



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 111 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CABINET SECRETARY, MINISTRY OF ARGICULTURE, LIVESTOCK,  
FISHERIES AND CO-OPERATIVES.....1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY,  
DEPARTMENT OF LIVESTOCK.....2<sup>ND</sup> RESPONDENT**

**KENYA VETERINARY VACCINES  
PRODUCTION INSTITUTE.....3<sup>RD</sup> RESPONDENT**

**THE BOARD OF KENYA VETERINARY  
VACCINES PRODUCTION INSTITUTE.....4<sup>TH</sup> RESPONDENT**

**DR. JANE WACHIRA.....5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

**STATE CORPORATIONS  
ADVISORY COMMITTEE.....7<sup>TH</sup> RESPONDENT**

**EX PARTE APPLICANT: UNION OF VETERINARY PRACTITIONERS OF KENYA**

**RULING**

**The Application**

1. The *ex parte* Applicant herein has moved this Court in an application brought by way of a Chamber Summons dated 17<sup>th</sup> May 2020, in which it is seeking the following orders:

1. **THAT** the application be and is hereby certified urgent for *ex parte* hearing at the first instance for purposes of Prayer 2.

**2. THAT** there be and is hereby issued and order debarring Dr. Jane Wachira from discharging the duties of a properly appointed CEO of the Kenya Veterinary Vaccines Production Institute, or in any other manner attempting to represent the interests of Kenya Veterinary Vaccines Production Institute to stakeholders within and without the sector, pending the hearing and determination of this Application.

**3. THAT** Leave be and is hereby granted to the Union of Veterinary Practitioners of Kenya to apply for an order of **CERTIORARI** to bring up into the High Court for quashing the decision and Resolution of the Board of Kenya Veterinary Vaccines Production Institute dated 2<sup>nd</sup> January 2020 recommending the renewal of the appointment of the Dr. Jane Wachira as the Chief Executive Officer of the Kenya Veterinary Vaccines Production Institute.

**4. THAT** Leave be and is hereby granted to the Union of Veterinary Practitioners of Kenya to apply for an order of **PROHIBITION** barring the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries & Co-operatives from appointing and Gazetting Dr. Jane Wachira as the Chief Executive Officer of the Kenya Veterinary Vaccines Production Institute.

**5. THAT** Leave be and is hereby granted to the Union of Veterinary Practitioners of Kenya to Apply for an Order of **MANDAMUS** compelling the Board of Kenya Veterinary Vaccines Production Institute to commence afresh a transparent and competitive process of appointing a Chief Executive Officer for the Kenya Veterinary Vaccines Production Institute.

**6. THAT** the leave granted herein does operate as stay of the resolutions of the Board of Kenya Veterinary Vaccines Production Institute dated 2<sup>nd</sup> January 2020 touching on the appointment of Dr. Jane Wachira as the Chief Executive Officer of the Kenya Veterinary Vaccines Production Institute until the substantive Judicial Review is heard and determined.

**7. THAT** the Honourable Court be pleased to give further orders and directions as it may deem fit and just to grant.

**8. THAT** the costs of this application be provided for.

2. The application is supported by a statutory statement dated 17<sup>th</sup> May 2020, and a verifying affidavit sworn on the same date by Dr. Miheso Mulembani, the Secretary General of the *ex parte* Applicant. After a perusal of the *ex parte* Applicant's pleadings, I note that its main grievance and grounds for the application is the renewal by the 4<sup>th</sup> Respondent of the term of office of the 5<sup>th</sup> Respondent as the Chief Executive Officer of the 3<sup>rd</sup> Respondent. The *ex parte* Applicant claims the said renewal is unlawful for the following reasons:

a. The letter seeking renewal was not written six (6) months period prior to the end of term as required by the government Circular No. OP/CAB.9/1A dated 23rd November, 2010 titled "procedure for reappointment of service Chief Executive Officers in state corporations."

b. The procedure followed by the Board is contrary to the law and the procedure laid down under the Sections 5(3) & Section 27(1) (c) of the State Corporations Act, as read with the Code of Governance for State Corporations, 2015 (*Mwongozo* Charter).

c. Further to b. above there was no discussion of the renewal of the term of the C.E.O by the board and there was no mention of the renewal in the Notices calling for the Board Meetings the entire of 2019.

d. That in light of the circumstances and the manner in which the board meeting was convened and how the resolution of was passed, the renewal is null and void *ab initio*

e. The renewal process was undertaken and speedily concluded despite grave competence and integrity concerns relating to the 5<sup>th</sup> Respondent's tenure.

f. That the actions of the 4<sup>th</sup> Respondent were clearly meant to hoodwink the 1<sup>st</sup> & 2<sup>nd</sup> Respondents to rubberstamp a decision made without due regard to procedure, the rule of law and tenets of justice.

3. Additional grounds raised by the *ex parte* Applicant are as follows:

a. **THAT** the impending renewal is a violation of Article 73, specifically the public trust bestowed on the 4<sup>th</sup> Respondent owing to disregard of grave and uncontroverted concerns of the lack of competence and the bad track record of the 5<sup>th</sup> Respondent, violations of the Constitution and nepotism during her tenure as the C.E.O.

b. **THAT** the renewal is a violation of Article 232 of the 2010 Constitution & Paragraphs A2, A3 and B5 of the Human Resource Policies and Procedures Manual for the Public Service May, 2016 in so far as they relate to the Principles of Public Service and the principle of merit in recruitment to Public Service.

c. **THAT** the 5<sup>th</sup> Respondent may **ANYTIME NOW** be gazetted as the CEO of the 3<sup>rd</sup> Respondent despite previous poor performance and violation of the law and the Constitution & the unlawful process that is pending approval by the 1<sup>st</sup> Respondent.

4. I have reproduced these grounds to illustrate the fact that the *ex parte* Applicant is aggrieved with the process of re-appointment of the 5<sup>th</sup> Respondent to public office, including her qualifications for that office. The *ex parte* Applicant is therefore seeking leave to bring judicial review proceedings in relation to the 5<sup>th</sup> Respondent's employment, which falls within the exclusive jurisdiction of the Employment and Labour Relations Court, pursuant to Articles 162(2) (a) and 165(5) of the Constitution, and section 12 of the Employment and Labour Relations Act.

5. In this regard, section 12(1)(b) of the Employment and Labour Relations Act specifically states that disputes between an employer and a trade union's organization fall with the jurisdiction of the said Court. In this respect it is notable that the *ex parte* Applicant has described itself as a trade union duly registered under the Labour Relations Act, 2007 (**NO.TU/181**) whose mandate is to legally represent and champion the labour interests of qualified and registered Veterinary Surgeons and Veterinary Paraprofessionals drawn from both the public and private sector in Kenya.

#### **The Orders**

6. In the premises I direct and order that this suit be and is hereby transferred to the Employment and Labour Relations Court at Nairobi for further hearing and determination. The *ex parte* Applicants' Chamber Summons dated 17<sup>th</sup> May 2020 shall accordingly be placed before the **Duty Judge** at the **Employment and Labour Relations Court at Nairobi** on **3<sup>rd</sup> June 2020** for directions.

7. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the *ex parte* Applicant, and to the Deputy Registrar of the Employment and Labour Relations Court at Nairobi, by close of business on 28<sup>th</sup> May 2020.

8. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY 2020**

**P. NYAMWEYA**

**JUDGE**