



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E052 OF 2020

KENYA PHARMACEUTICAL ASSOCIATION.....1ST APPLICANT

PATRICK ODUOR ADERA.....2ND APPLICANT

PETER ATANDI MOGERE.....3RD APPLICANT

VERSUS

CHITECHI AMBOKA.....1ST RESPONDENT

WILLIAMSON CHUMBA.....2ND RESPONDENT

JOEL CHEGE.....3RD RESPONDENT

FREDRICK KIIO.....4TH RESPONDENT

RULING NO.2

1. On 17th August 2020, this Court delivered a ruling in which it granted leave to the *ex parte* Applicants herein to commence judicial review proceedings against the Respondents herein. The Court also directed that a number of persons who were likely to be affected by the proceedings be joined as Interested Parties.

2. Two preliminary applications were subsequently filed. The first application is by the *ex parte* Applicants by way of a Notice of Motion dated 18th August 2020 in which they are seeking the following orders:

1. THAT the Court be pleased to certify this Application as extremely urgent and hear in the first instance.

2. THAT pending the hearing and determination of this Application an Injunction be and is hereby issued restraining the Respondents, whether by themselves, agents, nominees or any other person whatsoever, from holding themselves as, and in manner whatsoever performing the functions of a Committee of the Kenya Pharmaceutical Association.

3. THAT pending the hearing and determination of this Application, a gag order be and is hereby issued restraining the Respondents, whether by themselves, agents, nominees or any other person whatsoever, from writing, publishing, broadcasting, and or dispensing any information on behalf of the Kenya Pharmaceutical Association whether through electronic media, social media or any other publication.

4. THAT pending the hearing and determination of this Application an injunction be issued restraining the Respondents jointly and severally from assuming the office of and putting themselves across as officials of a Committee of the Kenya Pharmaceutical Association, hereinafter referred to as the Central Council Members Committee and or in any manner whatsoever interfering with the management and operations of the Kenya Pharmaceutical Association.

5. THAT pending the hearing and determination of this suit an injunction be and is hereby issued suspending the operation of the Central Council Members Committee of the Kenya Pharmaceutical Association forthwith, pending hearing and determination of this application inter-parties.

6. THAT pending the hearing and determination of this suit an injunction be and is hereby issued restraining the Respondents, from presiding over any or the Central Council Meeting of the Kenya Pharmaceutical Association pending hearing and determination of this Application interpartes.

7. THAT a declaration be issued by this Court declaring the Central Council Members Committee as constituted an illegal outfit and effectively dissolving the same.

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

3. The second application, which is by way of a Notice of Motion dated 25th August 2020 is alleged to be filed by the 1st *ex parte* Applicant herein, and is seeking the following orders:

1. THAT this application be certified as urgent and the same be heard *ex parte* in the first instance for purposes of prayer 2 hereunder and thereafter be listed for hearing prior to filing and/or hearing of the substantive Notice of Motion by the 2nd and 3rd Applicants;

2. THAT the Court be pleased to stay the orders issued on 17/08/2020 pending the hearing and determination of this Application *inter partes*.

3. THAT the Court be pleased to order that the name of Kenya Pharmaceutical Association be struck out as one of the Applicants.

4. THAT the Court be pleased to bar and/or disqualify the firm of Wangai Wanjuhi Advocates from the conduct of this case on behalf of Kenya Pharmaceutical Association and the 2nd and 3rd Applicants herein.

5. THAT the Court be pleased to vary, vacate, set aside and/or lift the Orders issued on 17/08/2020 specifically granting leave to operate as stay pending the hearing and determination of the intended substantive Notice of Motion.

6. THAT the Court be pleased to refer the issues raised by the 2nd and 3rd Applicant to the internal mechanisms of the Association as envisaged under Article 6 (vi) of its Constitution; IN THE ALTERNATIVE the Court do grant leave to the Association, all its Branches, Central Council and National Executive Committee either by themselves or their representatives to join this matter as Interested Parties.

7. THAT costs of this Application be provided for.

4. It is evident that some of the orders sought in the two applications touch on the officials and management of the 1st *ex parte* Applicant, which is the subject matter of the current judicial review proceedings.

5. For avoidance of doubt, this Court in its ruling of 17th August 2020 framed the dispute as follows:

“The *ex parte* Applicants are aggrieved by the actions of the Respondents to convene a meeting under the banner of the “Central Council” of the 1st *ex parte* Applicant and to create a committee known as the “KPA Central Council Members Committee”.

The *ex parte* Applicants are also aggrieved by the decisions of the Respondents to appoint themselves as officials of the said Committee, and to undertake disciplinary proceedings against the National Executive Committee that resulted in the dismissal of the 2nd and 3rd *ex parte* Applicants from their elected positions in the 1st *ex parte* Applicant as Chairman and Secretary General respectively.“

6. In addition, this Court ordered for a stay in the following terms:

“The leave so granted by the orders hereinabove shall operate as a stay of the implementation of the Respondents’ decisions and actions in their capacity as members of the National Executive Committee and of the Central Council of the 1st *ex parte* Applicant, pending the hearing and determination of the substantive Notice of Motion.”

7. The *status quo* to be maintained therefore is the one that obtained before the election or appointment of the Respondents as members of the 1st *ex parte* Applicant’s Central Council and/or National Executive Committee, and the stay of further implementation of any actions or decisions that have since been undertaken by the said Respondents.

8. I will accordingly dispose of the two pending applications at an *ex parte* stage for the following reasons. Firstly, this Court has already exercised its discretion as regards the *status quo* that needs to be maintained, and the stay orders only serve to facilitate the determination of the substantive issues in an judicial review application, and are not the focus of litigation. As explained by the Court in its ruling, the purpose of a stay is to preserve the *status quo* pending the final determination of the claim for judicial review. The prayers for injunctions and to vary or set aside the stay orders sought in the two pending applications are not capable of determining the substantive dispute, and will therefore only serve to delay the expeditious hearing of the substantive application herein.

9. Secondly, any substantive issues or points of law that any person needs to raise about the locus of the *ex parte* Applicants, or the propriety or merit of their application, need to be properly raised as a preliminary objection of law, or in a substantive reply to the substantive application. Lastly, any person who feels that he or she is directly affected by the *ex parte* Applicant’s application and would like an opportunity to participate is at liberty to apply to be joined.

10. In the premises the two Notices of Motion dated 18th August 2020 and 25th August 2020 are hereby struck out with no order as to costs, and this matter shall proceed to substantive hearing.

11. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicants, the applicants in the Notice of Motion dated 25th August 2020, and the Respondents by electronic mail by close of business on Friday, 4th September 2020.

12. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF SEPTEMBER 2020

P. NYAMWEYA

JUDGE