



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 164 OF 2013**

**BETWEEN**

**EVANS NYAMBEGA AKUMA.....PETITIONER**

**AND**

**HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**MINISTER OF STATE FOR PUBLIC SERVICE.....2<sup>ND</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION.....3<sup>RD</sup> RESPONDENT**

**PERMANENT SECRETARY, SECRETARY OF THE**

**CABINET & HEAD OF CIVIL SERVICE.....4<sup>TH</sup> RESPONDENT**

**PERMANENT SECRETARY,**

**PRIME MINISTER'S OFFICE.....5<sup>TH</sup> RESPONDENT**

**MINISTER OF FINANCE.....6<sup>TH</sup> RESPONDENT**

**AND**

**AMB. PETER NKURAIYA V. CHAIRPERSON PSCK.....7<sup>TH</sup> RESPONDENT**

**CONSOLIDATED WITH**

**PETITION NO. 591 OF 2012**

**BETWEEN**

**EVANS NYAMBEGA AKUMA .....PETITIONER**

**AND**

<b>HON. ATTORNEY GENERAL .....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>MINISTER OF STATE FOR PUBLIC SERVICE.....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>PUBLIC SERVICE COMMISSION.....</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>PERMANENT SECRETARY, SECRETARY OF THE</b>	
<b>CABINET &amp; HEAD OF CIVIL SERVICE.....</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>PERMANENT SECRETARY,</b>	
<b>PRIME MINISTER’S OFFICE.....</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>MINISTER OF FINANCE.....</b>	<b>6<sup>TH</sup> RESPONDENT</b>
<b>PROF MARGARET KOBIA.....</b>	<b>7<sup>TH</sup> RESPONDENT</b>
<b>ALICE MUITA.....</b>	<b>8<sup>TH</sup> RESPONDENT</b>
<b>RICHARD EVANS NDUBAI.....</b>	<b>9<sup>TH</sup> RESPONDENT</b>
<b>AMB. PETER NKURAIYA.....</b>	<b>10<sup>TH</sup> RESPONDENT</b>
<b>PATRICK GICHOHI.....</b>	<b>11<sup>TH</sup> RESPONDENT</b>
<b>VERONICAH BIRGEN.....</b>	<b>12<sup>TH</sup> RESPONDENT</b>
<b>DR JUDITH BWONYA.....</b>	<b>13<sup>TH</sup> RESPONDENT</b>
<b>CATHERINE OMWENO.....</b>	<b>14<sup>TH</sup> RESPONDENT</b>
<b>JOHN GICHAGA.....</b>	<b>15<sup>TH</sup> RESPONDENT</b>
<b>TITUS NDAMBUKI.....</b>	<b>16<sup>TH</sup> RESPONDENT</b>
<b>NJOKI KAHIGA.....</b>	<b>17<sup>TH</sup> RESPONDENT</b>
<b>JUSTER NKOROI NKIROTE.....</b>	<b>18<sup>TH</sup> RESPONDENT</b>
<b>WILFRED MUSAI.....</b>	<b>19<sup>TH</sup> RESPONDENT</b>
<b>JOYCE GICHOMO.....</b>	<b>20<sup>TH</sup> RESPONDENT</b>
<b>ANN MWANGI.....</b>	<b>21<sup>ST</sup> RESPONDENT</b>
<b>JANE CHEGE.....</b>	<b>22<sup>ND</sup> RESPONDENT</b>

**JUDGMENT**

1. The petitioner in these two consolidated matters is a civic minded person. He has moved the Court to challenge the appointment of Chairperson and Members of the Public Service Commission.

2. The Public Service Commission (“the Commission”) is established under **Article 233** and consists of a chairperson, a vice chairperson, and seven other members appointed by the President with the approval of the National Assembly. The process of appointment is set out in the **First Schedule** to the **Public Service Commission Act, Act No. 13 of 2012**.

3. By **Gazette Notices No. 460, 461 and 462**, the following persons were duly appointed by the President to be chairperson, vice chairperson and members of the Commission; Margaret Kobia – Chairperson, Amb. Peter O. Ole Nkuraiyua – Vice Chairperson, Michael N. Lokuruka, Patrick G. Gichohi, Lawrence Nyalle, Veronica Chemutai Birgen, Catherine Raini Omweno, Judith Emboyi Bwonya and Titus M. Ndambuki.

4. Although the petitioner’s petition and depositions are not the model of good pleading, doing my best, I have tried to make sense of what the petitioner’s grievance and it is that the persons appointed as Commissioners lack integrity and consequently they do not qualify to hold office in accordance with the Leadership and Integrity provisions of **Chapter Six** of the Constitution.

5. In the petition dated 27<sup>th</sup> December 2012 and amended on 19<sup>th</sup> February 2013 filed in **Petition No. 591 of 2012**, the petitioner seeks the following reliefs;

*[1] That orders of certiorari to quash the decision of the selection panel of the chairperson of Public Service Commission and other nominees to the Public service Commission.*

*[2] That an order of Mandamus to compel the selection panel to go back to drawing board and pick other candidates competitively , transparently, fairly through public scrutiny and participation in an open manner .....*

*[3] That a general declaration be made that a chairperson, vice chairperson and commissioners were not properly chosen or selected and are unfit to serve the public service commission. That the selection, appointment and gazettment be declared by null and void ....*

**Petition No. 164 of 2013** was filed to stop the gazettment of Hon. Peter Ole Nkuraiya, the Vice-chairperson of the Commission. The case was subsequently consolidated with **Petition No. 591 of 2012** as it raised similar issues of fact and law.

6. The petitioner also impugns the process of selection as lacking in transparency. He contends that the candidates were not competitively, transparently or fairly picked in a manner consistent with the values and principles articulated in **Article 10** which include good governance, integrity, transparency and accountability.

7. Serious allegations were made against each of the nominees. For reasons that will become apparent later in this judgment, it is not necessary for me to outline the nature of these allegations. Suffice to state that some of the charges made in the pleadings and depositions concern several third parties who are not parties to these proceedings and who have not been given an opportunity to defend themselves against the accusations made by the petitioner.

8. The respondents denied all the allegations made against them by the petitioner. Each of the Commissioners swore an affidavit specifically denying the allegations against him or her. It is their contention that they were properly appointed and the procedure was open, transparent and in accordance with the Constitution and the **Public Service Commission Act**.

9. I have considered the material before the Court and I am satisfied that the procedure adopted by the Selection Panel was in accordance with the **Public Service Commission Act**. The names of the persons selected were duly forwarded to the President. The President made the required appointment and

thereafter forwarded the names to the National Assembly by a letter dated 18<sup>th</sup> December 2012 written on his behalf by Secretary to the Cabinet. On 20<sup>th</sup> December 2012, the Speaker of the National Assembly directed that the names be considered by the Departmental Committee on Labour and Social Welfare for consideration before prior approval of the National Assembly.

10. The National Assembly did call for submissions on the proposed appointees through the newspapers as evidenced by an advertisement placed in the Sunday Nation of 23<sup>rd</sup> December 2012. The petitioner, in response to this announcement forwarded his memorandum dated 23<sup>rd</sup> December 2012 where he set out the various allegations against each of the Commissioners and which allegations are repeated in the petitions which he has filed.

11. It is clear that the Departmental Committee held public hearings. Although newspaper reports lack probative value, according to a newspaper report, furnished by the petitioner himself, the Chairperson of the Commission was questioned on the allegations of nepotism made against her by a member of the Departmental Committee during the public hearing. The allegation was of course denied.

12. The Departmental Committee considered the names and in a Report of the Departmental Committee on Administration and National Security on the Consideration of Nomination of chairperson, vice chairperson, and members of the Public Service Commission, recommended to the National Assembly that the names be approved. On 9<sup>th</sup> January 2013, the National Assembly debated the report and it was duly approved.

13. On the basis of the material before the court, I am satisfied that the process of selecting and appointing the Commissioners was open and transparent and in accordance with the provisions of the **Public Service Commission Act** and the Constitution.

14. The petitioner, in his oral submissions, requested the court to examine the each and every allegation made against the Commissioners. He states that the background and moral character of the Commissioners was not properly examined by the Selection Panel and the National Assembly therefore this court should intervene to enforce the Constitution. I agree that the petitioner has raised the serious allegations against the Commissioners but my review of the evidence shows that the issues raised were indeed considered, at least by the National Assembly, and rejected as lacking any basis. The petitioner himself admits that the evidence was considered by the National Assembly and dismissed.

15. It is not for the court to re-examine these allegations and make its own conclusion. The duty of the court in reviewing the process of appointment is to ensure that it meets the test of legality. I emphasize what I stated in the cases of ***John Waweru Wanjohi & Others v the Attorney General & Others, Kipngetich Maiyo & Others v the Kenya Land Commission Selection Panel Nairobi consolidated Constitutional Petitions Nos. 373 of 2012 and 426 of 2012 (Unreported)***, concerning appointments to the National Land Commission, ***“The Court must of course be careful not to usurp the powers and functions of the various constitutional and statutory bodies ...”*** These bodies have carried out their functions in accordance with the prescribed procedures and I am satisfied that in this case the process meets constitutional muster.

16. It is for this reason that I reject any entreaty by the petitioner to regurgitate the allegations made against the Commissioners and come up with my own findings. I am therefore constrained to dismiss the petitioner’s case.

17. Mr Bitta, counsel for the respondents, has urged me to mulct the petitioner with costs on the ground that allegations made were indeed false and scandalous and have been found as such during the whole selection process. I have reflected on such a course and I am not convinced that an award of costs would be appropriate in this case. I order each party to bear their own costs.

18. The petitions are accordingly dismissed but with no order as to costs.

**DATED** and **DELIVERED** at **NAIROBI** this 30<sup>th</sup> day of April 2013.

**D.S. MAJANJA**

**JUDGE**

Mr Evans Akuma, the petitioner in person.

Mr Bitta, Senior Litigation Counsel, instructed by the State Law Office for the respondents.