



Republic v Kenya Rural Roads Authority; Muthiani (Exparte Applicant) (Judicial Review Application E013 of 2022) [2023] KEELRC 1377 (KLR) (31 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1377 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E013 OF 2022**

J RIKA, J

MAY 31, 2023

**IN THE MATTER OF: ARTICLE 27 [8] OF THE CONSTITUTION OF KENYA 2010
IN THE MATTER OF: ARTICLE 36 AND 37 OF THE PUBLIC SERVICE COMMISSION ACT
IN THE MATTER OF: THE PUBLIC SERVICE COMMISSION
HUMAN RESOURCE AND POLICIES PROCEDURE MANUAL
IN THE MATTER OF: THE RECRUITMENT OF THE
DIRECTOR- GENERAL, KENYA RURAL ROADS AUTHORITY**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA RURAL ROADS AUTHORITY RESPONDENT

AND

SAMSON NZIVO MUTHIANI EXPARTE APPLICANT

JUDGMENT

Rika J

Court Assistant: Emmanuel Kiprono

Maitai Nyawira & Associates, Advocates for the Ex-Parte Applicant

Patricks Law Associates, Advocates for the Respondent and the Director-General

1. The Ex-Parte Applicant seeks, through a Notice of Motion Application dated 20th June 2022, that: -



- a. An order of certiorari issues, to remove into this Court and quash Gazette Notice Number 4309 [13th April 2022], appointing Philemon Kiprop Kandie, as the Director-General of the Respondent.
 - b. Costs be borne by the Respondent.
2. Leave to bring the Application was granted by the Court on 17th June 2022.
3. The Application is founded on the Statutory Statement and Supporting Affidavit of the Ex Parte Applicant on record.
 4. He describes himself as an Engineer, passionate about the observance of the Rule of Law, while the Respondent is described as a State Corporation, established pursuant to Section 6 of the [Kenya Roads Act](#), No. 2 of 2007.
 5. The Respondent advertised a vacancy in the position of Director-General of the Respondent, on 22nd March 2022. At the time, the position was held by Philemon Kiprop Kandie [Kandie], in an acting capacity.
 6. Kandie applied and was appointed as the Substantive Director-General with effect from the 13th April 2022, vide Gazette Notice Number 4309 of 13th April 2022.
 7. The Applicant had asked, that leave to apply for an order of Certiorari, operates as a stay of the said Notice. The Court declined this prayer, while granting leave, on 17th June 2022.
 8. His position is that advertisement was rife with procedural impropriety and bad faith. It fell short of Kenyans' legitimate expectations, that recruitment would be free and fair. The process was contrary to fair administrative process.
 9. The Respondent did not observe 21-day rule, contained in Section B.4 [1] of the Human Resource Policies and Procedures Manual for the Public Service, May 2016. The rule states that Ministries and State Departments should advertise all vacant posts in a manner that reaches the widest pool of potential applicants, and allow for at least 21 days, before closure of the advertisement. The advertisement is required to disclose details of the post; title of the post; number of vacancies; job description; person specification; and the proposed remuneration.
 10. The advertisement was done hurriedly. Applicants were granted a mere 13 days to apply. The Applicant states that in *R v. Communications Authority of Kenya, Ex-Parte Information Communication Technology Association of Kenya* [2021] e-KLR, the High Court quashed the relevant advertisement for breach of the 21-day rule.
 11. He states that the advertisement was not placed on the Public Service Commission Website. This limited the number of Applicants.
 12. The advertisement did not take into account, the 2/3rd gender rule. The [Kenya Roads Act](#) No. 2 of 2007 establishes 3 Authorities, namely the Respondent herein; Kenya National Highways Authority; and Kenya Urban Roads Authority. The latter 2 have male Directors-General. The Respondent should therefore have a female Director- General, pursuant to Article 27 [8] of [the Constitution](#), as read with Section 36 [3] [b] of the [Public Service Commission Act](#) No. 10 of 2017, and Section 10[1] of the Public Service [Values and Principles] Act No. 1A of 2015.
 13. The Applicable remuneration for the position was not stated. Section 37[4] of the [Public Service Commission Act](#) requires that advertisement inviting job applications, shall disclose



among other things, the remuneration payable. This is underscored in Section B of the Guidelines on the terms and conditions of service for State Corporations.

14. The advertisement was not made in good faith. It was made in haste. It was contrary to the legitimate expectations of Kenyans. Clause 2.18.2 of the Respondent's Human and Resource Management Policy and Procedure Manual, requires that candidates are informed of their interview date, time and venue at least 1 week in advance. The Respondent breached its own Manual, by not according candidates 1-week notice of their interview. Applications were to be received by close of business on 4th April 2022. Shortlisting could only take place from 5th April 2022. Interview was on 12th April 2022- giving a notice of 6 days only.
15. The Applicant therefore submits that the recruitment and appointment processes were not properly carried out. The outcome was predetermined. Appointment, gazettelement and signing of the contract by Kandie was done a day after the interviews were concluded. This would only be possible if the outcome was predetermined.
16. The Applicant states in his Verifying Affidavit, that Kandie had been acting as the Director-General for 1 year and 8 months, before he was appointed to the substantive role. At the time he was appointed in an acting capacity, 6th July 2020, the law required the holder of the position to have 15 years' post-registration experience in the field of road and highway engineering. Kandie had only 10 years' post- registration experience. He did not qualify to act. This requirement has since been altered by The Kenya Roads [Amendment] Act, 2022, calling for 10 years' post-registration experience. The Applicant submits that the change conferred upon Kandie the requisite qualifications. A previous Advertisement had been placed more than a year and a half before the Amendment, when Kandie was not qualified. The position was re-advertised immediately after the Amendment to allow Kandie apply. This was a nefarious scheme.
17. Only 9 candidates applied due to the short timelines. Thereafter, only 3 candidates were shortlisted, to attend interviews on 12th April 2022. Kandie was appointed on 14th April 2022. The selection process was a mere sham.
18. The Applicant states that he filed another Judicial Review Application, E&LRC JR. No. E006 of 2022, Samson Nzivo Muthiani v. Kenya Rural Roads Authority, seeking to stop the advertisement. An order was issued staying the advertisement, but the Respondent ignored it upon service. The Applicant decided to withdraw the said Application.
19. The Applicant prays the Court to grant the Notice of Motion dated 20th June 2022.
20. The Response is contained in the Affidavit of the Director-General Philemon Kiprop Kandie, sworn on 11th October 2022, and that of Respondent's Director of Corporate Services, C.P.A. Dan Manyasi Chamwama, sworn on the same date.
21. Chamwama explains that the Respondent is an autonomous corporate body, with perpetual succession and a common seal, established under the [Kenya Roads Act](#) No. 2 of 2007. It is responsible for the management, development, rehabilitation and maintenance of rural roads. Section 13 requires the Respondent to have a Director-General.
22. It did not have a substantive Director-General since March 2018.
23. Attempts were made by the Board, to fill the position substantively, on or about April/ May 2020. Advertisement was made, but the recruitment process was not finalized. Kandie was appointed in an acting capacity on 6th July 2020.



24. The Kenya Roads [Amendment] Act No. 3 of 2022 was enacted on 21st March 2022, clarifying the qualifications and term of the Director-General. The Respondent's Board initiated the process of filling up the position urgently after the law was amended, considering that Kandie had been acting in excess of 6 months, allowed by the law.
25. On 22nd March 2022, the Respondent advertised for the vacancy, in a daily newspaper with national reach. Applications were to be submitted by 4th April 2022. 9 candidates applied. 3 were shortlisted. They were invited for interviews on 12th April 2022. They were interviewed and their names forwarded to the Cabinet Secretary. This was in line with Section 13 [1] of the [Kenya Roads Act](#). Kandie was appointed by the Cabinet Secretary, in consultation with the Board, for a period of 5 years, running from 13th April 2022.
26. Chamwama states, that the Applicant has conceded that Kandie had the requisite qualifications, in his Verifying Affidavit. The process was fair and above board.
27. The Respondent is an independent and autonomous body. It is separate from the other 2 Authorities established under the [Kenya Roads Act](#). The requirement for gender balance under Article 27[8] of [the Constitution](#) should therefore be applied to the Respondent as a stand-alone Authority. Each Authority is a separate body corporate, with their own respective Boards. The Respondent has its own Human Resource Management Policy and Procedures Manual which governs implementation of the 2/3rd gender rule. The Applicant's position is misconceived. The 2/3rd gender rule is not to be applied collectively to the different corporate bodies, established under the [Kenya Roads Act](#).
28. The Respondent is not bound by Section B.4 of the Public Service Commission Human Resource and Procedures Manual for Public Service, 2016, requiring advertisement of public service vacancies for a minimum of 21 days. It is bound by its own Human Resource Manual. The Public Service Manual applies to Ministries and State Departments. The Respondent is not a Ministry or State Department. Its Board is the supreme decision-making body.
29. The Director-General seeks guidance from the Board, on any matter. Clause 15 of the Guidelines on Terms and Conditions of Service for State Corporations' Chief Executive Officers, Chairmen and Board Members, Management Staff, Unionisable Staff, is clear that the procedure in appointment of CEOs of State Corporations, is as approved by their Boards. The Board advertised the position in accordance with the Respondent's Human Resource Manual, giving 14 days' notice to the Applicants.
30. Without prejudice to the foregoing submission, Chamwama states the Public Service Manual, permits advertisement within the shorter period of 14 days, in cases of urgency. Kandie had been acting in excess of the allowable 6 months. It was a matter of urgency for the Respondent to fill up the position substantively, to avert any possible liability that would arise, with Kandie continuing in an acting role.
31. The Respondent's Human Resource Manual does not require the Board to advertise in the Public Service Commission website. Advertisement was made on 22nd March 2022, in a newspaper with national circulation.
32. The Respondent's Human Resource Manual, clause 2.16. 12, makes it discretionary for the Respondent, to state the salary and benefits payable, in the advertisement. The Guidelines for terms and conditions of service for State Corporation CEOs, allow for negotiations of the



terms and conditions of service. Lack of specific figures on the payable salary and allowances, did not contravene the law.

33. The candidates were invited for interviews on 5th April 2022. The interviews were to take place, and did take place, on 12th April 2022. This was within a period of 1 week, in accordance with clause 2.18.2 of the Respondent's Manual. The Respondent acted in accordance with the Manual.
34. Recruitment and appointment process was in accordance with the law. None of the applicants have faulted the process. Public interest in this Application ought to outweigh private interest. Kandie is qualified, and was competitively recruited.
35. Kandie repeats most of the contents of the Affidavit sworn by Chamwama, in his own Affidavit. He confirms that he was serving as the Director-General in an acting capacity since 6th July 2020; he was competitively recruited, interviewed and appointed as the substantive Director-General. He executed a contract of employment with the Respondent, to serve as the substantive Director-General, for a period of 5 years, with effect from 13th April 2022. He prays the Court to dismiss the Application.
36. Closing Arguments. Citing the High Court decision in *Rahab Wanjiru Njuguna v. Inspector-General of Police and Another* [2013] e-KLR, the Applicant argues that he has established that the process of appointment of Kandie as the Respondent's Director-General, was tainted with illegality, irrationality and procedural impropriety.
37. In *Wambua Maithya v. Pharmacy and Poisons Board; Pharmaceutical Society of Kenya and 2 Others* [Interested Parties] [2019] e-KLR, it was held that the appointment of the CEO of the Pharmacy and Poisons Board, failed to meet constitutional threshold, by ignoring Section B.4 [1] of the Public Service Human Resource Manual, 2016. The Board had given 13 days for the CEO job applications, in its advertisement. The Court stated that it was unreasonable to ignore the 21-day rule. The Court granted the writ of Certiorari, quashing the advertisement of the vacancy of the CEO, Pharmacy and Poisons Board and other attendant processes or decisions, including the final appointment of the CEO.
38. In *R v. Communications Authority of Kenya, Ex-parte Information Communication Technology Association of Kenya*, [2021] e-KLR, the Court found that State Corporations are included in Public Service, and are bound by the 21-day rule.
39. It is submitted for the Applicant that Section 37[1] of the *Public Service Commission Act*, requires advertisement of the vacancy in the Public Service Commission Website; and in at least one daily newspaper with wide national coverage, the radio and other modes of communication, so as to reach as wide a population of potential applicants as possible. This requirement is repeated in Section B.4 of the Guidelines on the Terms and Conditions of Service for State Corporations.
40. The Respondent did not demonstrate good faith, throughout the recruitment process. In *R. v. Anti-Counterfeit Authority Ex-Parte Caroline Mangata t/a Hair Works Saloon* [2019] e-KLR, the Court underscored that the public decision-making, should not be infected with improper motives, such as fraud, dishonesty or personal interest. The Respondent acted in bad faith and with ill-motive. This principle was restated in *R. v. Kenya Institute of Supplies Management Ex-Parte Mwaniki Gachumba*, [2019] e-KLR. It was emphasized that bad faith arises where a public body exercise a statutory power for a purpose other than that for which the power was conferred. Bad faith also connotes intentional wrongdoing.



41. The Respondent submits that it is an autonomous body corporate, with its own, binding Human Resource Manual. Invoking the decision of the E&LRC in *Khakasa Oyatsi v. Judicial Service Commission* [Petition No. E111 of 2021], the Respondent submits that Section B.4 of the Public Service Manual, applies to Ministries and State Departments; it does not apply to State Corporations like the Respondent.
42. Relying on *R. v. Commissioner General KRA Ex-Parte Sanofi Aventis Limited* [Nairobi H.C JR Review No. 117 of 2017] the Respondent argues that, when any number of days is prescribed for the doing of any act, or for other purpose, the same shall be reckoned exclusively of the first, and inclusively of the last day. The Respondent complied with Clause 2.18.2 of its Manual by giving Applicants 7 days' notice to attend interviews, from 5th April 2022 to 12th April 2022 [inclusive of the last day].
43. The Respondent submits that it acted in good faith. It did not await the amendment to the [*Kenya Roads Act*](#), in order to appoint Kandie. Amendment was a legislative process which did not have anything to do with Kandie.
44. The Respondent was not bound to advertise vacancy in the Public Service Commission Website. It opted to advertise in a newspaper with nationwide coverage. It was not bound to specify remuneration attached to the position in the advertisement. It acted in accordance with its own Manual in giving a notice for job applications, less than 21 days. There was no bad faith in executing the contract of employment 2 days after the interviews. The Respondent was being efficient in making the appointment expeditiously. It cannot be accused of bad faith, for expediting the process. The Applicant confirms that Kandie qualified for the position.
45. The Respondent urges the Court to adopt the maxim that, 'Omnia praesumuntur rite esse acta' meaning that all things are presumed to have been done rightly. This was expounded in *Kibos Distillers Limited v. Benson Ambuti Adegwa & 3 others* [Kisumu Court of Appeal, Civil Appeal No. 153 of 2019] where the Court held that, in law, there is a presumption of regularity, until the challenger presents clear evidence to the contrary. The Respondent adhered to the law, was rational and acted properly in the procedure on appointment of Kandie, as the Director-General.
46. The issues in dispute are: whether Philemon Kiprop Kandie was appointed to the position of the Director-General of the Respondent, in accordance with the law; and if not, whether a writ of certiorari quashing Gazette Notice No. 4309 of 13th April 2022, should issue.

The Court Finds: -

47. There is a consensus on the main facts, upon which this dispute is founded. The Respondent is a State Corporation, established under Section 6[1] of the [*Kenya Roads Act*](#), No 2 of 2007. The Applicant describes the Respondent as a State Corporation in his Statement of Facts.
48. The Ex-Parte Applicant is a public interest litigant, who brings the Application on his own behalf, and on behalf of the general public.
49. It is not contested that Kandie served the Respondent in an acting capacity, since 6th July 2020. He was appointed the substantive Director-General, for a period of 5 years, commencing 13th April 2022. He served in an acting capacity for a period of 1 year, 8 ½ months. This was against Section 34 of the [*Public Service Commission Act*](#), which allows Public Officers to serve in acting capacity for a minimum of 30 days and a maximum period of 6 months.



50. Against this background, the Respondent's Board advertised to fill the Director-General position substantively. The advertisement was made on 22nd March 2022. It was placed in a newspaper with nationwide circulation, but not in the Public Service Commission Website.
51. It required Applications to be made by 4th April 2022. A total of 9 candidates applied. 3 were shortlisted. They were interviewed on 12th April 2022. Their names were submitted to the Cabinet Secretary, who selected Kandie. The appointment was gazetted and a contract of employment executed.
52. 2/3rd Gender Rule. The argument by the Applicant, concerning 2/3rd gender rule, under Article 27 [8] of *the Constitution* is not persuasive.
53. There are 3 separate Authorities created under the Roads Act, 2007. Each has its own constitutive law, and human resource instruments. The Applicant argues that the other 2 Authorities, have male Directors- General, and the Respondent should therefore have appointed a female Director-General. The principle under Article 27[8] of *the Constitution* is that, not more than 2/3rd of the members of elective or appointive bodies, shall be of the same gender. There is no explanation by the Applicant why he lumps the Respondent with other entities. It is a separate entity, with only one position of Director-General, which cannot be split among different genders. This ground on review has no merit and is declined.
54. Failure to state applicable remuneration. The Court does not think this ground carries sufficient weight, to justify grant of the writ of Certiorari. Section 37 [4] of the *Public Service Commission Act*, requires advertisements for public office job vacancies, to include remuneration payable. This in the view of the Court, does not impose an obligation on public bodies, to give specific figures on remuneration. The disputed Advertisement states that, "the salary and other benefits attached to this position, will be determined by the Board guided by the State Corporations Advisory Committee [SCAC], in consultations with the Salaries and Remuneration Commission [SRC]." This information to potential Applicants on remuneration was sufficient; it did not contravene the *Public Service Commission Act*; and it was not mandatory to give specific figures on remuneration.
55. 1-week notice to the date of interview. Applications closed on 4th April 2022. Applicants were notified on 5th April 2022 that interviews would take place on 12th April 2022. Between 5th April 2022 and 12th April 2022, is a clear 7 days. The Court does not think that there was a breach of Clause 2.18.2 of the Respondent's Human Resource Manual, which requires that Applicants are informed of their interview date, time and venue at least 1 week in advance.
56. Applicability of the Public Service Manual to the Respondent. The Respondent submits that it is neither a Ministry, nor a State Department, and the Public Service Manual 2016, does not apply to it. This submission is advanced in relation to Section B.4 of the Manual, which requires advertisements for public service vacancies, to be for a minimum of 21 days.
57. Public Service is defined under Article 260 of *the Constitution*, to mean "the collectivity of all individuals, other than State officers, performing a state function within a State organ."
58. The definition given in the Human Resource Policies and Procedures Manual for the Public Service, includes State Corporations and Statutory Bodies. The Respondent is a State Corporation and in the respectful view of the Court, falls in the Public Service.
59. Article 234 [2] [e] and [d] of *the Constitution*, mandates the Public Service Commission, to ensure that Public Service is efficient and effective; to develop human resources; and to review



and make recommendations to the National Government in respect of conditions of service, code of conduct and qualifications of officers in the Public Service.

60. The Public Service Manual is generated pursuant to the constitutional mandate of the Public Service Commission under Article 234 [2] of *the Constitution*. It cautions in its preamble, that it is not exhaustive of all rules and regulations governing Public Servants in their day to day activities. The Manual should be read alongside other statutes where applicable, for better application and interpretation.
61. The Respondent is a State Corporation. Both Parties describe it as such. It has its own, internally- generated Human Resource Policies and Procedures Manual. Its own Manual cannot oust the minimum norms and standards for human resource practice in the Public Service. The Public Service Manual presents the minimum norms and standards for human resource practice. State Corporations and State Agencies, as well as County Public Services may customize the Public Service Manual, but they certainly cannot disregard the minimum norms and standards for human resource practice, in the Public Service, prescribed by the Public Service Manual.
62. The submission by the Respondent that it was not bound by the 21-day rule on advertising for the Director-General vacancy, does not have weight. The Respondent's internal Human Resource Manual, could never dislodge the minimum standards established by the Public Service Manual. As pointed out in the preamble to the Public Service Manual, the Public Service Manual provides the basis for human resource practice in the wider Public Service.
63. The Respondent offers the alternative submission that because Kandie was in an acting role, which was against the law on acting role for a maximum of 6 months, it was urgent to appoint the substantive Director- General. The Public Service Manual allows for a shorter period, in cases of urgency.
64. Did not the Director-General and the Respondent, know that it was necessary to fill the position urgently, when the former went on acting for approximately 1 year, 8 ½ months? There was no urgency communicated to the public, at the time the advertisement was placed in the newspaper. The Respondent has not established any ground that would justify the shortening of the advertisement period. There was no urgency shown. The Court agrees with the Applicant that the advertisement was made in contravention of the 21-day advertisement rule.
65. Bad faith. There is tremendous weight to this ground. Kandie was acting as the Director-General illegally. There was amendment to the *Kenya Roads Act*, which enabled Kandie to enter the bracket of qualified candidates to hold the position. The Respondent or Kandie, did not of course occasion the amendment. This was a legislative process.
66. The Kenya Roads [Amendment] Act No. 3 of 2022 commenced on 21st March 2022. The Respondent commenced the process of recruiting the substantive Director-General the following day- 22nd March 2022.
67. It was submitted by the Respondent that the Amendment clarified the qualifications and term of service of the Director-General. It was not explained to the Court why it was not possible to recruit a Substantive Director-General, before the Amendment of 21st March 2022. Had there been no substantive Director-General, before Kandie started acting?



68. The Advertisement was placed in the Daily Nation on 22nd March 2022. It was not placed in the Public Service Commission Website, in accordance with Section 37[1] of the [Public Service Commission Act](#). It was not placed in the radios and other modes of communication. The Respondent did not advertise the vacancy in accordance with the [Public Service Commission Act](#).
69. Reflective of the inadequacy of the advertisement mode, only 9 candidates, in a country dotted all over with a multitude of Road Engineers, applied. Out of these, only 3 were shortlisted and interviewed on 12th April 2022.
70. The 3 were successful. All their names were forwarded to the Cabinet Secretary to make the formal appointment. The Cabinet Secretary duly appointed Kandie, with effect from the following day, 13th April 2022, vide Gazette Notice No. 4309 of 14th April 2022. A contract of employment was executed between Kandie and the Board, employing him as the Substantive Director- General for 5 years. He had already served illegally in excess of 6 months, precisely for a period of 1 year 8 ½ months, as the Director- General. Was the period Kandie had served illegally and the remuneration earned, taken into account by the Board, in offering him a contract as the Substantive Director-General for another 5 years?
71. The Court agrees with the Applicant that the process was characterized by bad faith. The Respondent appeared to have decided that the acting Director-General, must become its substantive Director-General. The other 2 candidates who were shortlisted were included in the process, as were all the other 8 Applicants, is a sham process, aimed at the coronation of the acting Director-General. The other candidates were in the mind of the Respondent ushers, in a procession, where the outcome was predetermined.
72. Granted that interviews were conducted on 12th April 2022, when did the Board meet, evaluate performance of the respective candidates, and settle on Kandie? Where are the minutes of the Board, showing evaluation of the candidates and resolutions made with regard to each application?
73. The Respondent argues unconvincingly, that it expedited the process, which is evidence of its efficiency, rather than improper conduct of the process. The Court does not think this is correct. There is no efficiency, where a public body acts in total disregard of the law which governs the human resource function in the Public Service. An act of bad faith cannot be equated to efficiency.
74. Public bodies must not advertise vacancies, and go into the interview process with predetermined outcomes. Candidates ought not to be interviewed in a particular afternoon, and as the last candidate leaves the interview hall, an announcement in the media is being read out, on who the successful candidate is. Where does this leave such other candidates? The recruitment process must be objective, fair to all the candidates and in particular to the public, and must be rooted in [the Constitution](#), applicable Statutes and Human Resource Instruments. Where the interviewing public body comes to the interview room with their favourite candidate in mind, the principles of fair competition and merit as the basis of appointments and promotions in the Public Service, contained in Article 232 [1] [f] of [the Constitution](#), are abrogated.
75. The Court adopts inter alia, the following decisions submitted by the Applicant, in disposing of this Application: -



- a. *Pastoli v. Kabale District Local Government Council and Others* [2008] 2.E.A 300 [Judicial Review remedies are established, where the Applicant shows that the impugned decision is tainted by illegality, irrationality and procedural impropriety].
 - b. *Wambua Maithya v. Pharmacy and Poisons Board; Pharmaceutical Society of Kenya and 2 Others* [Interested Parties] [2019] e-KLR [failure to observe the 21 –day rule in advertisement for public office vacancies, in accordance with Section B.4 [1] of the Public Service Manual, is failure to meet the constitutional threshold. If a public body does not fulfil the requirements of the law, the Court will see to it that the law is followed, and will not readily listen to suggestions of ensuing ‘chaos,’ should a prerogative writ be granted. It is essential that bureaucracy is kept in its place].
 - c. *R.v. Communications Authority of Kenya Ex- Parte Information Communication Technology Association of Kenya*, [2021] e-KLR [Public Service includes State Corporations and State Bodies].
 - d. *R. v. Anti- Counterfeit Authority Ex-Parte Caroline Mangala t/a Hair Works Saloon* [2019] e-KLR [Public decision-making should not be infected with improper motives such as fraud, dishonesty or personal self-interest. There should be no bad faith and/or unreasonable conduct].
76. The decision cited by the Respondent, *Kibos Distillers Limited and 4 others v. Benson Ambuti Adegga and 3 others*, [Kisumu Court of Appeal Civil Appeal No. 153 of 2019], on the presumption of regularity, states that the presumption subsists, that is to say it is presumed that official duties have properly been discharged, until the challenger presents clear evidence to the contrary. The Applicant in this Judicial Review Application, has overwhelmingly shown, that the Respondent did not discharge is official duty properly, in appointing Kandie as the Director-General.

It is ordered: -

- a. An order of Certiorari is hereby issued, removing into this Court and quashing Gazette Notice No. 4309 of 13th April 2022, appointing Philemon Kiprop Kandie, as the Director-General of the Respondent.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF MAY 2023.

**JAMES RIKA
JUDGE**

