



**Kariuki v Board of the Tourism Regulatory Authority & 2 others
(Constitutional Petition E340 of 2022) [2023] KEHC 18453 (KLR)
(Constitutional and Human Rights) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E340 OF 2022**

HI ONG'UDI, J

MAY 31, 2023

BETWEEN

AGNES KARIUKI PETITIONER

AND

**THE BOARD OF THE TOURISM REGULATORY AUTHORITY 1ST
RESPONDENT**

**CABINET SECRETARY MINISTRY OF TOURISM & WILDLIFE 2ND
RESPONDENT**

THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Petition dated 6th July 2022 was filed pursuant to Article 22(2) of *the Constitution*. The Petitioner claims violation of her rights and those of other members of the public contrary to Articles 10, 22, 23, 35, 47, & 232 of *the Constitution*. She therefore prays for the following orders:
 - a. A declaration that the ongoing recruitment pursuant to the Vacancy Notice titled, “Advertisement for Job Vacancy Director General – Ref: TRA/1/10” offends Articles 10, 22, 23, 35, 47, and 232(1) of the Constitutional, unlawful, null and void.
 - b. A declaration that the failure to make public the names of all Applicants and provide meaningful public participation in the recruitment process pursuant to the vacancy Notice titled “Advertisement for Job Vacancy Director General – Ref: TRA/1/10” offends Articles 10, 22, 23, 35, 47, and 232(1) of *the Constitution*.



- c. The Honourable Court be pleased and do grant a judicial review order of prohibition to prohibit the 1st Respondent from proceeding with the ongoing recruitment pursuant to the Vacancy Notice titled “Advertisement for Job Vacancy Director General – Ref: TRA/1/10”.
- d. An order of Prohibition restraining the Board of the Tourism Regulatory Authority from conducting the process of recruiting a Director General until it is fully constituted as per the requirements of Section 8 of the Tourism Act and appointment of the two representatives of the Tourism Sector Associations to the Board is done.
- e. An order directing the Board of the Tourism Regulatory Authority to observe due process in the advertising, interviewing and selection of a Director General in accordance with Article 47 of the constitution of Kenya.
- f. An order quashing the Vacancy Notice titled “advertisement for Job Vacancy Director General – Ref: TRA/1/10” and entire process of recruitment of Director General and directing the Board of the Tourism Authority to commence a new recruitment process that adheres to the Constitution.
- g. Any other order the court may deem fit to grant
- h. Costs of this Petition.
- i. Any other order the court may deem fit to grant.

The petitioner’s case

2. The Petition is supported by the petitioner’s affidavit of even date. Together with the Petition was filed a Notice of Motion of even date seeking to stop the recruitment of the Director General. The orders were not issued and so the exercise proceeded on and a Director General was recruited.
3. The petitioner deponed that the period of 14 days between the date of advertisement and close of applications was too short for preparation by the applicants. Further that the short-listed candidates names were never published for members of the public to submit views on them. Instead the candidates were privately contacted avoiding fair competition, and transparency. She attached copies of letters of invitation for the interviews held between 11th – 14th July 2022 (AK-3). This she depones is a violation of Article 10(2) a & e of the Constitution.
4. She further averred that the board as constituted lacked representation from the Tourism sector association as required by the Tourism Act 2011. She annexed Gazette Notice No. 7551 of 2nd October 2015 and Gazette Notice No. 5462 of 7th August 2020 on appointment of independent board members to the 1st respondent, (AK-5 &6). The prayers the petitioner sought in the Notice of Motion dated 6th July 2022 are similar to those in the main Petition.

The respondent’s case

5. The response was done through the replying affidavit by Mr. Sila Muthuva the Director, Corporate service of the 1st respondent. It is dated 8th September 2022. He deposed that the 1st respondent is appointed pursuant to Section 8 of the Tourism Act 2011 and governed by the second schedule of the Act, State Corporations Act and Mwongozo guidelines. On recruitment of a Director General for the Authority he referred to section 14(1) & (2) of the Tourism Act 2011 on the guidelines and requirement. He too referred to the advertised position of Director General Ref No. TRA /1/10 on 13th May 2022 in the Daily Nation and Standard Newspapers as well as its website (SM-1).



6. He averred that there was no-known legal provision on the time frame for closure of employment applications. To him the 14 days period complained of was sufficient, and they never received any complaint on this. Further that at the close of the 14 days, the 1st respondent had received a total of fifty (50) applications after which the qualified candidates were shortlisted (SM-2) for interviews which were conducted between 12th – 15th July 2022. (SM-3). Thereafter the selection was done and the Cabinet Secretary did the appointment from three (3) candidates presented to him (SM-4 & 5).
7. He further deposed that there was no legal requirement for the 1st respondent to publish names of applicants, shortlisted candidates and invite comments from the public as alleged by the petitioner. Additionally the petitioner never requested for information with regard to the applications and recruitment. On the quorum of the board he deposed that the membership was sufficient as per the requirement under the second schedule paragraph 4 of the *Tourism Act*, 2011, and clause 1.1. of the Mwingozo guidelines.

Submissions

The Petitioner's submissions

8. These are dated 24th October 2022 and were filed by the firm of Makaka & Co. advocates. Counsel submitted that the Notice of Motion, was overtaken by events as interviews were conducted and a substantive office holder appointed. On whether the process of recruitment violated the constitutional requirement for public participation he answered in the positive. He contended that public participation was a national value which had to be complied with. He referred to the case of *Community Advocacy and Awareness Trust & others v. Attorney General & 6 others* [2012] eKLR at paragraph 73 where the court stated in relation to appointment to a public officer as follows:

“27th August ushered in a new regime of appointment stop public office. Whereas the past was characterised by open corruption, tribalism, nepotism, favouritism, scrapping the barrel and political patronage, the new dispensation requires a break from the past. *The Constitution* signifies at the end of ‘job for the boys’ era. Article 10 sets out the values that must be infused in every decision – making process including that of making appointments.” Emphasis added)
9. On public participation counsel submitted that the respondents did not publish a list of applicants, and the short listed candidates. They did not also grant the public an opportunity to give their views and comments on the shortlisted candidates. Thus the process disregarded the law, was unprocedural and in complete violation of Articles 10, 35, 47 & 232 of *the Constitution*. Counsel submitted that once the respondents indicated that only shortlisted candidates would be contacted, it meant they had set out to conduct a process that would be shrouded in secrecy, devoid of transparency, accountability and any involvement of the public.
10. On the need for public participation counsel referred to the case of *Okiya Omtatah Okoiti & 3 others v. Nairobi City County & 5 others* [2014] eKLR paragraph 122 where the court held:

“The 1st respondent had overlooked a standard for public appointments imposed on it by *the Constitution*. Even had the *Water Act* & Corporate Governance Guidelines not imposed on it the requirement for stakeholder engagement and an open transparent process, *the constitution* does. I need not repeat the provisions of Article 10, 73, 232, which I have already set out above.” Emphasis added).



Counsel submitted that in the Okiya Omtatah Okoiti case (supra) the Court nullified the appointment of the directors for want of public participation.

11. Further reference was made to the case of Benson Riitho Murithi vs J. W. Wakhungu & 2 others [2014] eKLR where the Court stated:

“It may seem that *the Constitution* has imposed an irksome and onerous burden on those responsible for making public appointments by requiring that they make the appointment on the basis of clear constitutional criteria: that they allow for public participation; and those they appoint meet certain integrity and competence standards. This burden, however, is justified by our history and experience, which led the people of Kenya to include an entire chapter on leadership and integrity in *the constitution*.”

12. It was counsel’s submission that it was not proper for the respondent to state that they were under no obligation to publish the names of the applicants and shortlisted candidates, as this was in violation of Article 232(1)(f). Further that the 1st respondent had a duty to avail the information on the exercise to the public without them having to request for it. Reference was made to the Benson Riitho case where Mumbi Ngugi, J (as she then was) at paragraph 83 stated:

“The primary responsibility lay on the 1st Respondent, and indeed any other state officer making a similar appointment, to put in place a mechanisms for recruitment or appointment of members of Boards of State corporations that would allow for public participation...”

Other cases referred to are (i) *legeus Lomosi Mudegu v. Board, Kenya Water Towers Agency* [2020] eKLR (ii) *David Kariuki Migua v. Attorney General & another* [2012] eKLR.

13. The next issue is whether the 14 days period set by the 1st respondent for submitting applications were in accordance with the law, counsel answered in the negative. He submitted that a minimum period of 21 days is provided for at Section B4 of the Public Service Commission Human Resource and Polices Procedural Manual as follows:

B4: Advertisement of vacant posts:

1. Ministries / State Departments will advertise all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty-one (21) days before closing the advert. The advert shall have the following details: the title of the post, number of vacancies, job description, person specification and the proposed remuneration.
2. The advert shall be delivered in soft copy to the Public Service Commission to be posted in its website.

Reliance was placed on the case of *Republic v Communication Authority of Kenya and Information Communication Technology Association of Kenya (ICTA K)* [2021] eKLR.

14. On whether the board had sufficient quorum to recruit a Director General, counsel submitted that the respondent had not raised any defence to show that the board as constituted represents different sectors of the public.



The respondent's submissions

15. These are dated 21st November 2022 and filed by Mr. C. Marwa litigation counsel. On whether the respondent violated the petitioner's constitutional rights counsel submitted in all that the petitioner stated about public participation their response is that the recruitment was conducted in line with *the Constitution* and other enabling laws. Further that through the admitted advertisement, the requirement for public participation was fully adhered to. He referred to *Okiya Omtatah Okoiti v. The Board, Kenya Pipeline Company Limited & 2 others, John Ngumi (Chairman) & 10 others (Interested parties)* [2020] eKLR where the court stated:

“As has already been stated above the vacancy for the position of Managing Director of KPC was widely advertised in several daily and weekly papers and on the website of the 1st respondent.”

Counsel cited section 37 of the Public Commission Act and *Nairobi Metropolitan PSV Saccos Limited & 2 others* [2013] eKLR to support the above position.

16. On failure to publish the list of shortlisted candidates counsel submitted that neither the petitioner nor any member of the public sought for information from the 1st respondent. Reference was made to section 6(5) of the Access of Information Act and he submitted that the qualifications and requirements for the applicants including fulfilment of chapter six of *the constitution* were outlined in the advertisement.
17. Counsel while referring to the cases of (i) *Consumer Federation of Kenya (COFEK) v. Public Service Commission & another* [2013] eKLR and (ii) *Solomon Chemjor & 7 others v. Commission for University Education & 3 others* [2017] eKLR submitted that all the stakeholder in particular the candidates who participated in the recruitment process were notified and permitted to participate in the process. This was admitted by the petitioner at paragraph 4 of the supporting affidavit sworn on 6th July 2022.
18. Counsel finally submitted that section 14(1) of the *Tourism Act* 2011 provides that the Cabinet Secretary in consultation with the Board of the Authority shall appoint the Director General through a competitive process. Clause 1.8(3) of Mwongozo guidelines provides:

“The quorum for Board meetings shall be five members where the total Board membership is eight to nine and four where the total membership is seven and below.”

He contended that these provisions of law were complied with by the Tourism Authority who conducted and concluded the interviews for the said position. The names of the three top ranking candidates were forwarded to the Cabinet Secretary Ministry of Tourism & Wildlife, who made the appointment.

19. In regard to quorum he submitted that all members were present on 15th July 2022 when a meeting was held. Counsel referred to the case of *Law Society of Kenya v. Cabinet Secretary for Tourism & Wildlife and 2 others; Kevin Muasya & 4 others (Interested parties)* [2021] eKLR where it was held:

“The Board members appointed by the Cabinet Secretary are drawn from persons who are not public officers and the core criteria is that these are persons nominated by association(s) in the tourism sector and or have expertise in tourism or tourism related disciplines. It has not been challenged that the interested parties have met that threshold for appointment or



that there are objections, complaints or other matter raised by association(s) in the tourism sector against the interested parties....”

20. Counsel finally submitted that the qualifications and requirements for the applicants including fulfilment of chapter six of *the constitution* was outlined in the advertisement and shortlisting of candidates was properly done. Further that the process of appointment of the Director General was carried out transparently and in accordance with *the constitution* and enabling laws. Reference was made to the case of North East Professionals Association (NEPA) vs. Attorney General & 3 others [2013] eKLR.

Analysis and determination

21. Having carefully considered the pleadings, submissions, cited authorities and the law I find the issues falling for determination to be as follows;
- i. Whether the recruitment of the 1st respondent’s Director General was conducted in accordance with the law.
 - ii. Whether the petitioner’s constitutional rights were violated.
 - iii. Whether the petitioner is entitled to the reliefs sought.

Issue No. (i) Whether the recruitment of the 1st respondent’s Director General was conducted in accordance with the law.

22. There is no dispute that the 1st respondent took out an advertisement in the daily newspapers and its website for the recruitment of its Director General, dated 13th May 2022 whose closing date as per the advert was 27th May 2022. There is also no dispute that candidates were shortlisted and interviews were conducted. The petitioner argues that failure to publish the names of the shortlisted candidates and to seek for an input from the public violated her right to public participation. In response the respondents argued that they applied the law in the process of the recruitment.
23. The petitioner also argued that the 1st respondent’s board was not properly constituted to conduct the interviews. The respondent refuted this, while relying on section 8(g) (ii) of the *Tourism Act*, 2011 and Clause 1.1 of the Mwongozo guidelines.
24. By virtue of Article 2(5) and (6) of *the Constitution*, international law edicts form part of Kenyan law. The International Labour Organization provides ‘The principles and operational guidelines for fair recruitment’. In the context of our case, General principle (III)(4) provides as follows:
- “Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.”
25. Nationally, the essence of the recruitment process in light of Constitutional principles has been discussed in a number of authorities. The Court in the case of David Kariuki Muigua v Attorney General & another [2012] eKLR observed as follows:
- “ 11. ... it would be expected that the Minister, in making the appointments to the Tribunal, would be guided by the national values and principles set out in Article 10 of *the Constitution*, in particular participation of the people, equity, good governance, integrity, transparency and accountability.”



26. Equally, the Court in the case of Andrew Omtatah Okoiti V Attorney General & 2 others [2011] eKLR in discussing whether the Judicial Service Commission had adhered to the legal professional standards and expectations of the human resource discipline with regard to the criteria for selection of the various candidates for the position of Chief Justice and Deputy Chief Justice noted as follows:

“I agree that the short listing stage is a very critical one in the recruitment process and the highest degree of transparency ought to be exhibited...”

27. Speaking to the importance of shortlisting candidates in the recruitment process, the Court in the case of Feisal Hassan & 2 others v Public Service Board of Marsabit County & another [2016] eKLR noted as follows:

“(29) ...Selection of persons to be shortlisted, that is the shortlisting exercise is perhaps the most important part of the appointment process as the eventual appointment can only be done from the shortlisted candidates. If a qualified candidate is not shortlisted his candidature is defeated by the very act of non-shortlist and if an unqualified one is shortlisted, it may be that a non-qualified person is eventually appointed irregularly and unlawfully. In the ordinary course of things, if a person is not shortlisted for a position, he cannot be selected even if he is qualified for the job. So if the shortlisting erroneously keeps out qualified candidates, the end result of the recruitment exercise will remain that suitable qualified candidates are not considered for the jobs.”

28. The effect of failing to do so in the recruitment process has seen various public organizations found to have violated the dictates of *the Constitution* in the process such as Article 10 of *the Constitution*. (See: Republic v. Office of the Governor Nairobi City County Ex-Parte Japheth Muriira Muroko & Another (2017)eKLR; Benson Riitho Mureithi v. J.W. Wakhungu & 2 Others(2014)eKLR; Republic v. Attorney General & 3 Others Ex-Parte Tom Odoyo Oloo(2015)eKLR; and Republic v. Secretary County Board & Another Ex-ParteHulbai Gedi Abdille(2015) eKLR.)

29. From the above reading it is apparent that the recruitment process from the beginning till the end must adhere to the principles of *the Constitution* and international conventions even when applying provisions of their enabling Statutes.

30. The respondents in this matter were required to undertake the recruitment process in compliance with its enabling statute, the *Tourism Act*, 2011. On recruitment of the Director-General, Section 14(1) of the Act provides that:

The Minister shall, in consultation with the Board of the Authority and subject to subsection (2), appoint the Director-General of the Authority through a competitive process and with the prior approval of the National Assembly.

31. The cited provision provides the manner in which the Director General should be appointed. It does not however detail the manner in which the recruitment process should adhere to the dictates of *the Constitution*. In my view this leaves an open potential of violation of various constitutional principles anchored on the argument that the procedure was “followed”. It is imperative to be mindful to the fact that the principles of *the Constitution* must be complied with.

32. Additionally, the respondents are to comply with the guidelines provided under Chapter 8 of the Mwongozo (The Code of governance for State Corporations). This Chapter emphasizes that the mandate of State Corporations must be in line with the principles of *the Constitution*.



33. In a circumstance such as that presented by the petitioner, the challenged Recruiter is to demonstrate the manner in which its processes and procedures upheld these principles in lieu of express directions from Statute or its Regulations. It is my considered view that the respondents failed to show that their recruitment procedure satisfied the dictates of *the Constitution*.
34. In this regard, I find useful guidance in the case of *Wambua Maithya v Pharmacy and Poisons Board; Pharmaceutical Society of Kenya & 2 others (Interested Parties)* [2019] eKLR where it was observed as follows:
- “60. ... In my view to couch a requirement in such a broad and vague terms can only be termed as an irrational requirement. Such a requirement therefore fails to meet the provisions of Article 10 of *the Constitution* that such a decision passes the test of non-discrimination, transparency and accountability, among others. It also fails to satisfy the provisions of Articles 27 and 232 of *the Constitution*.”

Whether the petitioner’s constitutional rights’ were violated

35. Chiefly on this issue the petitioner argued that the constitutional right to public participation was violated in the recruitment process. The respondent’s rebutted this assertion arguing that this requirement had been fulfilled, since they had placed an advertisement of the Director General’s position in the local daily newspaper on 13th May 2022, and on their website page.
36. The national values and principles of governance under Article 10(2)(a) of *the Constitution* envisage public participation as one of the hallmarks of *the Constitution*.
37. Discussing the essence of the public participation principle, the Court in the case of *Robert N. Gakuru & others v Governor Kiambu County & 3 others* [2014] eKLR opined as follows:
- “75. Participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively...”
38. Still on this, the Supreme Court in the case of *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party)* [2019] eKLR set out the following guidelines to ascertain whether the principle of public participation was attained:
- As a constitutional principle under Article 10(2) of *the Constitution*, public participation applies to all aspects of governance.
 - The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
 - The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
 - Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to ‘fulfill’ a



constitutional requirement. There is need for both quantitative and qualitative components in public participation.

- e. Public participation is not an abstract notion; it must be purposive and meaningful.
 - f. Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
 - g. Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
 - h. Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
 - i. Components of meaningful public participation include the following:
 - i. clarity of the subject matter for the public to understand;
 - ii. structures and processes (medium of engagement) of participation that are clear and simple;
 - iii. opportunity for balanced influence from the public in general;
 - iv. commitment to the process;
 - v. inclusive and effective representation;
 - vi. integrity and transparency of the process;
 - vii. capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.
39. The Black's Law dictionary defines recruitment as the process of identifying and hiring the most qualified candidate. Recruitment is therefore a process, and an advertisement of a job vacancy is just one of the steps. In this regard it is clear that the respondent's advertised the job vacancy calling for applications. It is apparent from the material before this Court that, that was the last the public was updated on the process contrary to the recognized norms in Kenya. In effect failure to continue engaging the public in the recruitment process after that, led to the instigation of this petition. The petitioner in this context argued that the public was denied public participation.
40. In a comparable matter, the Court in the case of *Consumer Federation of Kenya (COFEK) v Attorney General & 2 others* [2012]eKLR opined as follows:
- “ 56. In commencing the process of recruitment, the Authority advertised the vacant positions to enable Kenyans who qualify to apply for those positions. The adverts are clear in the requirements and it is not argued by the petitioner that the medium adopted denied a chance for Kenyans to participate by making applications to be considered for those positions.
 - 57. Secondly, the shortlisted candidates were also advertised. This meets the object of public participation and transparency. On one part, the public is entitled to know who has been shortlisted. The public participates by being able to send any reports or objections on any of the persons who have been selected. Those who have not been shortlisted are given an opportunity to make inquiries as to why they have not been shortlisted. The petitioner has not shown that there



was any complaint by any of the persons who applied for the position and was not shortlisted or any Kenyan who was aggrieved by the process.

58. Finally even the persons selected are still advertised giving an opportunity to participate in the process. It is by reason of the advertisement of the person so nominated, that Kenyans can also participate in the process by launching a challenge to the process of appointment.”
41. While the enabling Statutes do not expressly provide for the public participation, the Supreme Court guides that the public participation principle is to be adhered to in all aspects of governance. It is evident that the respondents only released the advertisement and failed to follow up with the list of names of the applicants, names of the shortlisted candidates and interview dates and eventually the appointed person. All these are annexed to the replying affidavit but they were never made in public.
42. This without doubt denied the public an opportunity to participate in the process as underscored by *the Constitution*. Organs are required to conduct real participation and commitment to the overall process. In my view, this was clearly not observed by the respondents in the circumstances of this case. Further no attempt was made to demonstrate that this constitutional principle was upheld in its fullness. The effect inevitably was violation of the principle of public participation.
43. On the issue of the composition of the Board the petitioner failed to show and prove that the Board was not properly constituted.

Issue No. (iii). Whether the petitioner is entitled to the reliefs sought

44. This Court having made a determination on the issues raised, the last question for consideration is what orders the Court should grant. The petitioners seek reliefs in the form of declarations and the prerogative writs.
45. In this regard, I find guidance in the case of *Hoffmann v South African Airways (CCT17/00) [2000] ZACC 17* where the Court opined as follows:

“(45) The determination of appropriate relief, therefore, calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third to make an order that can be complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case. Therefore, in determining appropriate relief, “we must carefully analyse the nature of the constitutional infringement, and strike effectively at its source.”

46. For the reasons set out in the analysis herein above, I find that the petitioner is entitled to the reliefs sought.

The upshot is that the petition has merit and is allowed. The following orders are therefore issued:

- i. A declaration that the recruitment pursuant to the vacancy Notice titled “Advertisement for Job Vacancy Director General – Ref TRA/1/10 was unconstitutional, unlawful, null and void.
- ii. A declaration that the failure to make public the names of all Applicants, shortlisted candidates, interview dates, in order to provide meaningful public participation the



recruitment process pursuant to the vacancy Notice titled “Advertisement for Job Vacancy Director General – Ref: TRA/1/10” offended Articles 10, 22, 23, 35, 47, and 232(1) of the Constitution

- iii. Prayer C is moot
- iv. Prayer D is moot
- v. The appointment of Mr. Nobert Kimutai Talam as the Director General of the 1st Respondent side the letter dated 18th July, 2022 is hereby set aside.
- vi. The Board of the Tourism Regulatory Authority is hereby ordered to observe due process in the advertising, interviewing and selection of a Director General in accordance with Article 47 of the constitution of Kenya.
- vii. An order quashing the Vacancy Notice titled “advertisement for Job Vacancy Director General – Ref: TRA/1/10” and entire process of recruitment of Director General and the Board of the Tourism Authority is directed to commence a new recruitment process that adheres to the Constitution.
- viii. Costs to the petitioner.
- ix. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 31ST DAY OF MAY 2023 IN OPEN COURT.

H. I. ONG’UDI

JUDGE OF THE HIGH COURT

