

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC PETITION E018 OF 2025

JULIUS OGOGOHPETITIONER

VS

**WATER SERVICES REGULATORY BOARD AND
COAST WATER WORKS**

DEVELOPMENT AGENCY AND 6 OTHERS.....RESPONDENTS

RULING

1. By a Notice of Motion application dated 10th June 2025, the Petitioner sought the following orders;
 - a) Pending the hearing and determination of the application herein, this Honourable Court be pleased to issue a conservatory order barring all the Interested Parties from performing and discharging the duties of the Director of the 2nd Respondent and stop any payment to them in terms of allowances, stipend, and any monetary benefit accruing from performance of duties as Directors.
 - b) Pending the hearing and determination of the petition herein, this Honourable Court be pleased to issue a conservatory order barring all the Interested Parties from performing and discharging the duties of the Director of the 2nd Respondent and stop any payment to them in terms of allowances, stipend, and any monetary benefit accruing from performance of duties as Directors.
2. The application is based on the grounds set out on the face of it and the supporting affidavit sworn by the Petitioner on 10th June 2025.
3. The Respondents opposed the application by the Replying affidavit sworn by Mr Hamoud Mguza, the 2nd Respondent's Chief Executive Officer, on 26th July 2025.

The Application

4. The petitioner stated that, sometimes in February 2023, the President of the Republic of Kenya appointed the 1st Interested Party as the Chairperson of the 2nd Respondent Board of Directors and the 2nd to 5th Interested Parties as members of the Board of Directors vide Kenya Gazette No. 1137 of 2023.
5. The said appointment was based on the provisions of Section 7[2] of the State Corporations Act.
6. The Petitioner stated that, as such, the appointment was based on the application of the general provisions on the appointment of the Directors and Chairperson of State Corporations, which only applies where there is no specific provision of law regarding the appointment.
7. Section 66 of the Water Act sets out who is responsible and qualified to make such an appointment, namely the Cabinet Secretary, Water, Sanitation and Irrigation.
8. It was stated that the President's purported appointment was ultra vires, resulting in the formation of an illegal Board of Directors.
9. The Petitioner contended that the appointment was, therefore, null and void abinitio and an act of impunity on the part of the President.
10. Accordingly, the decisions and resolutions of the 2nd Respondent's Board of Directors from February 2023 to February 2024 were null and void, and any financial expenditure during this period was an improper use of public funds.
11. The said appointment constituted an usurpation of the powers of the Cabinet Secretary in charge of the Ministry of Water, Sanitation and Irrigation, as provided for under Section 66 of the Water Act.

The Respondents' Response

12. The Respondent stated that the Petition in its entirety does not pass the prima facie test to warrant issuance of the conservatory orders sought in the Petitioner's application.
13. It was further stated that the power to appoint members of the Board legally vests in the President. The Cabinet Secretary exercises delegated authority from the President to appoint to the same board. As such, the petition herein stands on quicksand, and the application for conservatory orders, too.
14. The instant application is intended only to paralyse the operations of the Coast Waterworks Development Agency and must be viewed in the light of malice and political malfeasance.
15. The Respondents contended that the instant application is similar to another filed in ELRCPETITION No. 009/2025 by another activist, John Oucho Obura, purportedly as a public interest litigation. Following the application, conservatory orders were issued, effectively suspending the second respondent's managerial and operational affairs.
16. The conservatory orders issued on the 28th April 2025 in the above-mentioned petition had the effect of;
 - a. The continuation of the then Acting Chief Executive Officer in the capacity of Acting Chief Executive Officer of the 2nd Respondent, or the execution of duties and functions associated with the role of Acting CEO.
 - b. Restraining the Deputy Directors from holding office.
 - c. Restraining the Acting CEO and Deputy Directors from drawing any salary or allowances from the Exchequer.
17. The orders of the court dated 28th April 2025 are in force and have caused the 2nd Respondent operational difficulties. The institution will face even greater complexities should the conservatory orders sought by the current applicants be granted.

18. It shall not be in the public interest to issue conservatory orders in this particular instance, as it would paralyse service delivery, since the institution's leadership would be suspended en masse.

19. The Interested Parties are members of the Board of Directors of the Respondent, appointed pursuant to the provisions of the Water Act No. 43 of 2016 and the relevant gazette notices.

20. The 1st Interested Party was appointed by the Minister for Water and Sanitation vide Gazette Notice 4936 dated 23rd April 2024 for a period of three years. This is contrary to the petition's accusations that his appointment was made by the President.

21. It was further asserted that the terms of service of the other appointed Board Members had an appointed end date, the 4th July 2025. The application for conservatory orders is overtaken by events, having been filed only twenty-four days before the term expiry.

22. A Court of law never issues orders in vain. Further, the multiplicity of petitions and applications constitutes an abuse of the court process and vexation to the Respondent institutions.

23. The Coast Waterworks Development Agency serves the entire coastal region by providing water and sanitation infrastructure and maintaining it. It supports the regional water services providers.

The water services providers are:

- a. Taveta - Voi Water and Sewerage Company. (TAVEVO)-
- b. Lamu Water and Sewerage Company (LAWASCO)
- c. Kwale Water and Sewerage Company (KAWASCO)
- d. Kilifi -Mariakani Water and Sewerage Company (KIMAWASSCO) e. Tana Water and Sewerage Company TAWASCO)
- f. Malindi Water and Sewerage Company (MAWASCO)

g. Mombasa Water Supply and Sanitation Company. (MOWASSCO)

24. Public interest would demand denying any orders against the interested parties herein, as such actions could exacerbate the situation, resulting in millions of Kenyans relying on the aforementioned institutions and the CWWDA receiving substandard service due to inadequate oversight and a shortage of officials at the Board of Management level.

25. The balance of convenience favours the Respondents and the interested parties herein. No irreparable harm can arise if the interested parties are allowed to continue their service until the expiry of their terms.

Analysis and Determination

26. Without venturing into the other issues raised in the parties' respective pleadings, or the comprehensive and well-articulated submissions made by counsel on both sides, this Court is guided foremost by the overriding objective that governs its mandate, namely, the just, expeditious, and cost-effective determination of disputes. The objective obliges this Court to focus on the dispositive issue that is capable of resolving the matter without unnecessary engagement with peripheral questions.

27. In the instant application, the central and determinative point is that the Directors in question have already served and completed their respective terms of office. Their tenure having lapsed by effluxion of time, there is no subsisting term capable of being preserved, protected, or restrained by way of interim relief.

28. A conservatory order is intended to safeguard an existing legal right or position pending the determination of a dispute. It cannot issue in circumstances where the subject matter sought to be preserved has ceased to exist. To grant such an order in the present case would therefore be in vain, as the Court does not act in futility.

29. Accordingly, and without pronouncing itself on the remaining issues canvassed by the parties, this Court finds that the application is devoid of merit on this singular but decisive ground. The prayer for a conservatory order cannot be sustained in the circumstances.

30. In the upshot, the Petitioner's application is hereby dismissed.

Read Signed and Delivered this 26th Day of February 2026.

SIGNED
JUSTICE OCHARO KEBIRA