



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 284 OF 2014

BETWEEN

CONSUMER FEDERATION OF KENYA (COFEK) (*suing through its officials namely STEPHEN MUTORO, EPHRAIM KANAKE and HENRY OCHIENG*).....APPLICANT/PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF LABOUR,
SOCIAL SECURITY AND SERVICES.....1ST RESPONDENT
NATIONAL SOCIAL SECURITY FUND.....2ND RESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT
RICHARD LANG'AT.....4TH RESPONDENT**

RULING

1. The Petition dated 11th August 2014 challenges the constitutionality and legality of the appointment of the 4th Respondent as the Managing Trustee of the National Social Security Fund (NSSF).
2. In the said Petition, the Petitioner, the Consumer Federation of Kenya (COFEK) claims that the 1st and 2nd Respondents colluded to defeat the provisions of the **NSSF Act, 2013** and **Articles 10, 35 and 232** of the **Constitution** to propel the 4th Respondent into office.
3. The Petitioner therefore prays for the following orders;

***“(a) That order of Injunction be and is hereby granted to prevent the Respondents from implementing the decision of the 1st and 2nd Respondents purporting to confirm the 4th Respondent as the Managing Trustee of the 2nd Respondent on ground of being unconstitutional, is contrary to provisions of Article 232(1) and Sections 10(3)(a) and 15(7)(b)(c) of the National Social Security Fund Act, 2013.*”**

(b) That a declaration that the action by the 1st and 2nd Respondents appointing the 5th Respondent as the Managing Trustee of the 2nd Respondent is illegal, unconstitutional, null and void.

(c) That an injunction be and is hereby granted preventing the 4th Respondent from acting and or purporting to act as the Managing trustee of the 2nd Respondent

(d) That a declaration that the 1st Respondent failed to observe good governance and not living within the letter and spirit of the oath he took under Article 152(4)(a) of the Constitution.

(e) That an order be and is hereby issued compelling the 2nd Respondent's Board to advertise and competitively recruit, through an independent and credible agency, the Managing Trustee of the 2nd Respondent.

(f) That the Honourable Court be pleased to issue any other or further remedy that the Honourable Court shall deem fit to grant.

(g) An order that the Respondents do pay the costs of this Petition."

4. The above issues may look simple and straight-forward at face value and may not raise any complicated or substantial issues of law. However, on 24th July 2014, Mr. Ahmednassir, SC raised an issue regarding the need for the High Court to conclusively render itself on the issue of *locus standi* under **Articles 22 and 258** of the **Constitution**. The said issue was live in the pre-2010 Constitutional regime and there is need to address the issue with some measure of finality at the first instance. In that case, I am satisfied that the said issue is substantial enough to warrant the Constitution of an uneven number of Judges under **Article 165(4)** of the **Constitution**.
5. This Ruling is merely meant to formalize and rectify the record as the Hon. The Chief Justice has already appointed such a Bench.
6. Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2014.

ISAAC LENAOLA

JUDGE

In the presence of:

Kariuki -Court clerk

Mr. Ogola holding brief for Mr. Kurauka for Petitioner

No appearance for Respondent

Order

Ruling delivered. Mention on 10/12/2014 for directions.

Notice to issue.

ISAAC LENAOLA

JUDGE