

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 CORPORATIONSACT 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
4. INSPECTOR GENERAL (CORPORATIONS) RESPONDENT

PLAINT

1. The 1st plaintiff is a body corporate registered in Kenya as an Association under Societies Act Chapter 108, Laws of Kenya and the 2nd Plaintiff is of male adult of sound mind and disposition residing in Likoni are within the Republic of Kenya. Their address for purposes of this suit shall be P. O. Box 98163 – 80100, Shabir Manzil, Mbaraki Road, Ganjoni, Mombasa. Telephone/WhatsApp number +254 733951781.

2. The 1st Respondent is an adult male of sound mind and disposition and is the Chairperson of the Board of Directors of the Coast Water Works Development Agency, a state corporation in the meaning of State Corporations Act Chapter 446 and Water Act Number 43 of 2016, Laws of Kenya and whose offices for purposes of service are based at Mikindani Street, Off Nkurumah Road, Mombasa. P.O. BOX 90417-80100, Mombasa. Telephone: 041-2315230. Email: info@cwvda.go.ke. Service of summons shall be done through the plaintiffs.

- The 2nd Respondent is the acting Chief Executive Officer (CEO) and Secretary to the Board of Directors of the Coast Water Works Development Agency, a state corporation in the meaning of State Corporations Act Chapter 446 and Water Act 2016 Laws of Kenya whose offices for the purposes of service are the same as those of the 1st Respond. Service of summons shall be done through the plaintiffs.
4. The 3rd Respondent is the Accounting Officer in the parent ministry responsible for policy and regulation of the Coast Water Works Development Agency whose Board Chairperson is the 1st Respondent in this petition. His address for purposes of service is Maji House, Upper hill, Off Ngong road, P.O BOX 49720 – 00100 Nairobi Telephone: +254 020 2716103, 4900000 Email: ps@water.go.ke. Service of summons shall be done through the plaintiffs.
 5. The 4th Respondent is the holder of the public office charged with the responsibility of carrying out management audits in state corporations to ensure compliance with set policies, rules and procedures, and setting and providing advisory services to Government of the Republic of Kenya and other stakeholders on matters affecting state corporations. He has totally failed in his statutory mandate as set out in the State Corporations Act Chapter 446, Laws of Kenya. His address for the purposes of services is Inspector General (Corporations), Inspectorate of State Corporations, Harambee Avenue, Harambee House Annex, P. O. Box 54457 – 00200 Nairobi – Kenya. Email: igc@isc.go.ke. Service of summons shall be done through the plaintiffs.
 6. The 1st Respondent in his capacity as the Chair of the Boards of Directors of the Coast Water Works Development Agency has irregularly advertised a vacancy for the post of Chief Executive Officer of the corporation yet, as currently constituted, it is incompetent to advertise and/or hire a Chief Executive Officer for The Agency as it lacks quorum, does not meet the constitutionally required two-thirds gender rule and its appointment did not meet the constitutionally mandated public participation threshold.
 7. There was no public participation in the formulation of the qualification requirements and hiring policies and 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.
 8. 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. The Advertisement for application for the post of The CEO of The Agency does not factor in this fact.
 9. 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.
 10. 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 and the information to that effect is misleading and flawed.

11. The 1st Respondent is engaging in an opaque process by purporting that there are downloadable forms applicants can fill and upload again at the website, yet there are no such forms. This act of omission whether by design or otherwise renders the exercise, irregular, in bad faith, the null and void.
12. The general public and the Kenyan taxpayers stand to incur huge losses and irreparable damage should the 1st Respondent continue with the process of hiring the CEO for the CWWDA to its logical conclusion as the process is bound to be irredeemably flawed.
13. 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. That these requirements are of great public interests as they constitute a violation of the rights of the potential job applicants.
14. 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 the hiring of The CEO for the Agency.
15. The 4th Respondent has failed to inspect and investigate the financial and other management records and 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.
16. Despite several demand notices of intention to sue having been sent by the 1st and 2nd Plaintiffs to the 1st Respondent through telephone communication and in writing, the Defendant has absolutely refused to respond to the demands or make a commitment to withdraw the advertisement and cancel the hiring process for the CEO for the Agency until the concerns are addressed.
17. The Plaintiffs aver that there is no other suit pending and that there are no previous proceedings in any court between the Plaintiffs and the Defendants over the same subject matter.
18. This court has jurisdiction to preside and determine this matter.

REASONS WHEREFORE the Plaintiffs pray for judgement against the Defendants for:

- a) A declaration that access to safe clean drinking water and sanitation is a human right;
- b) 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;
- c) An order for status quo to persist until this matter is heard and determined;

- d) A declaration 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.
- e) 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.
- f) Any other relief the Honourable Court may deem fit and expedient to so grant.

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