



IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. MISC. APPL. NO. 185 OF 2011

IN THE MATTER OF ARTICLES 22, 23 & 73 OF THE CONSTITUTION OF KENYA SECTION 6(1)(b) OF THE KENYA INFORMATION AND COMMUNICATIONS

ACT (NO.2 OF 1998)

SECTION 27(1)(C) OF THE STATE CORPORATIONS ACT CAP 446 OF THE LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: AN APPLICTION BY CONSUMERS FEDERATION OF KENYA (COFEK) FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE CIVIL PROCEDURE RULES

CONSUMERS FEDERATION OF KENYA (COFEK) Suing through its officials namely STEPHEN MUTORO

**EPHRAIM GITHINJI KANAKE and HENERY MESHACK OCHIENG.....
.....PETITIONERS**

Versus

**HON. ATTORNEY GENERAL.....1ST
RESPONDENT**

**MINISTER FOR INFORMATION & COMMUNICATIONS.....2ND
RESPONDENT**

**COMMUNICATIONS COMMISSION OF KENYA.....3RD
RESPONDENT**

RULING

This is a petition for leave to commence Judicial Review proceedings and apply for the orders of Certiorari, Prohibition and Mandamus. The application is based mainly on the ground that the purported act of the Minister for Information (the Minister) to re-appoint Mr. Charles J.K. Njoroge (the officer) as the Director General of the Communication Commission of Kenya (the Commission) is illegal. It is supported by the affidavit of Stephen Mutoro the Secretary General of the Petitioner and the accompanying statement.

The facts as stated in both of those documents are that Engineer Charles J.K. Njoroge was upto the beginning of July 2011 the Director General of the Commission. Upon expiry of his three year contract, the Board of the Commission re-evaluated his performance but declined to recommend him for re-appointment because in its view he did not meet the required standard. It accordingly advised the Minister of its decision.

That advice notwithstanding, on 20th July 2011 the Minister, vide Gazetti Notice No. 8925 published on 29th July 2011, purported to re-appoint the said officer as the Director General of the Commission for a further period of three years.

The Petitioners have annexed to the supporting affidavit a circular from the Head of the Civil Service setting out the procedure to be followed by all State Corporations in the re-appointment of Chief Executive Officers of State Corporations. They aver that in the circumstances, the Minister's decision is a blatant illegal act reeking of impunity taken in total disregard of the national values contained in **Article 10 (2)(c) of the Constitution**. They therefore seek leave of this court to commence Judicial Review proceedings and seek the orders of Certiorari to quash the Minister's said decision, Prohibition to prohibit the said Charles J.K. Njoroge from continuing to act as Director General of the Commission and Mandamus to compel the Board to competitively appoint a new Director General of the Commission. They also seek that the leave if granted should operate as a stay of the Minister's purported decision to appoint the said Charles J.K. Njoroge to be the Director General of the Commission.

My task at this stage is not to decide whether or not the Minister's decision is illegal as claimed. I cannot make that decision without first hearing the Minister. My task at this stage is to decide whether or not on the basis of the material placed before me the Petitioners have made out an arguable case entitling them leave to apply for the said orders.

Having perused the petition as well as the accompanying statement and the supporting affidavit together with the annexures thereto, and having considered the submissions by counsel for the Petitioners, I am satisfied that the Petitioners have made out a case for grant of the leave sought. I therefore grant the Petitioners leave to apply for Judicial Review Orders of Certiorari, Prohibition and Mandamus as prayed. I direct that the leave granted shall operate as a stay of the Minister's purported decision to re-appoint the said Charles J.K. Njoroge as the Director General of the Commission for a further period of three years. That means that the said Charles J.K. Njoroge shall with effect from the date hereof cease to be or to act as the Director General of the Communication Commission of Kenya until this matter is heard and determined. It also means that the Board of the Communication Commission of Kenya if need be can only appoint somebody on an acting basis and not a substantive holder of that post until this matter is heard and determined. The Petitioners shall file and serve the substantive application within 15 days. Costs in cause.

DATED and delivered this 10th day of August 2011.

**D.K. MARAGA
JUDGE**