



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1102 OF 2020

JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CLERK OF THE NATIONAL ASSEMBLY.....1ST RESPONDENT

THE NATIONAL ASSEMBLY.....2ND RESPONDENT

AND

THE CABINET SECRETARY, MINISTRY OF INDUSTRIALISATION,

TRADE & ENTERPRISE DEVELOPMENT.....1ST INTERESTED PARTY

OFFICE OF DIRECTOR OF

PUBLIC PROSECUTIONS.....2ND INTERESTED PARTY

ETHICS & ANTI-CORRUPTION

COMMISSION.....3RD INTERESTED PARTY

DIRECTORATE OF CRIMINAL

PROSECUTION.....4TH INTERESTED PARTY

PUBLIC PROCUREMENT REGULATORY AUTHORITY.....5TH INTERESTED PARTY

NAIVANA AGENCIES

LIMITED.....PROPOSED INTERESTED PARTY/APPLICANT

EX PARTE:

BERNARD NJIINU NJIRAINI

RULING NO. 2

1. Naivana Agencies Limited (hereinafter “the Proposed Interested Party”) has filed an application by way of a Notice of Motion dated 28th October 2020, seeking orders that it be joined as an Interested Party in the instant proceedings, and that the *ex parte* Applicant herein be directed to serve it with the substantive Notice of Motion. The application is supported by an affidavit sworn on the same date by Benedict Kabugi Ndungu, the Proposed Interested Party’s Managing Director.

2. The main grounds for the application are that the instant judicial review proceedings are challenging the implementation of the National Assembly's Public Investment Committee Report dated 29th May 2020 on Consideration of the Special Audit Report on the Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards, and the *ex parte* Applicant has invoked and heavily relied upon previous proceedings commenced by the Proposed Interested Party in Judicial Review Application No. 66 of 2020 and Request for Review Application No. 18 of 2020 as one of the grounds for the grant of the prayers he is seeking.

3. Therefore, that the proposed Interested Part has a direct interest in the instant proceedings as contemplated under Order 53 Rule 3(2) of the Civil Procedure Rules. Lastly, the Proposed Interested Party also set out the arguments it wishes to advance at the hearing of the *ex parte* Applicant's substantive application, and sought to be joined and served with the said application so that it is not prejudiced.

4. As this is an application that seeks to join a party who claims to be directly affected, and therefore a necessary parties in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules, I find that the application can be heard *ex parte*. In addition, the Proposed Interested Party has provided evidence that it was a party in Public Procurement Administrative Review Board in Application No. 18 of 2020, and High Court Judicial Review Application No. 66 of 2020 which the *ex parte* Applicant has relied upon it its judicial review proceedings against the Respondent, which is also borne out by the *ex parte* Applicant's pleadings. In addition, to the extent that it has a grievance and interest in the investigations by the Respondent having been the complainant therein, it is a necessary party in the instant proceedings.

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

i. The Notice of Motion application dated 28th October 2020 is certified urgent and is admitted to hearing *ex parte*.

ii. Naivana Agencies Limited is hereby joined to this suit as the 6th Interested Party.

iii. The 6th Interested Party shall serve the *ex parte* Applicant with the substantive Notice of Motion dated 28th October 2020 and a copy of this ruling within two (2) days of today's date.

iv. Upon service, the *ex parte* Applicant be required to serve the 6th Interested Party with the substantive Notice of Motion, and the Chamber Summons dated 18th September 2020 and its supporting documents within three (3) days.

v. This matter shall be mentioned on 9th November 2020 for further directions.

vi. There shall be no order as regards the costs of the Notice of Motion dated 28th October 2020.

vii. 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 matter shall be heard on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

viii. 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.

iv. 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.

v. 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.

vi. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 9th November 2020.

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

vii. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE