



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

JUDICIAL REVIEW CASE NO. 3 OF 2019

IN THE MATTER OF AN APPLICATION BY MOLLY

CHEPTUBE HARRY FOR THE JUDICIAL REVIEW ORDERS OF CERTIORARI,

PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF BARINGO COUNTY GOVERNMENT SINGLE BUSINESS PERMIT BY-LAWS

AND

IN THE MATTER OF ALCOHOLIC DRINKS CONTROL ACT 2010

AND

IN THE MATTER OF BARINGO COUNTY GOVERNMENT,

ELDAMA RAVINE ALCOHOLIC DRINKS LICENSING ACT, 2014

AND BARINGO COUNTY ALCOHOLIC DRINKS CONTROL ACT, 2014

AND

IN THE MATTER OF FOOD, DRUGS AND CHEMICAL SUBSTANCES

(FOOD HYGEINE) REGULATIONS CAP 254 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE LIQUOR LICENSING OR ALCOHOLIC

DRINKS LICENSE FOR 2020 FOR KIPSAFARI PUB, ELDAMA RAVINE

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

TOWN ADMINISTRATOR, ELDAMA RAVINE SUB-COUNTY,

BARINGO COUNTY GOVERNMENT.....1ST RESPONDENT

THE CHAIRMAN ELDAMA RAVINE

ALCOHOLIC DRINKS REGULATION COMMITTEE.....2ND RESPONDENT

THE COMMITTEE SECRETARY ELDAMA RAVINE

ALCOHOLIC DRINKS REGULATION COMMITTEE.....3RD RESPONDENT

BARINGO COUNTY ALCOHOLIC DRINKS REGULATION

ADMINISTRATIVE REVIEW.....4TH RESPONDENT

THE COUNTY SECRETARY,

BARINGO COUNTY GOVERNMENT.....5TH RESPONDENT

THE CEC HEALTH, BARINGO COUNTY GOVERNMENT

DEPUTY COUNTY COMMISSIONER.....6TH RESPONDENT

ELDAMA RAVINE SUB-COUNTY.....7TH RESPONDENT

OCPD ELDAMA RAVINE POLICE DIVISION.....8TH RESPONDENT

AC, ELDAMA RAVINE SUB COUNTY.....9TH RESPONDENT

EX-PARTE, MOLLY CHEPTUBE HARRY

RULING

In the course of preparing the instant ruling in respect of the preliminary objection which was raised by the 1st to the 6th respondents it came to light that there was a pending application dated 19th March 2021 for the enlargement of time within which to file the substantive notice of motion in respect of the ex parte applicant's judicial review application.

The preliminary objection is in the following terms. “

1. *That the ex-parte applicant’s notice of motion application and the entire judicial review application is defective, frivolous and incompetent as the court has no jurisdiction to entertain the matter.*
2. *That the notice of motion application and judicial review offends the provisions of section 9(2) and (3) of the Fair Administrative Action Act No. 4 of 2015.*
3. *Such other points/reasons to be adduced at the hearing.”*

Interestingly counsel for the 1st to the 6th respondents raised the issue that the ex parte applicant did not file his notice of motion within the 21 days that is allowed by Order 53 Rule 3 of the Civil Procedure Rules 2010.

In the circumstances, I find that it is only prudent and fair that the pending application be disposed of first before considering the issue of the preliminary objection.

It is so ordered.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS 21ST DAY OF APRIL 2022.

J M BWONWONG’A

JUDGE

In the presence of: -

Kinyua: Court Assistant

Ms Jelagat holding brief for Mr. Arusei for the ex parte applicant

Mr. Kiptoon for the 1st, 2nd, 3rd, 4th, 5th and the 6th respondents.

The 7th, 8th and 9th respondents did not participate in these proceedings.



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