



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 5 OF 2021

JAVAS BIGAMBO.....CLAIMANT

VERSUS

THE BOARD, LAKE VICTORIA SOUTH

WATER WORKS DEVELOPMENT AGENCY.....RESPONDENT

ENG. GEROGE J.O ODEDEH.....INTERESTED PARTY

RULING

1. Before court is a notice of Motion Application dated 8th July, 2021, expressed to be brought pursuant to Articles 20, 22, 50(1), 23(3), 159(2)(d), 165, and 258 of the Constitution and Section 19 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rule, 2013.

2. The Applicant seeks the following orders:

i. Spent

ii. Spent

iii. THAT the Honourable court be pleased to issue a conservatory order, prohibiting the Respondent herein, their employees, servants and/or agents or anyone acting on their behalf from shortlisting, interviewing, appointing or taking any further step towards filling the position of the Chief Executive Officer of Lake Victoria South Water Works Development Agency pending the hearing and determination of this petition.

iv. THAT the Honourable court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders and /or favour the cause of justice.

v. THAT the costs of this application be provided for.

3. The Applicant urged the application on the 2nd November, 2021. The application is not opposed and the Respondent did not appear in court on the hearing date despite service.

4. The Applicant relied on the grounds on the face of the application and the Supporting affidavit of the Applicant herein and urged that the application be allowed as prayed as the same is not opposed.

5. The crux of the application is that the Respondent advertised and shortlisted candidates for the position of Chief Executive Officer of the Lake Victoria Water Works Development Agency and further conducted interviews for the position on 7th and 8th October, 2020 where the selection panel interviewed eleven candidates including the interested party.

6. The Applicant states that following the interviews, the selection panel identified three top candidates being Eng. George J.O Odede the interested Party with 88%, Eng. Boaz Okoth Akello with 73% and Ms. Sheila Yieke with 71%.

7. The Applicant further states that the Cabinet Secretary, Ministry of Water and Sanitation in collusion with the Respondent tried to circumvent the outcome of the recruitment process by appointing Eng. Boaz Okoth Akello, who was ranked 2nd by the selection panel, which decision was declared ultra vires the water Act and the State Corporations Act and therefore invalidated the appointment. The Applicant states that the Respondent was ordered to appoint the Chief Executive Officer without interference from the Cabinet Secretary.

8. The Applicant avers that in total disregard of the orders of the court issued in the said judgment, the Respondent on 2nd July, 2021 placed a fresh advertisement in the news paper for a vacancy for the same position thereby unfairly and without any cause, notice or reason nullifying the already concluded recruitment exercise despite use of public resources in the exercise and a suitable candidate found to fill the position.

9. The Applicant avers that the actions of the Respondent aforementioned, undermine Articles 10, 47, 73, 232 and 201 (d) of the Constitution on National Values and Principles of Public Service, the Right to Fair Administrative Action and the principles underpinning accountability for administrative action and affording adequate and equal opportunities for appointment in the public service.

10. The Applicant avers that it is in the interest of justice that the Respondent be compelled to fill the position of Chief Executive Officer of the Respondent, with a candidate from the already completed open and competitive process.

Determination

11. The Respondent herein was served with the instant application and a return of service is on record. They opted not to respond to the application. The application is thus unopposed. For this reason, the application is allowed in the following terms:

i. THAT a conservatory order is hereby issued prohibiting the Respondent, their employees, servants and/or agents or anyone acting on their behalf from shortlisting, interviewing, appointing or taking any further step towards filling the position of the Chief Executive Officer of Lake Victoria South Water Works Development Agency pending the hearing and determination of this petition.

ii. Costs shall be in the cause.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 18TH DAY OF NOVEMBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Baraza h/b for Mr. Macharia for the Petitioner/Applicant

N/A for the Respondent

Christine Omollo – C/A