



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**JR MISC. CIVIL APPLICATION NO.8 OF 2015**

**IN THE MATTER OF: An application by Eng. Moses Agumba Orot for leave to apply for Judicial Review Orders of Certiorari, Mandamus and Prohibition directed to the Cabinet Secretary Ministry of Water and Irrigation and the Board of Directors Lake Victoria South Water Services Board.**

**-AND-**

**IN THE MATTER OF: The proceedings and the decision made on 27.08.2015 by the Board of Directors Lake Victoria South Water Services Board**

**-AND-**

**IN THE MATTER OF: Article 22, 23, 25, 35(2), 47, 50 of the Constitution of Kenya**

**-AND-**

**IN THE MATTER OF: The State Corporation Act Cap 446 laws of Kenya, the Water Act, 2002, the Law Reform Act and Order 53 of the Civil Procedure Rules, 2012.**

**THE REPUBLIC (EX-PARTE)**

**THROUGH ENG. MOSES AGUMBA OROT..... APPLICANT**

**VERSUS**

**1. BOARD OF DIRECTORS LAKE VICTORIA SOUTH**

**WATER SERVICES BOARD..... 1<sup>ST</sup> RESPONDENT**

**2. CABINATE SECRETARY MINISTRY OF WATER & IRRIGATION ..... 2<sup>ND</sup> RESPONDENT**

**3. THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**-AND-**

**THE CHAIRMAN BOARD OF DIRECTORS LAKE VICTORIA SOUTH WATER**

**RULING**

The ex-parte applicant, **Eng. Moses Agumba Orot**, has moved this court by way of a Chamber Summons application dated 31<sup>st</sup> August, 2015 brought under **sections 8 and 9** of the **Law Reform Act Cap 26 Laws of Kenya** and **Order 53 Rules 1 and 2** of the Civil Procedure Rules, 2010, seeking leave of the Court to apply for an order of *certiorari* to remove into this Court for purposes of quashing the decision of the 1<sup>st</sup> respondent made on 27<sup>th</sup> August 2015 purporting to ask the ex-parte applicant to “*step aside*” from his position as the Chief Executive Officer of the 1<sup>st</sup> respondent, **Lake Victoria South Water Services Board**. The ex-parte applicant also intends to seek an order of prohibition directed at the 2<sup>nd</sup> respondent prohibiting the **Cabinet Secretary, Ministry of Water and Irrigation** from entertaining, implementing or acting upon the decision of the 1<sup>st</sup> respondent and also from appointing another Chief Executive Officer of the 1<sup>st</sup> respondent in an acting capacity or any other form.

The application is supported by the statement of facts attached to the application and the verifying affidavit by the ex-parte applicant and annexures to the application.

The ex-parte applicant, in a nutshell, says that he was appointed as the Chief Executive of the 1<sup>st</sup> respondent on 29<sup>th</sup> January 2015, a position he holds to-date and that the 1<sup>st</sup> respondent has acted in an illegal, and unprocedural manner when on 27<sup>th</sup> August 2015 it recommended that the ex-parte applicant steps aside on account of certain issues that had been resolved in 2014 and without giving the ex-parte applicant an opportunity to be heard.

The *ex-parte* applicant has also says that the decision of the 1<sup>st</sup> respondent was made without jurisdiction, was in contravention of the law and that the decision was made with malice given that the 1<sup>st</sup> respondent had instigated private criminal prosecution against him which were however stayed by a decision of the High Court sitting at Kisumu in **H. C. Misc. Application No. JR 6 of 2015.**

Mr Omollo, learned counsel for the ex-parte applicant has argued the application on behalf of the ex-parte applicant and reiterated that the 1<sup>st</sup> respondent acted without jurisdiction, acted with malice and violated the principle of Natural Justice. The 1<sup>st</sup> respondent is also accused of re-opening a matter that had been dealt with and closed and has urged that the court grants the orders sought since the 1<sup>st</sup> respondent, as a public body, had acted outside the law. Counsel submitted that they intend to challenge the decision of the 1<sup>st</sup> respondent prays and that once leave is granted it should operate as stay of that decision until the substantive motion is heard and determined.

I have considered the application before me, the statement of facts and replying affidavit. I have also perused the annexures to the application. I have in particular seen the minutes of the 1<sup>st</sup> respondent’s meetings held in May 2014 and July 2014. The ex-parte applicant was discussed in those meetings and was to be issued with a warning letter. I have also seen the letter from the 1<sup>st</sup> respondent to the ex-parte applicant dated 27<sup>th</sup> August, 2015 communicating the decision of the 1<sup>st</sup> respondent to him. From that letter, it is clear that the issues for which the *ex-parte* applicant is being asked to step aside are on “***the audit report or payroll variance amounting to Ksks.14,483,145, Kenya Revenue Authority issues affecting the Institution and private criminal prosecution preferred against you.***” (The *ex-parte* applicant).

Apart from the private criminal prosecution, the other issues had been deliberated in 2014 and resolutions made. The private criminal proceedings had by the time the 1<sup>st</sup> respondent was asking the ex-parte applicant to step aside, been stayed by an order of the court.

I am therefore satisfied that the ex-parte applicant has laid a basis for grant of the leave sought to enable him challenge the decision of the 1<sup>st</sup> respondent. The ex-parte applicant has alleged that he was denied

the right to be heard and that the 1<sup>st</sup> respondent acted outside its mandate. These are issues that the court hearing the substantive motion will have to deal with and make a determination. For my part and for purposes of leave these issues are plausible.

For the above reasons, I hereby allow the chamber summons application dated 31<sup>st</sup> August 2015 and make the following orders:-

1. Leave is hereby granted to the ex-parte applicant to apply for an order of certiorari to remove into this court for purposes of quashing the proceedings and decision by the Board of Directors Lake Victoria South Water Services Board made on 27<sup>th</sup> August 2015 and communicated to the ex-parte applicant vide letter reference No. LVSWSB/EST/0043/(33).
2. Leave is hereby granted to the ex-parte applicant to apply for an order of prohibition directed at the Cabinet Secretary, Ministry of Water and Irrigation prohibiting the Cabinet Secretary from entertaining, implementing or acting upon the proceedings and the decision made on 27<sup>th</sup> August 2015 by the Board of Directors Lake Victoria South Water Services Board and communicated to the ex-parte applicant vide letter reference No. LVSWSB/EST/0043/(33.)
3. Leave is hereby granted to the ex-parte applicant to apply for an order of prohibition prohibiting the Cabinet Secretary Water and Irrigation from appointing either in an acting capacity or on permanent basis any other person or officer to the position of the ex-parte applicant or replacing the ex-parte applicant based on the proceedings and decision of the Board of Directors of Lake Victoria South Water Services Board made on 27<sup>th</sup> August, 2015 and communicated to the ex-parte applicant vide letter ref LVSWSB/EST/0043/33 dated 27<sup>th</sup> August, 2015.
4. Leave is hereby granted to the ex-parte applicant to apply for an order of mandamus compelling the Board of Directors of Lake Victoria South Water Services Board and the Cabinet Secretary Ministry of Water and Irrigation to reinstate the ex-parte applicant to his position as the Chief Executive Officer, Lake Victoria South Water Services Board.
5. The leave granted do operate as a stay of the proceedings and the decision made on 27<sup>th</sup> August, 2015, by the Board of Directors, Lake Victoria South Water Services Board and communicated to the ex-parte applicant vide letter reference LVSWSB/EST/0043/33 dated 27<sup>th</sup> August 2015 requiring the ex-parte applicant to step aside pending the hearing and determination of the substantive application.
6. The substantive Notice of Motion be filed and served on all the interested parties within 21 days from the date hereof.
7. The matter be mentioned before a Judge of the High Court at Kisumu on 28<sup>th</sup> September, 2015 for directions.
8. Costs of this application be costs in the main application.

***Dated and delivered at Kakamega this 2<sup>nd</sup> day of September, 2015.***

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**E. C. MWITA**

**J U D G E**