



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. MISC E046 OF 2020**

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

**BETWEEN**

**PATEL RAVJI LALJI.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**HEZBON OMONDI, HELEN ADHIAMBO OBURU AND**

**NIKITTA AKINYI.....3<sup>RD</sup> RESPONDENTS**

**DIRECTIONS**

1. The Applicant herein has filed an application by way of a Chamber Summons dated 30<sup>th</sup> September 2020, seeking the following orders:

**1. That this application is certified urgent and heard ex-parte and service thereto be dispensed with.**

**2. That the *ex-parte* Applicant be granted leave to apply for an order of Certiorari to move to this Court and quash the seven (7) counts contained in the charge sheet dated 17<sup>th</sup> August 2020 in which the Applicant has already taken plea on Case No. E2308 of 2020, and the Court do find that ELC Appeal No. 22 of 2017 settled the issue relating to L.R No. 209/8323.**

**3. That the *ex-parte* Applicant be granted leave to apply for order of prohibition restraining the Respondents from prosecuting Criminal Case No. E2308 of 2020 in the Chief Magistrate's Court at Milimani Law Courts pending hearing and determination of this application.**

**4. That this Court do find that the Judgment on ELC Appeal No. 22 of 2017 is still in force and the issue touching L.R No. 209/833 was settled on 15<sup>th</sup> July 2017.**

**5. That leave be granted herein do operate as a stay of further directions/pre-trial or hearing of the private prosecution of Criminal Case No.2308 of 2020 pending the hearing and determination of the substantive application.**

**6. That the costs of this application be provided for.**

2. The application is supported by a statutory statement dated 30<sup>th</sup> September 2020 and a verifying affidavit sworn on the same date by the Applicant. The main ground raised by the Applicant is that the impugned criminal proceedings arise from a land dispute in Court between himself and the 3<sup>rd</sup> Respondents, which has been determined by the rulings in ELC Appeal No. 22 of 2017.

3. However, in light of the fact that the prayers which arise from criminal proceedings are being sought as against the Attorney General who is sued herein as the 1<sup>st</sup> Respondent, yet the Director of Public Prosecutions nor the Chief Magistrates Court in Nairobi, are not parties to this suit, I am of the view that the Chamber Summons dated 30<sup>th</sup> September 2020 should be argued *inter partes* before any further orders are given in this matter.

4. In the premises I direct as follows::

I. The Applicants shall serve the Respondents with the (i) the Chamber Summons application dated 30<sup>th</sup> September 2020; (ii) skeletal submissions thereon; (iii) a copy of these directions; and (iv) a hearing notice within fourteen (14) days of today's date.

II. The Respondents are granted leave to file and serve their response to, and skeletal submissions on the Chamber Summons application dated 30<sup>th</sup> September 2020 within fourteen (14) days from the date of service.

III. The hearing of the Chamber Summons application dated 30<sup>th</sup> September 2020 shall be held on 16<sup>th</sup> November 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 Applicants' Chamber Summons application dated 30<sup>th</sup> 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

IX. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 16<sup>th</sup> November 2020.

X. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicants by electronic mail by close of business on Monday, 5<sup>th</sup> October 2020.

XI. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 2<sup>ND</sup> DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE