



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND JUDICIAL DIVISION**  
**PETITION NO. 144 OF 2014**

**BETWEEN**

**CONSUMER FEDERATION OF KENYA (COFEK) Suing through its officials namely STEPHEN MUTORO,**

**EPHRAIM KANAKE AND HENRY OCHIENG .....  
**PETITIONER****

**AND**

**CABINET SECRETARY, MINISTRY OF**

**INFORMATION, COMMUNICATIONS AND TECHNOLOGY ..... 1<sup>ST</sup>  
**RESPONDENT****

**KENYA INFORMATION COMMUNICATION TECHNOLOGY AUTHORITY .....  
**2<sup>ND</sup> RESPONDENT****

**ATTORNEY GENERAL ..... 3<sup>RD</sup>  
**RESPONDENT****

**VICTOR KYALO ..... 4<sup>TH</sup>  
**RESPONDENT****

**JUDGMENT**

1. The petition dated 31<sup>st</sup> March 2014 seeks to impugn the alleged appointment of the 4<sup>th</sup> respondent as the Chief Executive of the Board of the Kenya Information Communication and Technology Authority. It is grounded on the fact that the Board failed to recruit a Chief Executive Officer competitively and in accordance with the principles and values of the Constitution under **Article 10** of the Constitution.
2. Under **Paragraph 11(2)** of the *Information and Communication Technology Authority Order, 2013* ('the **Order**'), the Cabinet Secretary shall appoint the first Chief Executive Officer of the Authority upon commencement of the **Order**. Thereafter the Chief Executive shall be appointed on a competitive basis

by the Cabinet Secretary upon recommendation by the Board. The **Order** came into force on 8<sup>th</sup> August 2013. The right of the Board to recommend a Chief Executive for appointment by the Cabinet Secretary only accrues after the term of the first Chief Executive appointed by the Cabinet Secretary has lapsed.

3. According to the material before the Court, the 4<sup>th</sup> respondent is holding the office of Chief Executive in an acting capacity as no recruitment has been done by the Cabinet Secretary as required under the **Order**. In my view, nothing would have been easier than for the petitioner to display the instrument of appointment. In any case, it is not doubted that such an appointment would, like other appointments to public office, be done on a competitive basis with public participation hence there is no need for an order to be made in that regard to the Cabinet Secretary or the Board to act in accordance with the Constitution and the law.

4. In light of **Paragraph 11(2)** of the **Order**, the right of the Board to recommend the Cabinet Secretary has not accrued and no Chief Executive has been appointed. In the circumstances, I decline to grant the orders sought in the petition.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> May 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Kurauka instructed by Kurauka and Company Advocates for the petitioner.

Mr Mohammed, Litigation Counsel, instructed by the State Law Office for the 1<sup>st</sup> and 3<sup>rd</sup> respondent.

Mr Odhiambo instructed by Kiptiness and Odhiambo Advocates for the 2<sup>nd</sup> and 4<sup>th</sup> respondent.