



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E052 OF 2020**

**KENYA PHARMACEUTICAL ASSOCIATION.....1<sup>ST</sup> APPLICANT**

**PATRICK ODUOR ADERA.....2<sup>ND</sup> APPLICANT**

**PETER ATANDI MOGERE.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**CHITECHI AMBOKA.....1<sup>ST</sup> RESPONDENT**

**WILLIAMSON CHUMBA.....2<sup>ND</sup> RESPONDENT**

**JOEL CHEGE.....3<sup>RD</sup> RESPONDENT**

**FREDRICK KIIO.....4<sup>TH</sup> RESPONDENT**

**AND**

**ASMAN CHITECHI.....1<sup>st</sup> INTERESTED PARTY**

**PHANISE ASUKA.....2<sup>nd</sup> INTERESTED PARTY**

**GREGORY LINTARI.....3<sup>rd</sup> INTERESTED PARTY**

**STEVEN OYAYA.....4<sup>th</sup> INTERESTED PARTY**

**CHANDOH MOSES.....5<sup>th</sup> INTERESTED PARTY**

**ERIC GICHANE.....6<sup>th</sup> INTERESTED PARTY**

**ISSAR NUR.....7<sup>th</sup> INTERESTED PARTY**

**JOHN NJENGA.....8<sup>th</sup> INTERESTED PARTY**

**EX PARTE APPLICANTS:**

**1. KENYA PHARMACEUTICAL ASSOCIATION**

**2. PATRICK ODUOR ADERA**

**3. PETER ATANDI MOGERE**

**RULING NO.3**

1. This matter was coming up today for the hearing of the *ex parte* Applicants’ substantive Notice of Motion, as directed by this Court on

17<sup>th</sup> August 2020. In the interim period this Court struck out two applications filed by both the *ex parte* Applicant and 1<sup>st</sup> *ex parte* Applicant, and reiterated that the substantive application proceeds to full hearing.

2. The Respondent has now filed yet another application by way of a Notice of Motion dated 18<sup>th</sup> September 2020, seeking the following orders:

**a. THAT the Court be pleased to declare the proceedings herein non-existent, null and void, and the same be struck out for failure to comply with Orders of 17.08.2020.**

**b. THAT costs of this Application and proceedings be borne by the 2nd and 3rd Applicants.**

3. The said application is supported by an affidavit sworn on 18<sup>th</sup> September 2020 by the 3<sup>rd</sup> Respondent, and is premised on the grounds that the *ex parte* Applicants have not complied with the directions given on 17<sup>th</sup> August 2020 as regards the filing and serving of the substantive Notice of Motion within fourteen days.

4. I have perused the Court record, and note that the *ex parte* Applicants did file a substantive Notice of Motion dated 18<sup>th</sup> August 2020, and have also filed an affidavit of service evidencing service of the said application on the Respondents. The Respondents application is therefore without any justifiable basis and cannot stand.

5. A letter by the *ex parte* Applicant's advocate dated 5<sup>th</sup> October 2020 addressed to the Deputy Registrar of the Judicial Review Division has also been brought to my attention. The *ex parte* Applicants allege that the Respondents persist to disobey this Court's orders, and are seeking specific clarifications of the said orders. There is however no application before this Court which it can act on, and the *ex parte* Applicants need to move the Court appropriately and properly in this regard, while bearing in mind that this Court has already addressed itself on the issue of clarification of its orders.

6. I accordingly order as follows:

**i. The Respondent's Notice of Motion dated 18<sup>th</sup> September 2020 is hereby dismissed with no order as to costs.**

**ii. The Respondents and Interested Parties shall file and serve their responses to the *ex parte* Applicant's Notice of Motion dated 18<sup>th</sup> August 2020 within fourteen (14) days of today's date.**

**iii. The *ex parte* Applicants shall thereafter file and serve the Respondent and Interested Parties with submissions on the Notice of Motion dated 18<sup>th</sup> August 2020 within fourteen (14) days of service.**

**iv. The Respondent and Interested Parties are granted leave to file their reply submissions within fourteen (14) days of service by the *ex parte* Applicants.**

**v. A judgment date on the *ex parte* Applicants' Notice of Motion dated 18<sup>th</sup> August 2020 shall be reserved at a hearing to be held on 19<sup>th</sup> November 2020.**

**vi. 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 Notice of Motion dated 18<sup>th</sup> August 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**vii. 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).**

**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 19<sup>th</sup> November 2020.**

**xxi. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant, Respondent and Interested Parties by electronic mail by close of business on Thursday, 8<sup>th</sup> October 2020.**

**Parties shall be at liberty to apply.**

7. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF OCTOBER 2020**

**P. NYAMWEYA**

**JUDGE**