

REPUBLIC OF KENYA
IN THE CONSTITUTIONAL AND HUMAN RIGHTS COURT AT MOMBASA
CONSTITUTIONAL PETITION NO..... OF 2022
IN THE MATTER OF ARTICLE 22 (1), (2)(c) & (d) ARTICLE 10,, 18, 121, 201 221 AND 232 OF THE
CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF STATE CORPORATIONS ACT CHAPTER 446, LAWS OF KENYA

AND

IN THE MATTER OF WATER ACT, No. 43 OF 2016, LAWS OF KENYA

AND

IN THE MATTER OF WATER SERVICES REGULATIONS, 2021 (LEGAL NOTICE No. 68 OF 2021)

1. CAPITAL YOUTH CAUCUS ASSOCIATION..... PLAINTIFF
2. EVANS OKONDO MOMANYI PLAINTIFF

VERSUS

1. CHAIRPERSON, BOARD OF DIRECTORS, COAST WATER WORKS DEVELOPMENT AGENCY..... RESPONDENT
2. ACTING CHIEF EXECUTIVE OFFICER, COAST WATER WORKS DEVELOPMENT AGENCY.....RESPONDENT
3. PRINCIPAL SECRETARY, MINISTRY OF WATER, SANITATION AND IRRIGATIONRESPONDENT
4. INSPECTOR GENERAL (CORPORATIONS)RESPONDENT

SUPPORTING AFFIDAVIT

I, **EVANS OKONDO MOMANYI** and P. O. Box 98163 – 80100, Shabir Manzil, Mbaraki Road Ganjoni, Mombasa within the Republic of Kenya hereby make oath and solemnly state as follows: -

1. **THAT** I am an adult male of sound mind and disposition and I am the 2nd Plaintiff herein and hence competent to swear this affidavit.
2. **THAT** I make this application as a matter of great public interest, as a Human Rights Defender (HRD) and on behalf of the vulnerable water users and other stakeholders in the Coast Region.
3. **THAT** the 1st Respondent hereinabove has irregularly advertised and/or caused to be advertised the vacancy for the post of Chief Executive Officer (CEO); hereinafter "The CEO" of the Coast Water Works Development Agency (CWWDA), hereinafter "The CWWDA" or "The Agency".
4. **THAT** the Board of Directors of the CWWDA as currently constituted does not meet the constitutional threshold of the two-thirds gender rule, does not reflect the face of Kenya and/or the Coast region and is therefore incompetent to advertise and or hire a Chief Executive Officer for The Agency as the process would be biased, irregular and therefore null and void.

5. **THAT** there was no public participation in the formulation of the qualification requirements and hiring criteria for the post of The CEO of The Agency in all of the six Counties of the Coast Region and therefore the candidate if and/or when hired might not represent the aspirations of the Coast residents
6. **THAT** water is life and access to clean affordable water is recognized as a human right under United Nation Water Convention and also under United Nations General Assembly Resolution A/RES/64/292 of 28 July 2010 and the Water Act, number 43 of 2016 laws of Kenya which recognizes the right to safe and clean drinking water and sanitation as human right that is essential for the full enjoyment of life and all human rights.
7. **THAT** because access to safe and clean drinking water and sanitation are basic human rights, the water users and stakeholders must participate in its management and decision-making processes; including the hiring and firing of the key actors by 1st Respondent
8. **THAT** the 2nd Respondent as the acting CEO and secretary to the Board of Directors has failed to advise 1st Respondent/The Board that the downloadable Application for Employment Forms they refer to in the advertisement for the employment of The CEO does not exist at the website.
9. **THAT** without the downloadable forms referred to in paragraph 8. hereinabove, the process of hiring The CEO as advertised would be opaque and irregular and renders the advertisement misleading and null and void.
10. **THAT** the general public and the taxpayers stand to incur huge losses and irreparable damage should the process of hiring the CEO for the CWWDA continue to its logical conclusion as the process is bound to be irredeemably flawed.
11. **THAT** the requirement, as per the advertisement for the position of the CEO, that candidates for the post be in possession of Police Clearance Certificate, Tax Compliance Certificate from KRA, Clearance from Higher Education Loans Board where applicable, Clearance from a registered Credit Reference Bureau are discriminatory, in bad faith, contrary to Article 27 as read together with Article 21 clause (3) of the Constitution of Kenya 2010 and are therefore null and void.
12. **THAT** the 3rd Respondent, as Chief Accounting Officer of the parent Ministry, has failed in his oversight role by allowing the 1st Respondent to initiate a flawed process for hiring of The CEO for the Agency.
13. **THAT** the 4th Respondent has failed to inspect and investigate the financial and other management records and the other activities of the CWWDA and also failed in his advisory role to the Minister on the lack of accountability and transparency in the management of the Agency
14. **THAT** I pray in the circumstance of the case and in the interest of justice that this Honourable court be pleased to grant the interim orders sought herein.
15. **THAT** I swear this affidavit in full support of the application and the averments and prayers in the Plaint.
16. **THAT** the deposed herein above is true to the best of my knowledge, information and belief.

SWORN by the said
CAPITAL YOUTH CAUCUS ASSOCIATION
AT MOMBASA

)
) **DEPONENT**

This day of 2022

BEFORE ME

COMMISSIONER FOR OATHS

)
)
)

DRAWN AND FILED BY:

CAPITAL YOUTH CAUCUS ASSOCIATION
P. O. BOX 98163 – 80100,
SHABIR MANZIL, MBARAKI ROAD, GANJONI,
MOMBASA

TO BE SERVED UPON

COAST WATER WORKS DEVELOPMENT AGENCY
PHYSICAL ADDRESS: MIKINDANI STREET, OFF NKURUMAH ROAD, MOMBASA
POSTAL ADDRESS: P.O. BOX 90417-80100, MOMBASA
Email: info@cwvda.go.ke