



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1117 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE COMMISSIONER FOR

CO-OPERATIVE DEVELOPMENT.....RESPONDENT

EX PARTE APPLICANT:

HABAKKUK H.O WAMUDUDA

RULING

1. The Applicant herein has filed an application by way of a Chamber Summons dated 14th October 2020, seeking the following orders:

(a) **THAT** the Application herein be certified urgent and orders issued in the first instance.

(b) **THAT** leave be granted to the applicant herein to apply for orders of certiorari to remove into this court and quash the decision of the respondent herein to surcharge the ex-parte applicant a sum of Ksh. 115,972,306.00 as communicated vide the Surcharge order letter dated 3rd September 2020 and fortified by the Notice dated 4th September 2020 and served on the ex-parte applicant on 10th of September 2020.

(c) **THAT** leave be granted to the ex-parte applicant to apply for judicial review orders of prohibition directed at the respondent prohibiting himself or any of his agents or persons acting through or under him or under his directives from enforcing the surcharge orders purportedly issued under the provisions of sections 58 and 73 of the Co-operative Societies Act and communicated vide surcharge order letters dated 3rd September 2020 and Notice dated 4th September 2020, surcharging the applicant a sum of Ksh. 115,972,306.00.

(d) **THAT** leave be granted to the ex-parte applicant to apply for judicial review orders of mandamus directing and or compelling the respondent to recall, cancel, invalidate and annul the surcharge orders communicated vide his letter dated 3rd September 2020 and Notice dated 4th September 2020, surcharging the applicant a sum of Ksh. 115,972,306.00.

(e) **THAT** the grant of the leave aforesaid do operate as a stay of enforcement of the said orders and/ or any proceedings founded thereon until the determination of this application.

(f) **THAT** costs of this application be provided for.

2. The said application is supported by an affidavit sworn on 9th October 2020 by the Applicant. In summary the Applicant is aggrieved with an inquiry undertaken by the Respondent and resultant surcharge order issued against him, and he alleges that the purported surcharge is based on an Inquiry report which was irregularly arrived at, and was not undertaken as envisaged by law . Upon perusal of the Respondent's inquiry order attached by the Applicant to his verifying affidavit, I also note that the said inquiry order was made pursuant to sections 58 and

73 of the Cooperative Societies Act.

3. Section 74 of the Cooperative Societies Act in this respect provides as follows in cases where a person is aggrieved with an inquiry undertaken by the Commissioner of Co-operatives pursuant to the powers of inquiry provided in section 73:

“(1) Any person aggrieved by an order of the Commissioner under section 73(1) may, within thirty days, appeal to the Tribunal.

(2) A party aggrieved by the decision of the Tribunal may within thirty days appeal to the High Court on matters of law.”

4. It is my view that arising from the provisions in the said section, and the provisions of section 9 of the Fair Administrative Actions Act, 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. I also note that the Applicant’s application is not supported by a statement as required by Order 53 Rule1 of the Civil Procedure Rules, and is therefore incompetently filed.

5. I accordingly hereby direct and order as follows:

I. The *ex parte* Applicant is granted leave to file and serve a statement in support of his Chamber Summons dated 31st August 2020, within seven (7) days of today’s date.

II. The Applicant shall also serve the Respondent with the Chamber Summons dated 14th October 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.

III. The Respondent is granted leave to file and his response to the Chamber Summons dated 14th October 2020 and skeletal submissions thereon within twenty-one (21) days of service by the Applicant.

IV. The Chamber Summons dated 14th October 2020 shall be heard on 15th December 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 Chamber Summons dated 14th October 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 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 15th December 2020.

X. 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 Thursday, 15th October 2020.

XI. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE