

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

PETITION NO. 5 OF 2014

BETWEEN

LIU RUILIN 1ST APPLICANT

MAA DONG MING..... 2ND APPLICANT

SINO HYDRO CORPORATION LTD 3RD APPLICANT

AND

REPUBLIC OF KENYA 1ST RESPONDENT

THE N.S.S.F BOARD OF TRUSTEES 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. This matter was commenced by the petitioners who challenged the authority of prosecutors, prosecuting *Homa Bay Chief Magistrate Criminal Case No. 1183 of 2013* on behalf of the National Social Security Fund (NSSF) without the necessary authority issued by the Director of Public Prosecutions and without gazettelement of their appointment as prosecutors.
2. I directed the Learned Senior Assistant Director of Public Prosecutions to ascertain the position and report to the court. Counsel now informs the court that Messrs Asoyo and Adero, who were prosecuting the matter, were not gazetted prosecutors.
3. In the circumstances, I hereby set aside and terminate the Criminal Proceedings in *Homa Bay Chief Magistrate's Court Criminal Case No. 1183 of 2013* forthwith. This is without prejudice to the Director of Public Prosecutions re-instituting the prosecution based on the same facts or the NSSF doing so with properly authorized prosecutors. There shall be no order as to costs.

DATED and DELIVERED at HOMA BAY this 17th day of December 2014

D.S. MAJANJA

JUDGE