



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 470 OF 2008
IN THE MATTER OF THE LAW REFORM ACT AND THE CIVIL PROCEDURE ACT

AND

IN THE MATTER OF THE WATER ACT, NO 8 OF 2002

AND

**IN THE MATTER OF AN APPLICATION BY WANGUHU NGANGA AND JANE NJAGI FOR
THE JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI AND
MANDAMUS**

AND

REPUBLICAPPLICANT

VERSUS

THE PERMANENT SECRETARY

MINISTRY OF WATER & IRRIGATION1ST RESPONDENT

THE MINISTER FOR WATER.....2ND RESPONDENT

AND IRRIGATION

EX-PARTE.....WANGUHU NGANGA & JANE NJAGI

JUDGEMENT

Through the notice of motion dated 13th August, 2008 Wangulu Nganga and Jane Njagi (the 1st and 2nd ex-parte applicants) pray for orders against the Permanent Secretary, Ministry of Water and Irrigation and the Minister for Water and Irrigation (the 1st and 2nd respondents) as follows:-

(i) An ORDER OF PROHIBITION directed at the respondent prohibiting them from implementing any decisions (made on a date unknown to the Ex-parte Applicant but embodied in a

letter dated 29th July, 2008 cancelling the board meeting of the said board under the hand of one Robert Gakubia, purporting to Act as the Chief Executive officer of the Board) seeking to dissolve and/or interfere with the operations of the Water Services Regulatory Board without any lawful reference to the Water Services Act, No 8 of 2002.

(ii) An ORDER OF PROHIBITION directed at the Respondents either acting directly or through any of their officers, prohibiting them from implementing any decisions (made on a date unknown to the Ex-parte Applicant but evidenced embodied in a letter dated 28th and 29th July, 2008 under the hand of one Robert Gakubia, purporting to Act as the Chief Executive officer of the Board) appointing the Chief Executive Officers of Water Services Boards without reference to the actual Board of the respective organizations contrary to the provisions of the Water Services Act No. 8 of 2002.

(iii) An ORDER OF PROHIBITION directed at the Respondents prohibiting them from implementing a decision (made on a date unknown by confirmed in gazette notice appointing members to the said Board) seeking to create a new water services board, TANAATHI Water Services Board without reference to the Water Services Regulatory Board are is mandatory under the Water Services Act, No. 8 of 2002, and the decision made pursuant thereto purporting to appoint members of the Board embodied in Gazette Notice No. 5453 of 24th June, 2008.

(iv) An ORDER OF PROHIBITION directed at the Respondent prohibiting them from issuing and implementing any further decisions or notices to dissolve the Water Services Regulatory and or interfere with the independence and or operations of board prior to the expiry of the terms of the board members, including the ex-parte Applicants or before complying with all of the legal requirements in relating to the revocation of appointments of the board members including the Ex-parte Applicants.

(v) An ORDER OF CERTIORARI to revoke into the High Court and quash the aforesaid decision seeking to dissolve and/or interfere with the operations of the dissolve the Water Services Regulatory Board in abuse of the discretion granted to the Respondents, the office and officers of the Ministry for Water and irrigation.

(vi) The Costs of and incidental to this application be awarded to ex-parte Applicants.

The application is supported by grounds on its face, a statutory statement dated 1st August, 2008, affidavits sworn by the applicants on the same date plus annexures thereto. The application was opposed through a replying affidavit sworn by engineer David Stower the 1st Respondent.

Although this matter was filed in August, 2008, the same did not proceed up to 15th November, 2011 when the advocate for the ex-parte applicants highlighted submissions before me. The reasons for the delay are captured in the court file.

Essentially the ex-parte applicants seek to overturn the decision made by the respondents through Gazette Notice No. 5453 of 24th June, 2008. Through the said Gazette Notice the 2nd respondent appointed certain persons as members of the Tanaathi Water Services Board for a period of three years with effect from 24th June, 2008. The ex-parte applicants who were members of the Water Services Regulatory Board were of the view that the 2nd Respondent had usurped their powers by appointing the said members.

I have looked at the Gazette Notice being challenged plus the entire application and I am of the humble view that this application has been overtaken by events. The three year period came to an end on 24th June, 2011 or thereabouts. By the time this application was argued on 15th November, 2011 the Gazette Notice had run its course.

Faced with a similar situation in Nairobi Milimani H.C.J.R MISC. APPLI. NO. 647 OF 2008

**REPUBLIC VS. THE MINISTER FOR LABOUR AND HUMAN RESOURCE DEVELOPMENT
EX-PARTE COTU (K) & 2 OTHERS, Majanja, J observed that :-**

”Under the National social Security Act, the term of the members of the Board of Trustees is limited. Under the First Schedule to the Act the Trustees serve for a period of three years. It follows that since these proceedings, were lodged, the composition of the Board of Trustees must have been reconstituted. No purpose will be served by dealing with this matter other than for academic purposes. The purpose of the court is to deal with real disputes and not merely academic matters.”

Into the issues raised in this matter because backbone of the application namely the Gazette Notice is no longer in place. It is unfortunate that the ex-parte applicants will not have their day in court. Their counsel cannot however be blamed for this state of affairs since the court record clearly shows that he was always prepared to proceed.

The only logical step is to dismiss the said application which I hereby do. There will be no order as to costs.

Dated and signed at Nairobi this 21st day of June , 2012

**W. K. KORIR
JUDGE**