



**Ojwang v Masha & 2 others (Petition E167 of 2024)
[2025] KEELRC 2069 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2069 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E167 OF 2024**

**MN NDUMA, J
JULY 10, 2025**

BETWEEN

STEPHEN OJWANG PETITIONER

AND

DR RUTH LAIBON MASHA 1ST RESPONDENT

**THE CHAIRPERSON, NATIONAL SYNDEMIC DISEASES CONTROL
COUNCIL (NSDCC) BOARD OF NATIONAL SYNDEMIC
DISEASES 2ND RESPONDENT**

CONTROL COUNCIL (NSDCC) 3RD RESPONDENT

JUDGMENT

1. The factual basis of the petition as set out under part E of the petition paragraphs 29 to 37 is that the 1st Respondent was appointed Chief Executive Officer (CEO) of the National Syndemic Diseases Control Council (NSDCC) formerly National Aids Control Council (NACC) on 14/1/2020 to serve a 3-year term until 15th September 2023.
2. That the three-year term expired on 15th September 2023. That the contract was renewed for a term of one year until 15th September 2024. That despite expiry of the one-year contract on 15th September 2024, the 1st Respondent has remained in office, without a valid contract and has continued to execute public duties unlawfully.
3. That the Petitioner requested information on the status of the employment of the 1st Respondent by a letter dated 16th September, 2024 copied to the Ministry of Health and State Corporation Advisory Committee but no response has been received in violation of Article 35 of the Constitution on the right to access public information.



4. That the National Aids Control Council (Amendment) order 2021 require the CEO of the Council to be appointed by the Council with the approval of the Cabinet Secretary. That the 1st, 2nd and 3rd Respondents have violated this requirement. That the Respondents have also failed to adhere to the circular Ref: OP/CAB.9/IA dated 20th April 2022 which provides guidelines on the procedure for appointment/reappointment of CEO 's of State Corporations by not seeking concurrence of Cabinet Secretary; approval of the Chief of Staff and head of Public Service prior to appointment. That the Respondents have violated other guidelines including circular dated OP/CAB.9/IA dated 25th November 2022 and Advisory by the Attorney General dated 14th December 2017 that appointments of CEOs in State Corporation be guided by the general provisions of section 5(3) of the State Corporations Act CAP 446 and specific Acts of Parliament, under the individual state corporation. That section 6(2) of the Act provides CEOs shall be appointed for a renewable period of five (5) years or such shorter period as may be specified in the notice of appointment.

Alleged violations.

5. Petition alleges violation of Articles 2(1), 10(2), 35(1)(a), 73 and 75 of the Constitution of Kenya 2010.
6. The Petitioner seeks the following reliefs:-
 1. A declaration that the failure by the 1st, 2nd and 3rd Respondents to provide information sought under Article 35(1) on the basis of the Petitioner's request dated September 17th, 2024, is a violation of the right to access information.
 2. A declaration that the failure by the 1st, 2nd and 3rd Respondents to provide information sought under Article 35(1)(a) on the basis of the Petitioner's request dated September 17th, 2024, is a violation of Article 10 of the Constitution specifically the values of the rule of law, participation of the people, human rights, good governance, transparency and accountability.
 3. A declaration that failure by the 1st, 2nd and 3rd Respondents to provide information sought under Article 35(1)(a) is a violation of the obligations imposed on the said respondents by chapter six specifically Articles 73(1) and 75(1) of the Constitution and section 3 of the Leadership and Integrity Act and sections 8, 9 and 10 of the Public Officers Ethics Act.
 4. An order of mandamus compelling the 1st, 2nd and 3rd Respondents to provide at the Respondents' cost, information sought by the Petitioner in their letter to the Respondents dated September 17th, 2024.
 5. An order of mandamus compelling the 1st Respondent to step aside until her contract position is determined by this honourable court.
 6. A declaration that all the decisions and actions made by the 1st, Respondent in the intervening period, after September 15, 2024, when the contract is contested be declared null and void.
 7. An order of mandamus compelling the 1st, 2nd and 3rd Respondents to meet any costs by way of a surcharge that may arise from their decisions leading to any losses, individually.
7. The Petitioner has attached the initial letter of appointment dated 4th June 2020; the recommendation for renewal of the contract of the 1st Respondent dated 28th July 2023 by the Cabinet Secretary for a period of one year and renewal of contract dated 1/8/2023. The Council states:

I am pleased to inform you that on 30th of March 2023, the NSDCC Board with the concurrence of the Cabinet Secretary of Health dated 28th July 2023, has approved your



renewal of contract as the Chief Executive Officer of the National Syndemic Control Council.”

8. The demand letter by the Petitioner to the Chairman of the Board of (NSDCC) dated 16/9/2024 lists 9 documents to be provided to the Advocate in line with Articles 10, 35 and 232 of the Constitution of Kenya 2024 including copy of 1st appointment; 2nd appointment; concurrence by Cabinet Secretary for 1st and 2nd contact ministry, the Board for the 2nd term appointment.

Response

Replying affidavit by 1st Respondent.

9. The 1st Respondent Dr. Ruth Laibon Masha filed a replying affidavit dated 31st October 2024 in which she states that she is the CEO of the 2nd Respondent appointed on 4th June 2020 for a term of 3 years with effect from 1/9/2020, that followed a fair, competitive and open recruitment process in which she emerged the top candidate.
10. That she rendered excellent service since then. That in terms of clause 2.12 of MSDCC HR and Administration Policy Regulations 2009, she was entitled to a 6 months’ notice of end of contract and within that period to indicate her desire to have the contract renewed.
11. That under Mwongozo – the Code of Governance for State Corporations dated January, 2015, she was entitled to have her contract renewed once by the 3rd Respondent subject to performance, review.
12. That the contract was due to end on 15/9/2023 and was notified accordingly on 10/3/2023, she made an application to the 2nd and 3rd Respondents’ expressing desire to have the contract renewed.
13. That the 3rd Respondent considered and renewed the contract for a period of 3 years which she accepted and executed a contract of on 1/8/2023.
14. That the renewal was lawful contrary to false allegations made by the Petitioner.
15. That her contract was never extended but was renewed lawfully. That the Petitioner relies on illegally obtained material contrary to Article 50(4) of the Constitution and ought not to be admitted as it violates the 1st Respondent’s rights and freedoms.
16. That the petition is time barred as it is filed after 3 years since the contract was renewed. The petition itself and documents attached thereto confirm that the Respondents’ appointed the 1st Respondent and renewed her contract lawfully with concurrence of the CEO concerned.
17. The 1st Respondent relies on the attached documents set out under paragraph 29 of the replying affidavit including the letter dated 1st August 2023, which confirmed renewal of the contract of the 1st Respondent for a period of 3 years pursuant to an evaluation results dated 28/9/2021.

2nd and 3rd Respondents.

18. The 2nd and 3rd Respondents filed replying affidavit dated 5th November 2024, sworn to by Geoffrey Litu, the Chairperson of the Board in which is deposed that the CEO of the 2nd Respondent is appointed by the Council with concurrence of the relevant Cabinet Secretary.
19. The deponent states that annexed appointment letter of the CEO dated 4/6/2020 and renewal dated 1/8/2023 by the Petitioner were obtained illegally and should be expunged from the record for violating Article 50(4) of the Constitution. That emails dubbed “Senior Governance Breaching and mismanagement at NSDCC marked SO-3B also falls in this category.



20. That upon expiry of CEO's contract on 15/9/2023, following notification by the Respondents and application by the CEO within 6 months' notice period, the Council resolved to renew the contract of 1st Respondent for a further period of three (3) years at a meeting held on 30/3/2023. The Cabinet Secretary approved the appointment by a letter dated 28/7/2023 following notification vide a letter dated 18/5/2023. The Council then renewed the 1st Respondent's contract on 1/8/2023 with effect from 14/9/2023 for a further period of 3 years.
21. That it is false as alleged by the Petitioner that the 1st Respondent's contract was renewed for a further term of one year ending 14th September 2024. (emphasis added)
22. That the petition lack merit and it be dismissed with costs.

Further Affidavit by Petitioner.

23. The Petitioner filed a further affidavit dated 8/11/2024 in which it traverses the deposition by the 1st, 2nd and 3rd Respondents, reiterates its case as set out in the petition and puts the Respondents to strict proof thereof.
24. The Petitioner emphasizes that the 2nd Respondent notified the Cabinet Secretary Ministry of Health by a letter dated 18/5/2023 requesting approval of the contract and the Cabinet Secretary responded by a letter dated 28/1/2023 in which the CS approved renewal of the contract of the 1st Respondent for a period of one (1) year which letter the Petitioner placed before court.
25. The Petitioner however acknowledges at paragraph 11 of the further affidavit:-

" That on August 1, 2023, the 2nd Respondent issued the 1st Respondent with a contract for 3 years contrary to the Cabinet Secretary Health's approval" and concludes that this is "a desperate patch work to mend an already hollow bucket (herein the contract)."
26. The Petitioner emphasizing again at paragraph 12 "12 That this letter seems to have been the only way to patch the gaps in the contract issued."
27. The Petitioner prays that the petition be granted as prayed.

Submissions

28. The parties filed written submissions which the court has carefully considered together with the depositions and annexures by the parties and has delineated the following issues for determination:
 - i. Whether the following documents filed by the Petitioner should be expunged from record for having been obtained in violation of Article 50(4) of the Constitution:-
 - a. Appointment letter dated 4th June 2020 of Dr. Ruth Laibon as Chief Executive Officer.
 - b. Letter from the Cabinet Secretary to the Chairperson NSDCC dated 28th July 2023.
 - c. Letter on the renewal of contract of the CEO NSDCC dated 1st August 2023
 - d. Emails marked as Annex S0-3
 - e. Emails dubbed as "Serious Governance Breaching and Management at NSDCC and marked as Annexed SO -3B."
 - ii. Whether the petition lacks any factual basis and it be dismissed for failure to disclose any cause of action.



- iii. Whether the Petitioner is entitled to the reliefs sought.
29. The Petitioner relies on a letter of concurrence by the Cabinet Secretary Health dated 28th July 2023 to allege that the 1st Respondent was appointed on a one-year term despite clear evidence provided by the Claimant that the 3rd Respondent renewed the contract of the 1st Respondent as the CEO of the 2nd Respondent by a letter dated 1st August 2023 effective on 14th September 2023 for a further period of 3 years. The petition clearly lacks factual basis. It is pertinent to note that the appointing authority of the CEO is the Council and only requires concurrence of the Cabinet Secretary. The Petitioner has on one hand petitioned the court to find the Respondents guilty of non-disclosure of necessary information to enable them file the petition in violation of Article 35(2) of the *Constitution* and in the same vein rely on documents listed herein in issue (i) to allege that the appointment of the 1st Respondent on 1st August 2023 for a period of 3 years was patch work, that is null and void and does not tally with the concurrence letter of the CS, Health dated 28/7/2023 in which the CS approved renewal of the contract of the 1st Respondent for a period of one year.
30. The Petitioner has been challenged to disclose the source of the aforesaid letter and others clearly forming part of the official records of the 2nd and 3rd Respondents and has offered no explanation.
31. The court is satisfied that these documents especially those that concern the conduct of the 1st Respondent at work were obtained in violation of Article 50(4) of the *Constitution* and infringe on the right and freedom of the 1st Respondent in particular not to have information that may be prejudicial to her be obtained illegally for production before court.
32. It behoved the Petitioner to issue and file a notice to produce of documents and to seek adverse interference to be made against the Respondents in the event they failed to disclose the information requested for by the Petitioner.
33. Accordingly, the emails marked as annexes SO – 3 and SO – 3B are struck off the record for having been obtained illegally being documents that infringes on the rights and freedom of the 1st Respondent in violation of Article 50(4) of the *Constitution*.
34. However, the letter of appointment dated 4th June 2020; the letter of concurrence by CS Health dated 28th July 2023 and the letter of renewal of contract for a period of three (3) years dated 1st August 2023 have been relied upon by the Respondents in support of their case and there is no possible prejudice and or violation of the rights and freedoms of the Respondents in terms of Article 50(4) of the *Constitution* that may emanate from the said letter.
35. Indeed, on the strength of the letter and contract of renewal of the term of the 1st Respondent for a period of three (3) years with effect from 14th September 2023 dated 1st August 2023, the petition discloses no cause of action for lack of any factual basis.
36. Accordingly, the Petitioner has not proved any violation and or threat to the rights and freedom of the Petitioner and or public interest undermined by the Respondents in the renewal of contract by Council being the appointing authority with the concurrence by the CS Health.
37. The lesser period mentioned in the concurrence letter by the CS be it in error or otherwise does not remove the mandate of the Council to renew the contract of the 1st Respondent in terms of Mwongozo and all other applicable legislation set out by the Respondents in defence of their position.
38. The court would only intervene to quash the renewal of the appointment of the CEO if they considered the decision to be demonstratively unreasonable as to constitute irrationality or perversity on the part of the decision makers. See *Michael Kiptoo versus Kenya Medical Training College and*



another Ethics and Anti-corruption Commission and another (Interested party). The decision by the Council does not fit that description at all.

39. Accordingly, the petition lack merit and is dismissed with no order as to costs this being a public interest litigation.

DATED AT NAIROBI THIS 10TH DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Lempaa for Petitioner

Mr. Kuranka for 1st Respondent

Mr. Mwangi for 2nd and 3rd Respondent

Mr. Kemboi – Court Assistant

