



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

PETITION NO. 13 OF 2019

IN THE MATTER OF ARTICLES 1, 3(1), 2, 5(3), 28, 41(1), 47 (1) & (2), 48, 50(1).(2)(a) & 258 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF RULES 4, 10, 11, 13, & 20 OF THE CONSTITUTION OF KENYA (SUPERVISORY AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) HIGH COURT PRACTICE AND PROCEDURE RULES 2013

AND

IN THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27(1) & 28, 41, 47(1) & 50(1)(2)(a) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF SECTION 66(1) & (2) OF THE WATER ACT 2016

AND

IN THE MATTER OF SECTION 2(1) & (2), (3) AND 3(1) & (2) OF THE FIRST SCHEDULE OF THE WATER ACT, 2016

WILLIAM WAHOME MWANGI.....PETITIONER

VERSUS

CABINET SECRETARY WATER,

SANITATION & IRRIGATION.....RESPONDENT

AND

PETER WERU KINYUA.....PROPOSED INTERESTED PARTY

RULING

1. The Applicant who is an Interested party has applied for a vacation of the conservatory orders granted by this court to the Petitioner. The Interested party through his Counsel Mr. Mburu, seeks to be enjoined as he submits he was properly appointed and Gazetted and that the continued application of the orders which he terms as invalid subsist. The Applicant asserts that he needs to be heard in the Petition and that the court should permit his entry into the affray. Respondent is not opposed.

2. Petitioner is opposed and asserts the Gazette Notice No. 9866 of 17th October 2019 is null and void *ab initio* as is Gazette Notice No. 9867 of the same date. It is argued that these Gazette Notices purport to appoint and revoke yet there was no vacancy. The Petitioner's Counsel

Mr. Wahome submits the Petitioner was cleared to travel to Egypt in October 2019 and even participated in Board meeting in October 2019 whereas the Applicant is purported to have been appointed in July 2019. The conservatory orders are said to be valid in accordance with Article 23(3) of the Constitution. He urges the decline of the motion.

3. In reply, Mr. Mburu submits the Rules of this court have not been ousted and should be applied as there was no basis to grant the orders at *ex parte* stage to the Petitioner.

4. It is clear the Petitioner's position flowing from the Gazette Notice appointing him was made a mockery of by the Cabinet Secretary for Water & Sanitation. Gazette Notice No. 9866 purports to appoint Peter Weru Kinyua to the position of Chairperson Tana Water Works Development Authority with effect from 26th July 2019. Immediately following is the Gazette Notice No. 9867 of 17th October 2019 which purports to revoke the appointment of the Petitioner Wahome William Mwangi. Both Gazette Notices are dated 25th July 2019 and are on the Kenya Gazette volume CXXI - No. 139 of 17th October 2019. It is clear the Notices by the Cabinet Secretary Hon. Chelugoi are illegal, null and void and I so declare. There is no way these notices can be valid as there is no adherence to the law in their provenance. They are backdated and it would be a waste of judicial time to hear the Petition to the full just so as to waste tax payer's money. The Petition is merited and the motion by the Interested Party has revealed there was no adherence to the law in his appointment. The effect for my findings is that the Gazette Notices having been issued illegally there is now a full reversal of the actions of the Cabinet Secretary as I quash Gazette Notices No. 9866 and 9867 of 17th October 2019 forthwith. The Honorable Attorney General is advised to forward a copy of this Ruling to the Minister – Cabinet Secretary and ensure that in future appointments be following the law so as to avoid wasting State Counsel's time and the Court's time.

It is so ordered.

Dated and delivered at Nyeri this 27th day of November 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar