



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISC APPLICATION NO. E057 OF 2020

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

BETWEEN

AFRISON EXPORT & IMPORT LIMITED.....1ST APPLICANT

HUELANDS LIMITED.....2ND APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

AND

MINISTRY OF INTERIOR AND COORDINATION

OF NATIONAL GOVERNMENT.....1ST INTERESTED PARTY

OFFICE OF THE PRESIDENT.....2ND INTERESTED PARTY

RULING

The Application

1. The Applicants herein have filed an application by way of a Chamber Summons dated 2nd November 2020, wherein they are seeking leave to apply for judicial review orders of Mandamus, compelling the Respondent to pay the Applicants the sum of Kshs. 100,000,000/= towards fulfilment of the judgment of the **HCCC No. 617 of 2012 - Afrison Export Imports Limited & Another vs Continental Credit Finance Limited (In liquidation) & others**. The said application is supported by a statutory statement dated 2nd November 2020, and an affidavit sworn on the same date by Francis Mburu, the 1st Applicant's Managing Director.

2. The main grounds for the application are that following the judgment in **HCCC No. 617 of 2012 - Afrison Export Imports Limited & Another vs Continental Credit Finance Limited (In liquidation) & others**, the Plaintiffs and Respondents negotiated the award in the judgment to Kshs.2,400,000,000. Further, that only part of the judgement has been satisfied, and that around December 2019, and upon inquiry from the 1st Interested Party, the Applicants were informed that a sum of Kshs. 100,000,000/= had been remitted to the Respondent towards fulfilment of the judgment. However, that the Respondent has declined to release the said money to the Applicants in spite of follow up.

3. The Applicants annexed copies of the decree and consent entered into between the parties in in **HCCC No. 617 of 2012 - Afrison Export Imports Limited & Another vs Continental Credit Finance Limited (In liquidation) & others** in support of its application.

The Determination

4. The applicable law on leave is *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The reasons for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMA No. 384 of 1996** are firstly, to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless; and secondly, to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

5. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was explained by Lord Bingham in **Sharma vs Brown Antoine (2007) I WLR 780**, that a ground of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success, however, that the test is flexible depending on the nature and gravity of the issues.

6. In the present application, I note that the Applicants have not provided any evidence of compliance with the Government Proceedings Act, and in particular, they have not provided any evidence of a Certificate of Order Against the Government issued to them or service thereof in respect of the judgment they seek to enforce against the Respondent.

7. In the circumstances, I find that the Respondent and Interested Parties need to be given an opportunity to respond to the Chamber Summons. I accordingly order as follows:

I. The Applicants shall serve the Respondent and Interested Parties with (i) the Chamber Summons dated 2nd November 2020, (ii) skeletal submissions thereon, (iii) a copy of this ruling, and (iv) a mention notice within twenty-one (21) days of today's date

II. The Respondent and Interested Parties are granted leave to file and serve their responses to, and skeletal submissions on the Chamber Summons dated 2nd November 2020 within twenty-one (21) days from the date of service.

III. This matter shall be mentioned on 20th January 2021 to confirm compliance and for further directions.

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 dated 2nd November 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

V. 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 mention on 20th January 2021.

IX. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicants by electronic mail by close of business on Thursday, 5th November 2020.

X. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE