

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR NO.....E1089.....OF 2020

IN THE MATTER FOR AN APPLICATION FOR LEAVE BY BARASA KUNDU NYUKURI TO APPLY FOR ORDERS OF PROHIBITION AND CERTIORARI IN THE MATTER OF ARTICLES 2(1) AND 2(2), 20, 22, 23, 25 (a) AND (c), 29 (D), 39, 47, 49, 157(10) AND (11) AND 159 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTIONS 4 (1), (2) AND (3), 6, 7 AND 9(1) OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF THE INTENDED KIBERA CRIMINAL CASE NO. 389 OF 2020 REPUBLIC -VS- BARASA KUNDU NYUKURI

BETWEEN

BARASA KUNDU NYUKURI..... EX-PARTE APPLICANT

VERSUS

THE KIBERA CHIEF MAGISTRATES COURT..... 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS..... 2ND RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.... 3RD RESPONDENT

IN CHAMBERS ELECTRONICALLY ON 25TH AUGUST 2020

BEFORE JUSTICE J. M MATIVO

ORDER

UPON READING the Application dated 25th August, 2020 and brought to Court on the same day by Counsel for the Applicant and brought Under Order 53 of the Civil Procedure Rules, Section 8 (1) and 9 of the Law Reform Act and all other enabling provisions of the Law AND UPON READING the Statement dated 25th day of August, 2020 and Verifying Affidavit of **BARASA KUNDU NYUKURI** sworn and the annexures thereto, AND WHEREAS THIS MATTER is coming up in Chambers;

IT IS HEREBY ORDERED

1. THAT the application be and is hereby certified as urgent and the same is admitted for hearing on a priority basis.
2. THAT leave be and is hereby granted to the ex-parte Applicant to apply for Judicial Review by way of an Order of CERTIORARI to remove into the High Court for purpose of it being quashed the Decision of the 2nd Respondent to charge the Applicant before the 1st Respondent or any other Court relating the possession of file reference number CS/CO/VOL.1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly.
3. THAT leave be and is hereby granted to the ex-parte Applicant to apply for Judicial Review by way of an Order of PROHIBITION to prohibit the 2nd Respondent from preferring any charge against the Applicant relating to the possession of file reference number CS/CO/VOL. 1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly.
4. THAT the leave herein granted shall operate as stay of the any decision to arrest, charge, investigate or summon the Applicant in relating to his possession of file reference number CS/CO/VOL. 1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly pending the hearing and determination of the substantive motion.
5. THAT WITHOUT PREJUDICE to the generality of the foregoing, pending the hearing and determination of the substantive application, the leave herein granted shall operate as stay of the Respondents decision to arrest, detain, charge, prosecute or in any manner institute criminal charges against the applicant in any court in Kenya premised on the facts particularized in the charge the dated 25th August 2020 or any facts arising or related to the complainant's complaint which triggered the impugned decision.
6. THAT the Applicant is directed to file and serve the substantive application within 15 days.
7. THAT the Applicant is directed to enjoin the complainant in the substantive application as an interested party and serve it with all the pleadings filed.
8. THAT Mention via video link for directions on hearing on 12th October, 2020 at 12.00 noon.

GIVEN under my Hand and the Seal of this Honorable Court this 25TH day of August, 2020

ISSUED at Nairobi this.....25TH.....day of.....AUGUST.....2020


DEPUTY REGISTRAR JR NO. E1089 OF 2020

HIGH COURT OF KENYA, NAIROBI