



Republic v Judicial Service Commission; Sheria Mtaani na Shadrack Wambui & another (Exparte Applicants) (Judicial Review Application E003 of 2021) [2021] KEELRC 1566 (KLR) (28 April 2021) (Ruling)

Republic v Judicial Service Commission Ex parte Sheria Mtaani Na Shadrack Wambui & another [2021] eKLR

Neutral citation: [2021] KEELRC 1566 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E003 OF 2021
NZIOKI WA MAKAU, J
APRIL 28, 2021**

BETWEEN

REPUBLIC APPLICANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

AND

SHERIA MTAANI NA SHADRACK WAMBUI EXPARTE APPLICANT

NADI BORU MOHAMMED EXPARTE APPLICANT

RULING

1. The Application before me for determination is the Ex parte Applicants’ notice of motion application dated 17th February 2021 seeking stay of the Respondent’s decision regarding the recruitment of 50 Resident Magistrates. At the time leave was sought and granted, the learned Judge seized of the matter did not grant leave to operate as stay. As such this motion now canvasses the issue of stay post grant of leave. The Applicants assert that the determination would be rendered nugatory if the stay sought is not granted.
2. The Judicial Service Commission in a replying affidavit sworn by its Secretary the hon. Anne Amadi Chief Registrar of the Judiciary
3. In this case, it being clear that leave to apply for judicial review orders having been granted by this Court and the substantive motion having been filed, the chamber summons application for leave and attendant stay is spent. This Court is therefore bereft of jurisdiction to entertain a part only of the



chamber summons application that was substantially dealt with by the Court on hearing the *ex parte* Applicants, as the application is incapable of truncation. I am of the firm view that the application for leave to operate as a stay is *res judicata*, the same having been categorically declined by the Court and this Honourable Court as presently constituted is *ipso facto, functus official* on the question of leave operating as stay as the parties were heard on the same on merit. The fate that befalls the motion before me is dismissal with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL 2021

NZIOKI WA MAKAU

JUDGE

