLR 127**, it was held that such a stay halts or suspends proceedings that are challenged by a claim for judicial review, and the purpose of a stay is to preserve the *status quo* pending the final determination of the claim for judicial review. The circumstances under which a Court may grant a direction that the grant of leave do operate as a stay of proceedings or of a decision, and the factors to be taken into account by the Courts in this regard were laid down in the said decision, and in various decisions by Kenyan Courts.

31. It has in this regard been held that were the action or decision is yet to be implemented, a stay order can normally be granted in such circumstances. Where the action or decision is implemented, then the Court needs to consider the completeness or continuing nature of such implementation. If it is a continuing nature, then it is still possible to suspend the implementation.

32. See in this regard the decisions in **Taib A. Taib vs. The Minister for Local Government & Others Mombasa HCMISCA. No. 158 of 2006, Jared Benson Kangwana vs. Attorney General, Nairobi HCCC No. 446 of 1995. Republic vs Cabinet Secretary for Transport & Infrastructure & 4 Others ex parte Kenya Country Bus Owners Association and 8 Others (2014) e KLR and James Opiyo Wandayi vs Kenya National Assembly & 2 Others, (2016) eKLR.**

33. In the present application the ex parte Applicant submitted that the Parliamentary Investment Committee Report does not relate to any amendment so that the public would not be affected, and only touches only upon the tender and contract entered into by the ex parte Applicant, which was not before the Parliamentary Investment Committee for consideration. Reliance was placed on the 12nd Respondent's Standing Order 218 for the position that unless in exceptional circumstances, a matter is referred to a Select Committee on a motion approved after notice given. As such, that the Respondents must demonstrate that such a motion extending its scope beyond the Special Audit Report dated 10th July 2019 and the previous tender, into the current tender, it exceeded its mandate. Therefore, that under Standing Orders 206 and 218, the Parliamentary Investment Committee's mandate was not extended to considering the current tender, and the Respondents shall suffer no prejudice if the stay orders are granted.

34. The 3rd Respondent submitted that given the nature of the investigations being undertaken by the National Assembly into allegations of grand corruption and fraud involving the *ex parte* Applicant, it will be against both the public policy and the public interest for the court to stay these proceedings. Various decisions were cited for the position that the public interest is an overriding factor that a court must consider when determining whether or not to grant stay orders including **R vs Capital Markets Authority ex parte Joseph Mumo Kivai & Another (2012) e KLR**, **R (H). vs Ashworth Special Hospital Authority**, and in **Re Bivac International SA (Bureau Veritas) (2005) 2 EA 42**, The 3rd Respondent submitted that the public in general will be prejudiced by the court exercising its discretion to grant stay as prayed as the service carried by the 1st and 2nd Respondent are exercised in public interest and no prejudice will be suffered by the *ex parte* Applicant if stay is not granted as the applicant have not stated the hardship and/or irreparable harm that it stands to suffer if the leave does not operate as stay.

35. I note from the letter relied upon by the *ex parte* Applicant dated 18th June 2020 written on behalf of the 1st Respondent, that the Parliamentary Investment Committee did finalise its report, and a copy of the said report which is dated 29th May 2020 was annexed by the *ex parte* Applicant. Further it is indicated by the 1st Respondent that the said report was tabled on 2nd June 2020 before Parliament, and is awaiting adoption or otherwise. It is therefore premature at this stage to make any orders of stay, as the final status of the said report is not known, given that no debate has been held, nor a final decision made by the 2nd Respondent on the recommendations made in the report, and specifically on the tender no. KEBS/T010/2019-2021.

36. In addition, the *ex parte* Applicant still has the opportunity to challenge the said recommendations during the full hearing of its case, in the event that the same are found to have been made contrary to the law and Constitution. In the premises I find that the stay orders are not merited at this stage.

The Orders

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

I. The 1st and 2nd Respondents' Notice of Preliminary Objection dated 27th May 2020 is not merited and is accordingly dismissed with no order as to costs.

II. The 3rd Respondent's Notice of Preliminary Objection dated 7th June 2020 is not merited and is accordingly dismissed with no order as to costs.

III. The *ex parte* Applicants' Notice of Motion application dated 22nd June 2020 is hereby allowed, and the annexed letter dated 18th June 2020 from the 1st Respondent and the Parliamentary Investment Committee's Report dated 29th May 2020 on the Auditor General's Special Audit Report dated 10th July 2019 that was presented to the National Assembly on the 2nd June 2020 are hereby admitted to the record.

IV. Prayer 3 of the *ex parte* Applicant's Chamber Summons dated 15th May 2020 seeking orders that the leave so granted to institute these judicial review proceedings shall operate as a stay to suspend the adoption and implementation of the

Parliamentary Investments Committee's Report and Recommendations on the consideration of the Auditor General's Special Audit Report dated 10th July 2019 only insofar as it touches on, refers to, relates to and make recommendations respecting and regarding tender no. KEBS/T010/2019-2021 is declined .

V. The costs of the *ex parte* Applicant's Chamber Summons dated 15th May 2020 and Notice of Motion dated 22nd June 2020 shall be in the cause.

VI. The Respondents shall file and serve the *ex parte* Applicant with their responses to the *ex parte* Applicant's substantive Notice of Motion dated 29th May 2020 within fourteen (14) days of today's date.

VII. Upon service of the said responses or default thereof, the *ex parte* Applicant shall file and serve the Respondents with submissions on the substantive Notice of Motion within fourteen (14) days.

VIII. The Respondents are granted corresponding leave to file and serve their reply submissions within fourteen (14) days from the date of service of the *ex parte* Applicant's submissions.

IX. This matter shall be mentioned on 21st September 2020 to confirm compliance and set a judgment date.

X. 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 dated 29th May 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

XI. The parties shall file their pleadings, applications and written submissions electronically by using the Judiciary e-filing system, and shall send a copy to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com, and also avail the electronic copies in word format.

XII. 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.

XIII. 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.

XIV. 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.

XV. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant and Respondents by electronic mail by close of business on Monday, 6th July 2020.

XVI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 21st September 2020, and bring it to the attention of a Judge in the Division on that date for reservation of a judgment date.

XVII. Parties shall be at liberty to apply.

38. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF JULY 2020

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this ruling will be delivered electronically by transmission to the *ex parte* Applicant's and Respondents' counsels email addresses, by close of business on 6th July 2020.

P. NYAMWEYA

JUDGE