

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**PETITION NO. E011 OF 2025**

**SAMUEL MARIGI KIMANI ..... PETITIONER**

**VERSUS**

**MOMBASA COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**WATER SERVICES REGULATORY BOARD ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**MOMBASA WATER SUPPLY AND SANITATION**

**COMPANY LTD ..... 1<sup>ST</sup> INTERESTED PARTY**

**ABDIRAHIM MOHAMED FARAH ...2<sup>ND</sup> INTERESTED PARTY/1<sup>ST</sup> CONTEMNOR**

**EDITH KWEKWE MARAFA ..... 2<sup>ND</sup> CONTEMNOR**

**JUDGMENT**

The petitioner is seeking the following orders:

- (a) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have no statutory mandate to appoint any persons to serve as the Managing Director of the 1st interested party or to appoint any other senior employee of the company to such a role is vested in the 1<sup>st</sup> interested party.*
- (b) A declaration that the 1<sup>st</sup> respondent's decision to renew the terms of the 2<sup>nd</sup> interested party herein, Abdirahim Mohamed Farah as the 1<sup>st</sup> interested party's managing director for a term of three (3) years vide letter dated 7 march 2025 is contrary to article 10(2), 47(1), 73 and 232 of the constitution and therefore illegal, unconstitutional, null and void.*
- (c) Upon the issuance of prayer (b) above, an order is to issue quashing the renewal of the 2<sup>nd</sup> interested party, as the 1<sup>st</sup> interested party's managing director by the 1<sup>st</sup> respondent.*
- (d) The 3<sup>rd</sup> respondent be compelled to file report on the technical competence of the 2nd interested party and renewal process that the 1st respondent did in light of the Water (Services) Regulations, 2024 and Corporate Governance for the Water Services Sector, 2024.*
- (e) Pending the recruitment of the managing director of the 1<sup>st</sup> interested party, the 1<sup>st</sup> interested party's board of directors be directed to appoint a competent member of staff of the Mombasa Water Supply and Sanitation Company Ltd to act as the*

*managing director upon the lapse of the current term of the 2<sup>nd</sup> interested party on 2 May 2025.*

*(f) Costs of the suit and an order for the refund of filing fees for this petition.*

*(g) Or such other order(s) as the court shall deem just.*

## **Petition**

The petitioner is a resident of Mombasa County and a consumer of water and sanitation services supplied by the 1<sup>st</sup> interested party. The 1<sup>st</sup> respondent is a corporate body established under section 57 of the County Government Act (CGA) and mandated to appoint persons to hold or act in offices of the County. The 2<sup>nd</sup> respondent is established under Article 176 of the Constitution and the CGA to perform the functions set out under the Fourth Schedule of the Constitution, including water and sanitation services. The 3<sup>rd</sup> respondent is a body corporate established under section 46 of the Water Act, with functions including issuing licences for the provision of water services and determining standards for their provision. The 1<sup>st</sup> interested party is a private limited liability company performing a public function as an agent of Mombasa County Government, responsible for revenue generation from the sale of water and sewerage services. The 2<sup>nd</sup> interested party (IP) has been the managing director of the Mombasa Water Supply and Sanitation Company Ltd since 2 May 2022, and the employment contract is set to lapse on 2 May 2025.

The petition is that the respondents have violated the Constitution, the law, and the corporate governance standards in the water services sector. Under the Water (Services) Regulations made under the Water Act, a county water services provider should employ a managing director (MD) and other employees on terms and conditions approved by its board of directors. Such terms and conditions should comply with the water sector benchmark on remuneration and the guidelines issued by the Salaries and Remuneration Commission (SRC). Thus, under the Corporate Governance Standards for the water Services Sector, a board of directors should ensure that an MD position is advertised and appoint a person who meets the criteria set out under section 86 of the Water Act. Issue the MD a contract in terms of any CBA in place. Under the Act, the criteria for appointment are set out.

The petition is that the MD of the Mombasa Water Supply and Sanitation Company's 3-year contract is set to expire on 2 May 2025. The board of directors of the 1st IP unilaterally renewed the contract, effective 6 March 2025, a procedure and a legal matter that is improper. The 1<sup>st</sup> respondent has no authority to appoint the MD of the 1st IP, and it is not a party to the contract among the employee, the employer, the 2nd IP, and the 1st IP. Thus, the decision of the 1st respondent is *ultra vires*.

Under the Mombasa Water Supply and Sanitation Company Ltd articles of association, the board has the sole mandate to appoint an MD on competitive terms under the sector. Under the Water (Services) Regulations, the 1<sup>st</sup> IP has the authority to appoint the MD of a water services provider, which acts through the Board.

Under the Corporate Governance Standards for the Water Services Sector, developed by the Water Services Regulatory Board, the board of directors should appoint its MD under a performance-based contract.

The petition is that the 1st respondent's renewal of the 2nd IP's contract has no basis and should be declared null and void. Under section 72 of the Corporate Governance Standards for the Water Services Sector, a water services provider, such as the 1st IP, should appoint the MD through a competitive process. The unilateral renewal of the contract for the MD by the 1st respondent is contrary to the rules, practice and the law.

Section 59(b) of the CGA mandates the 1st respondent to the appointment of persons to hold office under the County Public Service, including the board, and not employees of the 1st IP, which should be done by the board.

The petition is that the 1st respondent has renewed the 2nd IP contract by usurping the powers of the 1st IP's board. Such interference should be stopped through an order of the court.

### **Response**

In reply to the petition, the 1<sup>st</sup> IP filed the Replying Affidavit of Edith Kwekwe Marafa, the board chairperson, who avers that, as a limited liability company, the 1st IP has the mandate to provide cost-effective water and sanitation services in Mombasa County. As an agent of the 2<sup>nd</sup> respondent, the 1<sup>st</sup> IP is mandated to discharge its duties.

Kwekwe avers that section 77 of the Water Act and regulation 9 of the Water (Services) Regulations mandate the County Government to establish water service providers within its jurisdiction. By a letter dated 7 March 2025, the 1st respondent renewed the 2nd IP's contract as MD for a term of 3 years, with effect from 2 May 2025, subject to the 1st IP's agreement and ratification.

Kwekwe avers that the petitioner was aggrieved by the decision of the 1st respondent and noted the court, which, on 4 April 2025, issued orders staying the 1st respondent's appointment of the 2nd IP. However, the board ratified the decision to renew the 2nd IP's contract in compliance with applicable laws and regulations. Such renewal was not unilateral as alleged by the petitioner. The contract was renewed through a collaborative agreement between the 1st respondent and the 1st IP within the confines of the applicable legal framework.

The position of MD is, by law, a public office subject to regulations governing public officers, including the County Public Service Board. The contention in the petition that only the 1<sup>st</sup> IP can renew the MD contract is factually untenable and disregards the ownership structure of the 1<sup>st</sup> IP. The petitioner is not a member of the board and has not demonstrated his interest in the affairs of the 1st IP to move the court, as herein done.

### **Determination**

On 30 October 2025, parties had a partial consent in the following terms:

- a) The 2<sup>nd</sup> IP confirmed that he is not interested in being appointed as the MD of the 1st IP, and the letter dated 1 March 2025 is revoked.
- b) Based on (a) above, the interim orders issued on 4 April 2025 be vacated. [The Order stopped the recruitment of the MD for the 1<sup>st</sup> IP].

- c) The minutes of the 1<sup>st</sup> IP on 2 May 2025 and the resolution thereof are nullified.
- d) Parties agree per Regulation 5 of the Water (Services) Regulations and paragraph 3.9(4) of the Corporate Governance Standards for Water Services Sector, 2024, the Board of Directors of the 1<sup>st</sup> P have the sole authority to appoint the MD of the Company.
- e) The 1<sup>st</sup> IP through the Board of directors will proceed to carry out a competitive process for an MD in line with the competence criteria of the Water Services Criteria without the respondents' interference.

The only matter that was not agreed upon was on costs and the framing of the various declarations sought in the petition.

The respondents agreed that the 1<sup>st</sup> IP should be allowed to recruit the MD in accordance with the company regulations.

The interested parties, through their advocates, submitted that they are ready and willing to recruit a new MD in accordance with applicable law, regulations, and sector practice.

In the petition, the statutory mandate to appoint a person to the position of MD of a water supply and sanitation company, such as the 1<sup>st</sup> IP, is regulated by the Water Act and Article 11(1) of the Water (Services) Regulations. Hence, the entity of the 1<sup>st</sup> IP has the sole mandate to advertise and recruit for the MD position at the company. The operative best practice is articulated in the Corporate Governance Standards for the Water Services Sector, which, under sections 3.3, 72, 73, and 74 thereof, address the parameters for recruitment and the criteria for the MD position holder.

In this regard, the 1<sup>st</sup> IP admitted that it indeed has the sole mandate to advertise, recruit, and appoint the persons to hold the MD position for the company.

In this regard, the decision by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to renew the terms of the 2<sup>nd</sup> IP contract as the 1<sup>st</sup> IP MD for a term of 3 years, with effect from 2 May 2025, is without any legal basis and is therefore invalid. The averments by Kwekwe as the chairperson of the 1<sup>st</sup> IP that the renewal of the contract was done in consultation and collaboration between the 1<sup>st</sup> respondent and 1<sup>st</sup> IP are contrary to the provisions of the Water Act and Article 11(1) of the Water (Services) Regulations and the Corporate Governance Standards for the Water Services Sector. The entity of the 1<sup>st</sup> IP has the sole mandate to recruit for the position of its MD. See **Okiya Omtatah Okoiti & 3 others v Nairobi City County & 5 others [2014] KEHC 8486 (KLR)** and **Kimani v Water Services Regulatory Board; Water Services Providers Association (Interested Party) [2023] KEHC 22356 (KLR)**

The appointment of the 2<sup>nd</sup> IP, Abdirahim Mohamed Farah, by the 1<sup>st</sup> respondent is revoked. The subject letter of the 1<sup>st</sup> respondent, dated 7 March 2025, issued to the 2<sup>nd</sup> IP renewing his contract with the 1<sup>st</sup> IP is quashed.

The 1<sup>st</sup> respondent retains the authority to appoint its officers to hold various positions substantively or through acting roles. Such mandate is not undertaken by any other entity, including the 1<sup>st</sup> respondent, whose role with regard to the 1<sup>st</sup> IP is as addressed under section 59(b) of the CGA with regard to the appointment of persons to hold or act in offices of the

county public service including the boards of cities and urban areas within the County as held in **Rhodah Kiilu & 106 others v Governor, Machakos County & 2 others [2018] KEELRC 1569 (KLR)** and **Musyoka & another v County Public Service Board, Kitui County & 4 others [2022] KEHC 13699 (KLR)**.

On this basis, the petition is filed. The petitioner, as a resident of Mombasa County, is served by the respondents and the 1st IP for water, sanitation, and sewage services. He is a consumer of the services thereof, and by filing this petition, there is justification. He is entitled to the attendant costs. The matter would have been resolved earlier than this date were it not for the conduct of the 1st IP, who shall pay 50% of the petitioner's costs upon assessment.

Accordingly, the petition has merit as addressed above. The appointment of the 1<sup>st</sup> respondent to the 2<sup>nd</sup> IP as the MD for the 1<sup>st</sup> IP through a letter dated 7 March 2025 is hereby quashed. The 1<sup>st</sup> IP shall undertake fresh recruitment for the position of MD. The 1<sup>st</sup> IP shall meet 50% of the petitioner's costs.

**Delivered in open court at Mombasa, this 12<sup>th</sup> day of March 2026.**

M. MBARŪ  
JUDGE

In the presence of:

Court Assistant: Omar

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