



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL SUIT NO.21 OF 2015

JOHN OBURA OWUOTHPLAINTIFF
VERSUS
NATIONAL IRRIGATION BOARD.....1ST DEFENDANT
THE HONOURABLE ATTORNEY-GENERAL.....2ND DEFENDANT

R U L I N G

1,By the application dated 9.6.15 the plaintiff/applicant prays for the following reliefs:

- a. **A temporary injunction against the 1st defendant restraining it either by itself, its agents and or servants from convening and or holding its full board meeting on 11.6.15 or any date thereof pending the inter parties hearing of this application.**
- b. **An injunction do issue against the 1st defendant agents and or servants from convening and or holding its full board meeting or any other meeting whatsoever pending the hearing and final determination of this suit or further orders of this court.**

2. The applicant has supported the said application by his sworn affidavit dated 9.6.15. The applicant is a licensed farmer within West Kano Irrigation Scheme which comprises 5 National Irrigation Schemes namely West Kano, Ahero, South West Kano, Gem Rae, Oluch Kimura and Lower Kuja irrigation Schemes. According to the applicant the same cover about 32,255 acres and has 15,720 farmers. It covers 20% of the irrigation schemes in Kenya.

3. By a gazette notice dated 27.4.15 the Acting Cabinet Secretary for Agriculture Livestock and Fisheries constituted a board pursuant to the provisions of the Irrigation Act Cap 437 Laws of Kenya. The persons appointed therein did not represent the applicant's interest and in particular the farmers from the Nyanza Province region. This according to the applicant contravened paragraph 1(c) of the Schedule to the Act.

4. The respondent did not file any response despite being served with the relevant application. The applicant has filed his submissions in support of the application.

5, I have perused the application together with the relevant annexures and I am satisfied that the applicant has locus standi to bring the application. Section 3 of the Irrigation act provides for the establishment of the board and it states as follows:

“3(1) There is hereby established a Board to be known as the National Irrigation, which shall be a body corporate having perpetual succession and a common seal, with power to sue and be sued, and capable of purchasing or otherwise acquiring, holding, managing and disposing of any property movable or immovable, entering into contract, and doing all

things necessary for the proper performance of its duties and discharge of its functions under this Act and any subsidiary, legislation made thereunder.

(2) The provisions of the Schedule shall have effect as to the constitution membership, proceedings of and otherwise in relation to the Board.”

6, The Act goes ahead to stipulate that the board shall have at least four meetings in a year and that the chairman may constitute a special meeting.

7. The functions of the board are clearly geared towards the establishment and planning of the National Irrigation Schemes among others.

8. The constitution of the Board is anchored on Section 1 of the Schedule which state as follows:

“(1) The Board shall consist of the following members;

(a) a chairman who shall be appointed by the Minister;

(b) the director of agriculture or a person deputed by him in writing to exercise his functions on the Board;

(c) one representative from each province in which a national irrigation scheme exist, or is being planned, appointed by the Minister from a panel of not less than three persons associated with irrigation submitted to him by each Provincial Agricultural Board concerned. Provided that should a province have no Provincial Agriculture Board, the minister shall appoint a representative for such province after consultation with persons representing irrigation interest in that province...”

9. Clearly the schedule recognised the old Provincial administrative set up where this country had 8 provinces. It appears therefore that at least every province is to have a stake at the board. That was the intention of parliament.

10. From the gazette notice dated 27th April 2015, the following were appointed as Representatives from various provinces,

- a. **Pacifica Kipyegon Mango;**
- b. **Teresa Muthoni Mushira;**

Under sub-paragraph (b) -

- a. **Francis Gichuki (Dr)**
- b. **Japheth Rutare (Eng)**
- c. **Anna Kina Nyambu**

11. Those under sub-paragraph (h) I suppose represent various Ministries and state agencies with stake in the irrigation section.

12, So who is representing the Nyanza region or Nyanza Province for that matter? Is any of those mentioned under Schedule (c) its representative? This answer could only be obtained from the Cabinet Secretary.

13. Unfortunately as stated earlier, the respondents did not file any replies. I am however persuaded in the absence of any other proof from the defendant/respondents that there are no representatives from the Nyanza Province region. Yet I do agree with the applicant that the National Irrigation Schemes enumerated in his affidavit cannot be wished away. They are so significant that, their input ought to be considered.

14, In the absence of any representation at the board I do not think that their interest will be taken care of. The powers vested on the Board are such enormous that the input from Nyanza Province ought to be considered. In short I find that there is a clear imbalance in the Board which cannot be wished away.

15. Consequently I shall allow the application dated 5/6/15 on the following terms:

(a) There be and is hereby issued a temporary injunction pending the hearing and determination of this suit against the 1st defendant, its servants and or agents from holding or convening a full Board meeting or any other meeting within the next 60 days from the date herein.

(b) The respondent within these 60 days should gazette a representative from the Nyanza Region as provided by the Act.

(c) Should the respondent fail to comply with Order (b) above then there shall be injunction automatically stopping the respondent from holding or convening any meetings of its board or any other meeting pending the hearing and determination of the suit.

(d) The applicant shall have the costs of this application.

It is so ordered

Dated, signed and delivered this 2nd day of December 2015.

H. K. CHEMITEI

J U D G E

IN THE PRESENCE OF:

..... for the applicant

..... for the respondent