

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI
MILIMANI LAW COURTS

PETITION NO. 51 OF 2018

IN THE MATTER OF: ARTICLES 1, 2, 3, 4(2), 10, 12(1)(A), 19, 20, 21, 22, 23, 24, 27, 41(1), 47, 48, 50(1), 73, 75, 156, 159, 162, 165, 232, 234, 236, 258, AND 259 OF THE CONSTITUTION OF KENYA.

IN THE MATTER OF: THE ALLEGED VIOLATION OF ARTICLES 1, 2, 4(2), 10, 27, 41(1), 47, 73, 232, 234, 249(2)(b) AND 259(1) OF THE CONSTITUTION;

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF THE PRESIDENT EXECUTING THE MANDATE OF THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF THE CIRCULAR REF. NO. OP/CAB.39/1A OF 4TH JUNE 2018 ISSUED BY JOSEPH KINYUA PURPORTING TO SEND HEADS OF PROCUREMENT AND ACCOUNTING UNITS IN GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES INCLUDING STATE CORPORATIONS AND INDEPENDENT OFFICES AND COMMISSIONS, ON COMPULSORY LEAVE FOR 30 WORKING DAYS.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF PRESIDENTIAL FIAT AND THE MASS SACKINGS OF PUBLIC OFFICERS BASED ON ROADSIDE DECLARATIONS ISSUED BY THE PRESIDENT.

IN THE MATTER OF: THE ABUSE OF DELEGATED LEGISLATION BY THE EXECUTIVE AND THE REGULATORY BURDEN IMPOSED ON THE PEOPLE OF KENYA

IN THE MATTER OF: THE DOCTRINES OF LEGITIMATE EXPECTATION, AND *VOID AB INITIO*.

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

~VERSUS~

JOSEPH KINYUA 1ST RESPONDENT
THE PUBLIC SERVICE COMMISSION 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT

(In open court on the 6th day of June, 2018 before Hon. Justice Onesmus Makau)

ORDER

APPLICATION FOR ORDERS

1. **THAT** this Application be certified as urgent and fit to be heard forthwith, and be granted *ex-parte*, and in priority to any other matter herein.
2. **THAT** pending the *inter-partes* hearing and determination of this Application and the Petition herein the Honourable Court be pleased to issue an interim order suspending the Circular Ref. No. OP/CAB.39/1A of 4th June 2018 issued by the 1st respondent.
3. **THAT** pending the *inter-partes* hearing and determination of this Application and the Petition herein the Honourable Court be pleased to issue an interim order of injunction prohibiting the respondents or any of their agents from implementing in any way whatsoever the Circular Ref. No. OP/CAB.39/1A of 4th June 2018 issued by the 1st respondent.
4. **THAT** consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
5. **THAT** the costs of this application be provided for.

This matter coming up for hearing of the Petitioner/Applicant's application dated 6th June, 2018 presented to this Court under certificate of urgency on the same date *Under articles 20, 22, 50(1), 23(3), 159(2)(d), 165, and 258 of the Constitution of Kenya 2010, Sections 18, 19 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, and all other enabling provisions of the Law AND UPON READING* the Supporting Affidavit of **OKIYO OMTATAH OKOITI** and the annexures thereto **AND UPON HEARING** for the Petitioner/Applicant *ex-parte*;

IT IS HEREBY ORDERED:

1. **THAT** this Application be certified as urgent and same be heard on 13.6.2018.
2. **THAT** the Circular No. OP/CAB.39/1A of 4.6.2018 issued by the 1st Respondent is hereby suspended pending inter partes hearing on 13.6.2018.
3. **THAT** the respondent and or their agents are prohibited from implementing the said circular pending the inter partes hearing on 13.6.2018.

4. THAT the respondents to file and serve response to both the motion and the petition by close of business 11.6.2018.

Given under my hand and seal of this court at Nairobi this 6th day of June, 2018.

Issued at Nairobi this 6th day of June 2018.

Certified True copy of the Original
Sign: [Signature]
Deputy Registrar Employment and
Labour Relations Court
Date: 6/6/18

[Signature]
DEPUTY REGISTRAR

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

PENAL NOTICE

TAKE NOTICE that this is a valid court order and any party whosoever served and disobeys it will be in contempt of court and is liable to imprisonment for a term not exceeding 6 months.