



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW MISC APPLICATION NO. E056 OF 2020**

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

**BETWEEN**

**DANIEL NJIRU NGAI.....APPLICANT**

**VERSUS**

**NATIONAL COUNCIL FOR**

**PERSONS WITH DISABILITIES.....1<sup>ST</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**RULING**

**The Application**

1. The Applicant herein filed an application on 2<sup>nd</sup> November 2020 by way of a Chamber Summons dated 8<sup>th</sup> July 2020, wherein he is seeking the following orders:

1. That the Application to be certified as urgent and be heard in the first instance "Exparte".
2. Leave for an Order of Mandamus compelling the 1<sup>st</sup> Respondent, National Council for Persons with Disabilities to issue a recommendation letter in the name of the Applicant herein, to the Commissioner of Income Tax, the 2<sup>nd</sup> Respondent for processing and exemption.
3. Leave for an Order of Certiorari to move the High court to remove into this court and quash the decision of the 1<sup>st</sup> Respondent declaring the Applicant's application for tax exemption unsuccessful.
4. Leave be granted to the Applicant to apply for an order of Mandamus compelling the 2<sup>nd</sup> Respondent to issue the Applicant with a tax exemption certificate.
5. Leave for A Declaration that the National Council for Persons with Disabilities , the 2<sup>nd</sup> Respondent herein is in breach of it's duty under section 35(2) and 42 of the Persons with Disability Act, No. 14 of 2003.
6. Leave be granted to the Applicant to apply for a Declaration that the National Council for Persons with Disabilities is in breach of it's duty under section 35(2) of the Persons with Disability Act, No. 14 of 2003.
7. Further or in the alternative damages arising from the matters herein and interest thereon.
8. The leave so granted do operate as stay of the revocation and/or lapse of the Applicant's tax exemption status pending the filing, hearing and determination of the substantive application
9. The Applicant hereby requests a hearing of this application before the Judge pursuant to Rule 3 of Order 53 of the Civil Procedure Act.

**10. If leave to apply is granted, a direction that the hearing of the application for judicial review be expedited.**

**11. That costs of this application be provided for.**

2. The said application is supported by a statutory statement dated 8<sup>th</sup> July 2020, and an affidavit sworn on the same date by the Applicant. The main ground for the application is that the *ex parte* Applicant was previously issued with an Income Tax Exemption Certificate of persons with Disabilities under the Persons with Disabilities Act, and the Respondents have refused to recommend the renewal of, and to renew his tax exemption certificate.

3. Upon perusal of the application, I note that while the Applicant annexed copies of his membership card with the National Council for Persons with Disability, the tax exemption certificate issued to him, and letters written to the Respondents on renewal of the said tax exemption, he has not annexed evidence of the decision made by the 1<sup>st</sup> Respondent that he is challenging. This is particularly relevant given that the letters written by his advocate to the said Respondents on the said decision are dated 20<sup>th</sup> October 2019 and 19<sup>th</sup> February 2020, which is over the six months' time limit for filing an application for certiorari provided for by *Order 53 Rule 2* of the Civil Procedure Rules.

4. In the premises, I find that the threshold of an arguable case has not been met by the Applicant for grant of leave, and I hereby order as follows:

**I. The Applicant is granted leave to file and serve a supplementary affidavit annexing evidence of the decisions by the Respondents that are the subject of the Chamber Summons dated 8<sup>th</sup> July 2020 within fourteen (14) days of today's date.**

**II. The Chamber Summons dated 8<sup>th</sup> July 2020 shall be heard on 16<sup>th</sup> December 2020.**

**III. 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 8<sup>th</sup> July 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.**

**IV. 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).**

**V. 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).**

**VI. 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).**

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

**VIII. 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, 5<sup>th</sup> November 2020.**

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

5. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF NOVEMBER 2020**

**P. NYAMWEYA**

**JUDGE**