



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E033 OF 2020

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE SPEAKER OF THE NAIROBI

COUNTY ASSEMBLY.....1st RESPONDENT

THE CLERK OF THE NAIROBI

COUNTY ASSEMBLY.....2nd RESPONDENT

THE NAIROBI COUNTY ASSEMBLY.....3rd RESPONDENT

THE NAIROBI COUNTY

ASSEMBLY SERVICE BOARD.....4th RESPONDENT

HON. CATHERINE AKOTH.....5th RESPONDENT

EX PARTE APPLICANT:

HON. MAMAURICE OTIENO GARI

RULING

1. The *ex parte* Applicant herein has filed an application by way of a Chamber Summons dated 4th September 2020, seeking leave to apply for orders of certiorari, mandamus and prohibition with respect to the 1st Respondent’s decision and action of publishing Gazette Notice number 6390 dated 26th August, 2020 on the 28th August 2020, notifying of the appointment of the 5th Respondent as a member of the Nairobi City County Assembly Service Board, and the removal of the *ex parte* Applicant as a member of the said Board.

2. The said application is supported by a statutory statement dated 4th September 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. Upon perusal of the application and supporting documents, I note that the Applicant is relying on the provisions of section 12 of the County Government Act on the establishment of the county assembly service boards which provides as follows:

“(1) There shall be a county assembly service board for each county assembly.

(2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.

(3) The Board consists of—

(a) the Speaker of the county assembly, as the chairperson;

(b) a vice-chairperson elected by the Board from the members appointed under paragraph (c);

(c) two members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly; and

(d) one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.

(3A) The members of the Board appointed under section 12(3)(d) shall serve on a part-time basis.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office—

(a) if the person is a member of the county assembly—

(i) at the end of the term of the county assembly; or

(ii) if the person ceases to be a member of the county assembly; or

(b) if the person is an appointed member, on revocation of the person's appointment by the county assembly; or

(c) if the person is the Speaker, when the person ceases to be such Speaker.”

3. Some of the grounds for the application stated in the statutory statement are as follows:

“(a) It is not in dispute that the 1st Respondent, on the 26th August, 2020, swore in and gazetted the 5th Respondent as an appointed member to the Nairobi County Assembly Service Board as representative for the Orange Democratic Party.

(b) It is undisputed, too, that at the time of this impugned decision the *ex parte* Applicant served, as representative of the Orange Democratic Party, in the County Assembly Board pursuant to his appointment on the 18th October, 2019, and gazette notice number 9978 issued on the 22nd October, 2019.

(c) The 1st Respondent purported to rely on a letter from the Orange Democratic Party dated the 18th August, 2020, alleging to make changes to minority leadership within the County Assembly; contrary to the provisions of Section 12 (5) of the County Government Act.”

4. In light of the provisions of the Political Parties Act as regards the resolution of disputes between members of political parties, and the provisions of Articles 162(2) (a) and 165(5) of the Constitution, and section 12 of the Employment and Labour Relations Act on the exclusive jurisdiction of the Employment and Labour Relations Court, it is my view that the question of leave to commence judicial review proceedings against the Respondents require to be heard *inter partes* before any orders can be granted by this Court.

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

I. The *ex parte* Applicant shall serve the Respondents with the Chamber Summons dated 4th September 2020, (ii) skeletal submissions on the said Chamber Summons (iii) a copy of these directions and (iv) a hearing notice with twenty-one (21) days of today's date.

II. The Respondents are granted leave to file and serve their responses to the Chamber Summons dated 4th September 2020 and skeletal submissions thereon within twenty-one (21) days of service by the Applicant.

III. The Chamber Summons dated 4th September 2020 shall be heard on 12th October 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 and determine the Applicant's Chamber Summons dated 4th September 2020 on the basis of the electronic copies of the pleadings and the 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 and asunachristine51@gmail.com.

VI. 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.

VII. 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.

VIII. 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.

IX. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 12th October 2020

X. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Monday, 7th September 2020.

XI. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2020

P. NYAMWEYA

JUDGE