

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1100 OF 2020

BETWEEN

ALLEN WAIYAKI GICHUHI.....APPLICANT

VERSUS

COMMITTEE ON SENIOR COUNSEL.....1ST RESPONDENT

THE LAW SOCIETY OF KENYA.....2ND RESPONDENT

RULING

The Application

1. On 25th February, 2020, the Committee on Senior Counsel, the 1st Respondent herein, invited qualified members of the Law Society of Kenya to apply for the conferment of the rank of Senior Counsel. The said applications were made through the Law Society of Kenya, which is sued as the 2nd Respondent herein. Allen Waiyaki Gichuhi, an advocate of the High Court of Kenya and the Applicant herein, duly lodged his application.

2. The said Applicant has now filed an Originating Notice of Motion application dated 14th September 2020 in which he is seeking the following orders:

1. THAT the application dispensed with in the first Instance In respect to prayers 2, 3 and 4 (below)

2. THAT these proceedings be admitted for hearing during the current recess of this Court.

3. THAT the 2nd Respondent be directed to forthwith:

(a) Forward to the 1st Respondent all applications it received pursuant to the 25th February, 2020 invitation for its qualified members to apply for the conferment of the rank of Senior Counsel.

(b) Forward to the 1st Respondent the names with full particulars of the two advocates elected at its Annual General Meeting held on 2020 to serve on the 1st Respondent.

4. THAT a temporary order of interdict be issued restraining the 1st and 2nd Respondents from receiving, considering and/or making any decision in relation to any application submitted pursuant to the invitation for applications for conferment of the rank of Senior Counsel as contained the email to members of the Law Society of Kenya dated 2nd September, 2020 and an advertisement in the Daily Nation edition of 3rd September, 2020 pending the hearing and determination of these proceedings

5. THAT directions be issued for the expedited hearing and determination of these proceedings.

6. THAT a declaration be Issued that the invitation for applications for conferment of the rank of Senior Counsel as contained the email to members of the Law Society of Kenya dated 2nd September, 2020 and an advertisement in the Daily Nation edition of 3rd September, 2020 was and is unlawful.

7. THAT invitation of the 2nd Respondent for applications for conferment of the rank of Senior Counsel as contained the email to members of the Law Society of Kenya dated 2nd September, 2020 and an advertisement in the Daily Nation edition of 3rd September, 2020 be quashed.

8. THAT the 1st Respondent be prohibited from considering any applications submitted pursuant to the invitation for applications for conferment of the rank of Senior Counsel as contained the email to members of the Law Society of Kenya dated 2nd September, 2020 and an advertisement in the Daily Nation edition of 3rd September, 2020

9. THAT the 1 Respondent be directed to consider and render its decision on the applications for conferment of the rank of Senior Counsel submitted pursuant to the Invitation made on 25th February, 2020, on or before 30th September, 2020.

10. THAT, in alternative to prayer 7 (above), time be extended by a period of not more than one month from the date of receipt from the 2nd Respondent, of the applications it received pursuant to the 25th February, 2020 invitation for qualified members of the Law Society of Kenya to apply for the conferment of the rank of Senior Counsel

11. THAT the costs of this application be provided for.

3. The application is supported by an affidavit sworn on 14th September 2020 by the Applicant. Upon perusal of the pleadings I note that the Applicant is relying on the provisions of the Advocates Act and the Advocates (Senior Counsel Conferment and Privileges) Rules, 2011, and the procedures thereunder on the conferment of the rank of Senior Counsel. I am thus satisfied that the Applicant has demonstrated that the matter is urgent, and that the same ought to be heard on a priority basis, in light of the timelines provided in the said Rules for consideration of applications for Senior Counsel.

4. I am however also persuaded, arising from the allegations made in the Applicant's Originating Notice of Motion application and the range of orders sought therein, that the Respondents require to be given an opportunity to be heard before this Court makes any substantive orders.

The Orders

5. In the premises, the Applicant's Originating Notice of Motion application dated 14th September 2020 is allowed only to the extent of the following orders:

I. The Originating Notice of Motion application dated 14th September 2020 be and is hereby certified as urgent, and that the same is hereby admitted for hearing on a priority basis and during the Court recess.

II. The Applicant shall serve the 1st and 2nd Respondents with the Originating Notice of Motion application dated 14th September 2020, together with a copy of this ruling and a hearing notice, within five (5) days from today's date.

III. Upon being served with the said pleadings and documents, the 1st and 2nd Respondents shall be required to file and serve their reply to the said Originating Notice of Motion application dated 14th September 2020 within ten (10) days from the date of service.

IV. The Originating Notice of Motion application dated 14th September 2020 shall be heard *inter partes* on on 30th September 2020.

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 Originating Notice of Motion application dated 14th September 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VI. 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 and asunachristine51@gmail.com.

VII. 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 Applicant, Respondent or Interested Party), and the nature of the pleading or document.

VIII. 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.

IX. The parties shall also be required to file and 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 with copies to asunachristine51@gmail.com.

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 30th September 2020.

XI. 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 Tuesday, 15th September 2020.

XII. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 14th DAY OF SEPTEMBER 2020

P. NYAMWEYA

JUDGE