



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 18 OF 2019**

**IN THE MATTER OF: AN APPLICATION FOR THE JUDICIAL REVIEW BY MUHIDIM SALUM FARAHANI**

**AND**

**IN THE MATTER OF: REFUSAL BY THE DISTRICT CRIMINAL INVESTIGATION OFFICER (DCIO) KILINDINI PORT POLICE, THE OFFICER COMMANDING POLICE DIVISION (OCPD) KILINDINI PORT POLICE, THE OCS KILINDINI PORT POLICE TO RELEASE FIVE CONTAINERS BELONGING TO THE APPLICANT FOR VERIFICATION PROCESS BY THE KENYA REVENUE AUTHORITY AND KENYA PORTS AUTHORITY**

**BETWEEN**

**MUHIDIN SALUM FARAHANI.....APPLICANT**

**AND**

- 1. THE DISTRICT CRIMINAL INVESTIGATION OFFICER (DCIO)**
- 2. THE OFFICER COMMANDING POLICE DIVISION (OCPD) KILINDINI PORT POLICE**
- 3. THE OFFICER COMMANDING STATION (OCS) KILINDINI PORT POLICE**
- 4. THE ATTORNEY GENERAL.....RESPONDENTS**

**AND**

**HUSSEIN MURSAL KHEYRE.....INTERESTED PARTY**

**RULING**

1. The Ex parte Applicant first moved this Court on 3<sup>rd</sup> April, 2019 seeking the leave of this Court to commence proceeding for Judicial Review remedy of mandamus. The said leave was granted and the Ex parte Applicant directed to file the substantive Notice of Motion within 7 days as from 3<sup>rd</sup> April, 2019.
2. The substantive Notice of Motion was filed on 9<sup>th</sup> April, 2019. However, in both the applications for leave and in the substantive Notice of Motion the heading of these proceedings is referred to as "Miscellaneous Application".
3. In the prayer however the Applicant is seeking orders of Judicial Review under Order 53 Rules 1, 2, 3 and 4 of the Civil Procedure Rules.
4. In the course of these proceedings it became necessary for parties to call oral evidence. The Court realized that the proceedings had evolved from Judicial Review proceedings to those of a suit in which parties are at liberty to call evidence. It also became clear that the disputed issues cannot be resolved by way of Judicial Review but only in a proper suit by way of plaint or an Originating Summons. It became necessary therefore to discontinue these proceedings.
5. The parties agreed that this Court makes a Ruling to the effect of the foregoing and gives leave to parties to initiate fresh proceedings in proper forum which admits oral evidence.

6. In light of the foregoing this Court makes the following orders on the application:

(a) Application dated 3<sup>rd</sup> April, 2019 is withdrawn.

(b) Parties are at liberty to file appropriate proceedings in a forum which admits oral evidence.

(c) Parties to bear own costs herein.

**Dated, Signed and Delivered in Mombasa this 14<sup>th</sup> day of October,**

**2019.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

No Appearance for Applicant

Mr. Wachira for Respondents

Mr. Muchiri for Interested Party

Mr. Kaunda Court Assistant