



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**MISC APPLICATION NO E050 OF 2020**

**KENYA COUNCIL OF EMPLOYMENT AND**

**MIGRATION AGENCIES.....APPLICANT**

**VERSUS**

**HON. ATTORNEY.....1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY,**

**NATIONAL TREASURY AND PLANNING.....2<sup>ND</sup> RESPONDENT**

**SPEAKER OF NATIONAL ASSEMBLY.....3<sup>RD</sup> RESPONDENT**

**CLERK OF NATIONAL ASSEMBLY.....4<sup>TH</sup> RESPONDENT**

**STATE DEPARTMENT FOR PUBLIC SERVICE.....5<sup>TH</sup> RESPONDENT**

**AND**

**STATE DEPARTMENT FOR PUBLIC SERVICE.....1<sup>ST</sup> INTERESTED PARTY**

**PUBLIC SERVICE COMMISSION OF KENYA.....2<sup>ND</sup> INTERESTED PARTY**

**ETHICS & ANTI- CORRUPTION COMMISSION.....3<sup>RD</sup> INTERESTED PARTY**

**EMBAKASI CENTRAL MEMBER OF PARLIAMENT**

**BENJAMIN GATHIRU.....4<sup>TH</sup> INTERESTED PARTY**

**JANE CHEGE.....5<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. Before Court is an application dated 26<sup>th</sup> October 2020 and filed in Court on 30<sup>th</sup> October 2020. The application is incoherent in several respects and difficult to follow, however the applicant appears to seek interim orders to prohibit the National Assembly from deliberating and debating the Public Service (**Amendment**) Bill, 2019 which is at the second reading in the National Assembly and to quash the decision of the respondents contained in the motion in parliament.

2. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents raised a preliminary objection that the Court lacks jurisdiction to hear and determine this matter which is pending in Parliament.

3. That the application offends the provisions of Order 53 of the Civil Procedure Rules, 2010 which provides for the documents to be filed when seeking leave of Court in judicial review.

4. Firstly, the Court finds that the application is drafted in an incoherent manner making it difficult for the Court to discern the applicant's grievance against the respondents and the interested parties.

5. The applicant has stated that the impugned Bill has been debated up to the second reading. Following the principles set out by the Supreme Court in Justus Kariuki Mate & Another –vs- Martin Nyaga Wambora & Another [2017] eKLR, the Court is satisfied that the application and the suit has been brought prematurely and this Court is loath to interfere in proceedings pending before an independent state organ which fact is admitted by the applicant. The Supreme Court stated in this respect: -

**“for the due functioning of Constitutional governance, the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case.”**

6. The applicant has not established any *prima facie* justification for the Court to grant conservatory orders in this matter stopping parliament from carrying out its lawful mandate.

7. In any event, as was rightly stated by the Court in Robert N. Gakuru –vs- Governor Kiambu County & 3 Others (2013) eKLR, when a bill is pending before the Assembly, be it County or National, it may be passed or not and the public can always exercise their rights once the legislative process is completed.

8. Furthermore, due to the incoherent nature of the application, the applicant has not justified grant for leave to file a substantive motion under Order 53, Rule 1(1) (3). The present application does not have an affidavit verifying the statutory statement. Instead the Application has two supporting affidavits, one in support of the Certificate of Urgency and another in support of the Chamber Summons.

9. In striking out an application for judicial review in Meshack Aluvaale –vs- Attorney General and 3 Others 1 [2013] eKLR, the Court stated: -

“In a Judicial Review application, it is the affidavit that is of circumstantial value but not the statement of facts. In the instant case, the verifying affidavit comprises, only three short paragraphs, which are introductory in nature. The facts and annexures relevant to the application are all contained in the statement of facts which is offensive to Order 53, Rule (1) (2) Civil Procedure Rules – without facts in the verifying affidavit which is filed with the Chamber Summons, the judicial review application is naked and cannot be sustained. I do agree with the respondent that without evidence in support of the application, the same is incompetent and fatally defective and must be struck out.”

1. In the present application, I agree with the respondent and the interested parties that the application is vague, incoherent and lacks a verifying affidavit to the statement of facts and it must be struck out as prayed in the Preliminary Objection.

2. This position was well supported in Republic –vs- Busia Chief Magistrate and 2 Others - Exparte - Mathias Murumbe Makokha [2016] eKLR where it was restated that the legal position on Judicial Review remains that it is the verifying Affidavit not the statement to be verified which is of evidential value.

3. Accordingly, the Preliminary Objection is upheld and the application is struck out.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Odukenya for 1<sup>st</sup> and 2<sup>nd</sup> Respondents and 1<sup>st</sup> and 2<sup>nd</sup> interested parties.

Mrs Okwara for 3<sup>rd</sup> interested party.

Evans Nyabega for Exparte Applicant

Ekale – Court clerk