



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO.42 OF 2015**

**RIFT VALLEY WATER SERVICES BOARD**

**1<sup>st</sup> CLAIMANT**

**JAPHETH MUTAI**

**2<sup>nd</sup> CLAIMANT**

**v**

**JULIUS LAMAON**

**1<sup>st</sup> RESPONDENT**

**CHRISTINE NDOIGO**

**2<sup>nd</sup> RESPONDENT**

**SAMUEL KALENG**

**3<sup>rd</sup> RESPONDENT**

**NEMWEL MICHUKI**

**4<sup>th</sup> RESPONDENT**

**RULING**

1. Japheth Mutai (applicant) was appointed as the Chief Executive Officer of the Rift Valley Water Services Board through a letter dated 5 February 2009. The appointment was for 3 years.
2. Through a letter dated 17 January 2012, the Rift Valley Water Services Board informed the applicant that he was being reappointed as the Chief Executive Officer for a further 3 years with effect from 1 February 2012. This contract would expire on or around 31 January 2015.
3. On 29 June 2014, the applicant, pursuant to clause 6 of the contract, made a request to the Rift Valley Water Services Board to have his contract renewed.
4. The Rift Valley Water Services Board did not respond to the renewal request, and therefore on 20 January 2015, the applicant sought for a renewal of the contract from the Cabinet Secretary, Ministry of Environment, Water and Natural Resources.
5. The Cabinet Secretary, through a letter dated 30 January 2015 informed the applicant that his contract had been renewed for a further 3 years effective 1 February 2015. The Cabinet Secretary referred to clause 54 (sic) of the Water Act, 2002 as the basis of the renewal.
6. The Respondents on their part had been appointed as members of the Rift Valley Water Services Board with effect from 10 February 2012 and 14 June 2012 for 3 year terms. The Respondents terms were therefore to expire on or around 9 February 2015 and 13 June 2015.
7. Before the expiry of the term of the Respondents, the Respondents requested for an end of term meeting and the same was fixed for 9 February 2015.
8. In the course of the end of term meeting, the Respondents appointed one Eng. Rachel N. Makokha as the acting Chief Executive Officer of the Rift Valley Water Services Board.
9. The appointment of an acting Chief Executive Officer did not go down well with the applicant and on 17 February 2015, he and (the Rift Valley Water Services Board) lodged a Memorandum of Claim against the Respondents seeking

- a) A permanent injunction compelling the Respondents by themselves, their servants, their agents, representatives and/or servants from in any way interfering with the workers/staff of the Claimants and their offices.
- b) A declaration that the 2<sup>nd</sup> Claimant was duly appointed by the Cabinet Secretary in accordance with sections 4 and 7(3) of the State Corporations Act cap 446 Laws of Kenya and the Constitution of Kenya 2010.
- c) A declaration that the 2<sup>nd</sup> Claimant herein is the legally appointed Chief Executive Officer.
- d) Costs and interest at court rates.
- e) Any other relief that this Honourable Court deems fit and just to grant.

10. The applicant also filed a motion under certificate of urgency seeking

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2. That a temporary injunction be issued pending the hearing and determination of this Application, restraining the Respondents/Respondents by themselves, their employees, agents and any other person working under their authority from in any way interfering with the workers/staff of the Claimants/Applicants and their offices and/or disrupting (sic).

3. That a temporary injunction be issued pending the hearing and determination of this Suit, restraining the Respondents/Respondents by themselves, their employees, agents and any other person working under their authority from in any way interfering with the workers/staff of the Claimants/Applicants and their offices.

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- 11. The Court certified the motion urgent on 18 February 2015, and prayer 2 was also granted. The Court directed that the motion be served for *inter partes* hearing on 25 February 2015.
- 12. On 25 February 2015, it emerged that the 2<sup>nd</sup> to 4<sup>th</sup> Respondents had not been served and the Court ordered that they be served through substituted service in the Standard Newspaper. The motion was adjourned to 9 March 2015.
- 13. On 9 March 2015, when the motion was called none of the parties was present and the Court dismissed the motion. However, after an application by the applicant, the Court reinstated the motion and it was urged on 11 March 2015.
- 14. The substantive prayer for determination in this ruling is prayer 3. The grounds cited on the face of the motion to support this prayer are that, the Respondents have since the expiry of their contracts as Board members intended to interrupt the running of the Rift Valley Water Services Board, have barred the applicant from carrying on his duties and threatened his life and the Respondents have appointed a new Chief Executive Officer.
- 15. The relevant parts of the applicants supporting affidavit to the prayer under discussion are paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.
- 16. The facts as gleaned from these paragraphs are the events which occurred on 9 February 2015. These relate to the appointment of an acting Chief Executive Officer by the Respondents.
- 17. The Court has also perused the written submissions filed by the applicant on 11 March 2015 (the bigger part of the submissions are not relevant to the prayer under discussion but rather seeks that the Court validate the renewal of the applicant's contract, not part of the motion).
- 18. In my view, the Respondents purported action to appoint an acting Chief Executive Officer, if at all was not supported by the law but this is something which can be resolved through the parent Ministry under which the Rift Valley Water Services Board operates.
- 19. On the threats against the applicant and the other employees, the applicant annexed what appear to

- be mobile text messages. The Court was not informed of the mobile numbers from which these messages were sent or the recipient number(s) of the messages.
20. The applicant did not lay any evidential nexus in the affidavit between the text messages and the Respondents. The applicant has not demonstrated that the Respondents apart from the purported appointment of an acting Chief Executive Officer, threatened or interfered with the applicant or employees in such a way as to warrant judicial intervention.
  21. The issues raised in the motion could have easily been presented to the Police or the parent Ministry to handle. Parties should not always take the Courts as the first port of call in all manner of disputes.
  22. In the view of the Court, the applicant has not shown that prayer 3 of the motion is merited. The test laid out in the case of *Giella v Cassman Brown & Bros Ltd* for the grant of interlocutory injunction has not been met.
  23. The motion is therefore dismissed.
  24. Each party to bear own costs.

**Delivered, dated and signed in Nakuru on this 27<sup>th</sup> day of March 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimants Mr. Aim instructed by Odhiambo & Odhiambo Advocates

For Respondents Absent