

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 401 OF 2014

REPUBLIC.....APPLICANT

VERSUS

THE CABINET SECRETARY, MINISTRY OF INFORMATION
& COMMUNICATION..... 1ST RESPONDENT
COMMUNICATIONS AUTHORITY OF KENYA.....2ND RESPONDENT
THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

CAROLE KARIUKI.....1ST INTERESTED PARTY
WILBERT KIPSANG CHOGE.....2ND INTERESTED PARTY
KENNEDY MONCHERE NYAUNDI.....3RD INTERESTED PARTY
GRACE MWENDWA MUNJURI.....4TH INTERESTED PARTY
PROF. LEVI OBONYO.....5TH INTERESTED PARTY
HELLEN KINOTI6TH INTERESTED PARTY
BEATRICE OPEE.....7TH INTERESTED PARTY
PETER MUNYWOKI MUTIE.....8TH INTERESTED PARTY

EX-PARTE: ADRIAN KAMOTHO NJENGA

JUDGEMENT

Introduction

1. By a Notice of Motion dated 24th October, 2014 the *ex parte* applicant herein

Adrian Kamotho Njenga seeks the following orders:

1. An order of Certiorari to remove into this honourable court and quash the decision and gazette notices Nos. 2915 and 3586 dated 24th April and 20th May 2014 respectively by the 1st Respondent and the 1st Interested Party publishing the names of the shortlisted candidates for appointments to the 2nd Respondent's board and appointing the 2nd to 7th Interested Parties as members of the Communications Authority of Kenya (CAK) Board

2. **An order of Mandamus compelling the 1st Respondent to disclose the full composition of the Selection panel chaired by the 1st Interested Party.**
3. **Costs of an incidental to the application be provided for.**
4. **Such further and other reliefs that the Honourable Court may deem just and expedient to grant.**

Applicant's Case

2. The application was supported by a verifying affidavit sworn by the applicant on 23rd October, 2014.
3. According to the deponent, he is a thirty three (33) year old Kenyan citizen of sound mind who instituted these proceedings as a law abiding citizen and a *bona fide* and qualified Applicant for the appointment to the board of the 2nd Respondent whose name was unlawfully not published in the 2nd Respondent's website nor in the Kenya Gazette as required by the ***Kenya Information and Communications (Amendment) Act 2013*** Laws of Kenya (hereinafter referred to as "the Act").
4. That among other awards of excellence, he was the holder a Master of Business Administration Degree specializing in Information Systems from the University of Nairobi and was at the time a Doctor of Philosophy candidate at the same University. He was also a Certified Cyber Security Associate (CCSA) and Certified Public Accountant of Kenya (CPA-K), a seasoned scholar, researcher and consultant with a broad range of publications in top rank journals having presented numerous works in International Conferences and

the application for Judicial review is made, but rather, it is concerned with the decision making process itself, and if that process is flawed, the decision reached is equally flawed and will not be allowed to stand; (ii) that where a regulation is couched in mandatory terms, it demands strict compliance. Non-compliance with the spirit and letter of such a regulation is fatal to any action taken in pursuance thereof.

79. However, having found that the appointment of the 2nd to the 7th interested parties was tainted with illegality in that they were appointed outside the statutory timelines provided under section 6B of the *Kenya Information and Communications (Amendment) Act, 2013*, it follows that I find merit in the instant application. I decline to entertain extraneous issues in order to deny the applicant an otherwise merited relief. I do not see any likely chaos which will result if the 1st Respondent commences the process of the appointment of the members of the Board afresh in compliance with the law after all, the said appointments are not for life but are term appointments.

Order

80. Accordingly, the order which commends itself to me and which I hereby grant is an order of certiorari removing into this honourable court and quashing the decision and gazette notices Nos. 2915 and 3586 dated 24th

April and 20th May 2014 respectively by the 1st Respondent and the 1st Interested Party publishing the names of the shortlisted candidates for appointments to the 2nd Respondent's board and appointing the 2nd to 7th Interested Parties as members of the Communications Authority of Kenya (CAK) Board.

81. The costs of this application are awarded to the ex parte applicant.

Dated at Nairobi this day 29th day of May 2015

G V ODENGA
JUDGE

Delivered in the presence of:

Mr Kabathi for the ex parte applicant
Cc Patricia