



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 35 OF 2019

(Before Hon. Justice Mathews N. Nduma)

MICHAEL ODHIAMBO YIEMBO.....PETITIONER

VERSUS

ENG. GEORGE J. O. ODEDEH.....1ST RESPONDENT

CABINET SECRETARY,

MINISTRY OF WATER AND SANITATION.....2ND RESPONDENT

CHAIRMAN, LAKE VICTORIA SOUTH WATER

WORKS DEVELOPMENT AGENCY.....3RD RESPONDENT

LAKE VICTORIA SOUTH WATER WORKS

DEVELOPMENT AGENCY BOARD OF DIRECTORS..... 4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

STATE CORPORATIONS ADVISORY COMMITTEE.....6TH RESPONDENT

RULING

1. The application dated 3rd October 2019 sought to stop the appointment of the 1st Respondent as the Chief Executive Officer of Lake Victoria South Water Works Development Agency, the 4th Respondent pending the hearing and determination of the Petition. The respondents filed replying affidavit on 7/11/2019.
2. Upon considering the application together with the supporting affidavit and annexures thereof. Having also considered the replying affidavits and the submissions by all the parties:
3. The court finds that the dispute presented in this application cannot be determined before the petition is heard and determined on the merits.
4. The Petitioner/Applicant has not satisfied the requirements of granting an interim injunction set out in the case of **Giella – VS – Cassman Brown & Co. Ltd (1973) E. A 358** in that no *prima facie* case has been established and the Applicant has not demonstrated that he shall suffer irreparable harm not capable of being remedied by way of damages and costs if the interim order is not granted.
5. Accordingly, the application lacks merit and is dismissed.
6. The petition to proceed on the merits.
7. Due to the prevailing COVID 19 situation, the court takes this opportunity to give directions on the hearing and determination of the petition as follows:

8. The respondents to file responses to the petition within 14 days from date of the ruling. The petitioner to file supplementary affidavit, if any and final submissions within 14 days of service and the respondents to file submissions within 14 days of service.

Ruling Dated, Signed and delivered at Nairobi this 11th day of June, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

Mr. Odhiambo for Petitioner/Applicant

Mr. Oregio for Respondents

Chrispo – Court Clerk