

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 IRRIGATION RESPONDENT
- INSPECTOR GENERAL (CORPORATIONS)

NOTICE OF MOTION

(Under Order 51 and 40 rules 3, 4, and 11 of the Civil Procedure rules and section 1, 1A, 2B and 3A and section 63 (c) & (e) of the Civil Procedure Act (Cap21) Laws of Kenya)

TAKE NOTICE that this Honourable Court shall be moved on day of 2022 at 8:30 a. m in the forenoon or so soon thereafter as the applicant's application will be heard seeking for the following ORDERS:

1. **THAT** a declaration be made that access to safe clean drinking water and sanitation is a human right;
2. **THAT** a restraining order in the form of an injunction to stop the 1st Respondent from proceeding with the process of hiring a CEO for The Agency issue;
3. **THAT** an order for status quo to persist until this matter is heard and determined;
4. **THAT** a declaration be made that public participation in the appointment of the Members of the Board of Directors (including that of the CEO) of the state corporation (Coast Water Works Development Agency) is mandatory and a human right.
5. **THAT** a permanent restraining order 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.

6. **THAT** an order that the 3rd and the 4th Respondents have failed in their statutory oversight responsibilities as state officers and are therefore unfit to hold public office issue.
7. **THAT** the Honourable Court may grant any other relief it so deems fit and expedient.
8. **THAT** the cost for this suit be provided for

WHICH APPLICATION shall be grounded on the annexed affidavit of **CAPITAL YOUTH CAUCUS ASSOCIATION** and **EVANS OKONDO MOMANYI** and on any other evidence to be adduced at the hearing hereof: -

GROUNDS:-

- a) **THAT** The 1ST Defendant might proceed with process of the hiring of the CEO for the CWWDA to the detriment of the taxpayers and also contrary constitution.
- b) **THAT** the rights of the plaintiffs as customers of the CWWDA, other water users and stake holders may be grossly violated if the process of hiring the CEO proceeds.
- c) **THAT** the Plaintiffs actually face existential threats to their own lives if interim orders are not granted urgently since water is life.
- d) **THAT** the public stand to suffer irredeemable loses and damages should the 1st Respondent proceed with the hiring process for the CEO for the Agency
- e) **THAT** it is in the interest of the public that the Honourable Court grant the orders herein
- f) **THAT** it is in the interest of justice that the Honourable Court grant the orders herein.

DATED at **MOMBASA** this day of 2022.

DRAWN AND FILED BY:

1. CAPITAL YOUTH CAUCUS ASSOCIATION &
 2. EVANS OKONDO MOMANYI
- 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@cwwda.go.ke