



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1114 OF 2020

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE ENERGY AND PETROLEUM REGULATORY

AUTHORITY.....1st RESPONDENT

DIRECTOR GENERAL OF THE ENERGY

AND PETROLEUM REGULATORY AUTHORITY.....2nd RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....3rd RESPONDENT

EX PARTE APPLICANT: OCEAN GAS LIMITED

RULING

1. The *ex parte* Applicant herein has filed an application by way of a Chamber Summons dated 9th October 2020, seeking the following orders :

1. THAT the instant Application be certified as urgent and leave be granted to the Applicants to apply for the following Judicial Review orders:

a) Mandamus compelling the first and second Respondents herein to reopen and/or unseal the Applicant's Liquefied Petroleum Gas (LPG) cylinder refiling plant located at Donholm locality within Nairobi County by removing all the seals they placed on the said plant on 29th September 2020.

b) Certiorari to bring into the High Court for the purpose of quashing the decision of the first and second Respondents herein to close and/or seal the Applicant's Liquefied Petroleum Gas (LPG) cylinder refiling plant located at Donholm locality within Nairobi County on 29th September 2020.

c) Prohibition prohibiting the Respondents herein from unilaterally closing, sealing and or in any manner interfering by any raid with the Applicant's operation in relation to the Applicant's Liquefied Petroleum Gas (LPG) cylinder refiling plant located at Donholm locality within Nairobi County.

2. THAT the leave so granted do act as a stay of the first and second Respondent's decision to seal and/or close the Applicant's Liquefied Petroleum Gas (LPG) cylinder refiling plant located at Donholm locality within Nairobi County by directing them to remove the seals that might interfere with the normal operations of the Applicant's business operations within the Plant.

3. The costs of this application be provided for.

4. The said application is supported by a statutory statement dated 9th October 2020, and a verifying affidavit sworn on the same date by one Najib Abdallah, the *ex parte* Applicant's manager. Upon perusal of the application and supporting documents, I note that the *ex parte* Applicant states that it is also registered with the Energy and Petroleum Regulatory Authority (the 1st Respondent herein) to carry out the business of dealers in the storage filling and distribution of liquefied petroleum gas (LPG) cylinder and allied business, and is aggrieved by the decision of the 1st and 2nd Respondents herein to seal and close its company on 29th September 2020.

5. Section 25 of the Energy Act in this respect establishes the Energy and Petroleum Tribunal, and section 36 provides for the said Tribunal's jurisdiction as follows:

(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.

(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.

(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.

(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

(6) The Tribunal shall hear and determine matters referred to it expeditiously.

6. The Authority referred to in section 36 is the 1st Respondent, and it is consequently my view that arising from the said provisions of the Energy Act on the jurisdiction of the Energy and Petroleum Tribunal, 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.

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

I. The *ex parte* Applicant shall serve the Respondents with the Chamber Summons dated 9th 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.

II. The Respondents are granted leave to file and serve their responses to the Chamber Summons dated 9th October 2020 and skeletal submissions thereon within twenty-one (21) days of service by the *ex parte* Applicant.

III. The Chamber Summons dated 9th October 2020 shall be heard on 14th December 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 *ex parte* Applicant's Chamber Summons dated 9th October 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 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.

VII. 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.

VIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 14th December 2020.

IX. 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 Thursday, 15th October 2020.

X. Parties shall be at liberty to apply.

8. Orders accordingly.

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

P. NYAMWEYA

JUDGE