



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

JUDICIAL REVIEW APPLICATION NO. 1 OF 2020

IN THE MATTER OF 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CHAPTER 40 OF THE LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE ACT

-AND-

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

REPUBLIC.....APPLICANT

-VERSUS-

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

COMMISSIONER OF POLICE

MAKUENI COUNTY BASE COMMANDER.....2ND RESPONDENT

SULTAN HAMUD TRAFFIC BASE.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

-AND-

PETER MWANYIVU MUNYIKA.....1ST EX-PARTE APPLICANT

JOSPHINE NJOKI CHORONGO.....2ND EX-PARTE APPLICANT

EMILY MASAGO GIBSON.....3RD EX-PARTE APPLICANT

MARTHA MAWASI MWAVULA.....4TH EX-PARTE APPLICANT

CHRISPIN KILILO MIGANYO5TH EX-PARTE APPLICANT

MATILDA MAWASI MGHANGA.....6TH EX-PARTE APPLICANT

THOMAS MAWORA KITIMO.....7TH EX-PARTE APPLICANT

ROZA WALEGWA MATATA.....8TH EX-PARTE APPLICANT

JACKSON MWARIMBO MWAKICHUCHU... 9TH EX-PARTE APPLICANT

GREGORY NDICHILA MWANGANYI.....10TH EX-PARTE APPLICANT

THOMAS LEGWA MAGEMBA.....11TH EX-PARTE APPLICANT

RULING

1. Before me is a Notice of Motion dated 20th August 2020 filed by several ex-parte Applicants herein through counsel Mr. Shem Kebongo & Co seeking the following judicial review orders:

1) An order of mandamus directed to the Respondents to compel the 3rd Respondent to fill and issue police abstracts to the ex-parte Applicants who were involved in a road traffic accident on 04/03/2018.

2) A declaration that the 3rd Respondent is in breach of their duty under the law in that he failed to file and issue police abstracts to the ex-parte Applicants.

3) An order for costs.

2. The application was brought under Order 53 Rule 1 of the Civil Procedure rules (Cap 21) and the provisions of the Government Proceedings Act (Cap 40). Leave to file the substantive Notice of Motion herein was granted by the court on 10th August 2020.

3. The application is supported by the Statutory statement of the Applicants which lists the grounds for the reliefs sought as well as a verifying affidavit sworn by the 1st Applicant on 30/07/2020 which provides the facts relating to the road traffic accident in question and the reluctance by the police at Sultan Hamud to issue police abstracts to the ex-parte Applicants in respect of the said traffic accident.

4. Though the application was served on the Respondents in October 2020 and acknowledged through endorsement of office stamps thereon, no response has been filed by any of the Respondents by the time of hearing the same.

5. The ex-parte Applicants counsel filed written submissions on 10th December 2020 but none of the Respondents filed written submissions or response to the application and thus on 10/12/2020 the court fixed a ruling date. I have to mention that the counsel for the Applicants relied on the case of **Kenya National Examinations Council –vs- Republic – Exparte Geoffrey Gathenji & Others – Nairobi Civil appeal No. 266 of 1996** to emphasize that the judicial review court can issue mandamus orders.

6. Having considered the application, documents filed and submissions filed for the ex-parte Applicants, I note that under the Police Act, only police officers can issue a police abstract to members of the public in Kenya. Thus in my view, it is their duty to do so provided the Applicant for the abstract pays the requisite Government charges to the same. In any event, if there is any lawful reason for denying issuance of the same, such reason can and should be communicated to the Applicant for such police abstract. In the present case the police have neither issued the police abstracts applied for to the ex-parte Applicants, nor have they communicated to them any lawful reason for their failure to do so although they issued them with medical examination or P3 forms. Thus this application not being opposed has to succeed with respect to the prayers regarding issuance of police abstracts.

7. In their application the Applicants have also asked for a declaration be issued against the 3rd Respondent. The traditional English Judicial review orders were limited to orders of certiorari mandamus and prohibitions. However, Article 22 of the Constitution of Kenya 2010 appears to have expanded the scope of judicial review orders and made judicial review proceedings a constitutional matter. In that context, it appears that declarations may be issued in appropriate cases in judicial review proceedings.

8. Having said so, the law under Order 53 of the Civil Procedure Rules (Cap 21) requires that the reliefs sought by an Applicant have to be those contained in the Statutory Statement filed with the Chamber Summons for leave. In the present case, the only substantive reliefs contained in the Statutory Statement is a prayer for mandamus. There being no request to amend reliefs sought to add another prayer, in my view this court cannot grant the declaration sought against the 3rd Respondent.

9. I will add that even where reliefs are properly sought, the grant of judicial review orders is an exercise of discretionary power of the court and may or may not be granted for reasons to be stated by the court in each case.

10. I thus allow the application dated 20th August 2020 to the extent that I order as follows:

1) An order of mandamus be and is hereby issued directed at the Respondents to compel the 3rd Respondent to fill and issue police abstracts to the ex-parte Applicants who were involved in a road traffic accident on 04/03/2018.

2) I award the cost of these proceedings to the ex-parte applicants against the Respondents jointly and severally.

Delivered, signed & dated this 15th day of February 2021, in open court at Makueni.

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GEORGE DULU

JUDGE