

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

PETITION NO. 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, 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

PETITION

TO: THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

THE HUMBLE PETITION OF OKIYA OMTATAH OKOITI, BEING AN ADULT CITIZEN OF KENYA AND A RESIDENT OF NAIROBI CITY COUNTY, WHOSE ADDRESS OF SERVICE FOR PURPOSES OF THIS PETITION IS CARE OF ROOM 4, FLOOR B1, BLOCK A, WESTERN

WING, NSSF BUILDING, BISHOPS ROAD, P. O. BOX 60286 -
00200, NAIROBI, IS AS FOLLOWS:

A. THE PETITIONER

1. The Petitioner, a resident of Nairobi City County, is a law abiding citizen of Kenya, a public spirited individual, a human rights defender, and a strong believer in the rule of law and constitutionalism. He is a member of Kenyans for Justice and Development Trust, which is a legal trust, incorporated in Kenya and founded on republican principles and set up with the purpose of promoting democratic governance, economic development and prosperity. His address of service for purposes of this Petition is care of Room 4, Floor B1, Block A, Western Wing, NSSF Building, Bishops Road, P. O. Box 60286 - 00200, NAIROBI.

B. THE RESPONDENTS

2. The 1st Respondent - **JOSEPH KINYUA** - is a busybody who was recently dropped as the State House Chief of Staff but continues to masquerades as the Head of the Public Service, purporting to have the powers to instruct or direct Principal Secretaries/Authorised Officers, yet he has never himself been vetted by Parliament, he is way above the mandatory retirement age of 60 years, he is not an authorized officer and he was deliberately handpicked by the President in an act that was totally *ultra vires* and, without any recruitment procedure known in law being followed, imposed on the Public Service Commission to undermine the autonomy of the Commission. He has been sued herein for usurping the powers and mandate of the Public Service Commission. He is accused herein for breaching the Constitution of Kenya; the Public Service Commission Act 2017; the Statutory Instruments Act 2013; and the Fair Administrative Action Act 2015 by unilaterally issuing a statutory instrument that is the exclusive preserve of the Public Service Commission. His address of service for purposes of this Petition is care of **and Head of Public Service, Office of the President, Harambee House, Harambee Avenue, NAIROBI**.
3. The 2nd Respondent - **THE PUBLIC SERVICE COMMISSION (PSC)** - is a Constitutional Commission and a body corporate established under Article 233 of the Constitution of Kenya. Article 234 as read with Sections 11 and 12 of the Public Service Commission Act

2012, empowers the Commission to establish and abolish offices in the public service; and appoint persons to hold or act in those offices, and to confirm appointments; exercise disciplinary control over and remove persons holding or acting in those offices; promote the values and principles referred to in Articles 10 and 232 throughout the public service; investigate, monitor and evaluate the organisation, administration and personnel practices of the public service; ensure that the public service is efficient and effective; and develop human resources in the public service. The Commission has been sued herein for standing by as its powers are usurped by the 1st respondent. The Commission's address of service for purposes of this Petition is care of **The Secretary, Public Service Commission of Kenya, Commission House, Harambee Avenue, P.O. Box 30095 - 00100, NAIROBI**.

4. The 2nd Respondent - **HON. ATTORNEY GENERAL** - has been sued in this Petition on behalf of the President as the Legal Adviser and Representative of the Government of Kenya, who shall promote, protect and uphold the rule of law and defend the public interest, within the meaning of Article 156 of the Constitution. His address of service for the purposes of this Petition is care of **The Hon. Attorney General's Chambers, MOMBASA**.

C. SUMMARY OF THE PETITIONERS' CASE

5. The Petitioner is aggrieved that the 1st respondent has given himself powers and a mandate unknown in law as the occupant of the non-existent office of the Head of the Public Service, and has, in contemptuous violation of express provisions of the Constitution of Kenya 2010, the Public Service Commission Act 2017, the Fair Administrative Action Act 2015, and the Statutory Instruments Act 2013, issued a statutory instrument (**Circular Ref. No. OP/CAB.39/1A of 4th June 2018**), purporting to send heads of procurement and accounting units in government ministries, departments and agencies, including state corporations, on compulsory leave for 30 working days.
6. The petitioner is inviting the Honourable Court to intervene and determine the constitutional and legal validity of the impugned Circular.

7. The petitioner is praying for orders declaring the impugned circular to be inconsistent with the Constitution and other laws of Kenya and, therefore, invalid, null and void *ab initio* to the extent of the inconsistency.

D. THE PETITIONER'S LOCUS AND THE HONOURABLE COURT'S JURISDICTION

8. As stated in the Preamble to the Constitution, the petitioner, alongside all the people of Kenya, aspire for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law

9. Under Article 3(1) of the Constitution of Kenya, the petitioner has an obligation to respect, uphold and defend the Constitution.

10. Article 22 of the Constitution of Kenya vests the *locus standi* for the enforcement of the Bill of Rights, *inter alia*, in the Petitioner herein.

11. Article 48 enshrines the petitioner's right to access justice.

12. Article 50(1) recognises the Petitioner's right to have any dispute that can be resolved by the application of law decided in a fair, impartial, and public hearing before this Honourable Court.

13. Article 258 of the Constitution of Kenya vests the *locus standi*, *inter alia*, in the Petitioner herein to institute court proceedings to defend the values and principles in the Constitution whenever the Constitution is contravened or is threatened with contravention.

14. Articles 1(c), 4(2), 10, 22, 23, 50(1), 159, 162, 165, 258 and 259 of the Constitution of Kenya, as read with Section 12 of the Employment and Labour Relations Court Act (No. 20 of 2011), vest jurisdiction in this Court, *inter alia*, to hear any question regarding the violation of labour rights and workplace disputes; determining if acts or omissions are constitutional; and the interpretation of the Constitution, including questions of contradiction between any law and the Constitution, and to protect the Constitution from any threats or violations.

E. THE FACTS RELIED UPON

15. In the most outrageous installment on the Government's ongoing staged war on corruption the 1st respondent, signing off as the Head of the Public Service, has issued a Circular Ref. No. OP/CAB.39/1A of 4th June 2018, titled "Re: Presidential Proclamation on Fresh Vetting of Public Officers," and addressed to the Attorney General, all principal secretaries/accounting offices, Comptroller of State House, the Clerk National Assembly, the Clerk Senate, the Chief Registrar of the Judiciary, the Director-General National Intelligence Service, the Controller of Budget, the Auditor General, and Independent Offices and Commissions.
16. The circular purports to direct heads of procurement and accounting units in government ministries, departments and agencies, including state corporations to hand over their offices to their deputies and proceed on compulsory leave for 30 working days effective from 6th June 2018. During the leave period the officers are forbidden from foreign travel without clearance from the 1st respondent.
17. Further, the affected officers:
- 17.1. Are to be scrutinized afresh;
 - 17.2. Are required to reapply for their jobs latest by Friday 8th June 2018;
 - 17.3. Are required to declare their wealth, tax returns, and indicate residential addresses, spouses, utility bills, among a throng of personal details.
18. The petitioner is aggrieved that the circular is oppressive and unreasonable, and is outright illegal and unconstitutional and, therefore, invalid, null and void *ab initio*. Further and in particular:
- 18.1. Contrary to Article 50(2)(a) of the Constitution which decrees that "***Every accused person has the right to a fair trial, which includes the right – (a) to be presumed innocent until the contrary is proved,***" the circular treats the affected public officers as though they had been found to be guilty hence the disciplinary actions being taken against them;

- 18.2. Contrary to **Article 50(2)(b)** of the **Constitution** which decrees that *“Every accused person has the right to a fair trial, which includes the right– (b) to be informed of the charge, with sufficient detail to answer it,”* the impugned disciplinary actions are being taken against the affected public officers without telling them the crimes/offences they are accused of having committed;
- 18.3. Contrary to **Article 50(2)(c)** of the **Constitution** which decrees that *“Every accused person has the right to a fair trial, which includes the right– (c) to have adequate time and facilities to prepare a defence,”* the affected public officers were not given the opportunity to defend themselves before any forum.
- 18.4. Contrary to **Article 50(2)(l)** of the **Constitution** which decrees that *“Every accused person has the right to a fair trial, which includes the right– (l) to refuse to give self-incriminating evidence,”* the affected officers are required to make full disclosure of their private lives without being told what they are accused of.
19. The above state of affairs constitutes a gross attack on **Article 25(c)** of the **Constitution** which declares that the right to a fair trial may not be limited.
20. The petitioner is aggrieved that the blanket disciplinary measure is being imposed on a class of people without holding each one accountable for specific claims as an individual, and without consideration for its impact on the general population and the public service.
21. The petitioner states that the 1st respondent has no capacity in law to make such a drastic public policy statement anchored, as he claims therein, on the President’s Madaraka Day speech delivered on 1st June 2018.
22. With the doctrine of limited power informing the Constitution of Kenya 2010, presidential declarations do not have the force of law.

23. Under Article 260, the Constitution defines the “public service” to mean “the collectivity of all individuals, other than State officers, performing a function within a State organ.”
24. Article 234 of the Constitution sets out the functions and powers of the Public Service Commission (PSC), and puts the Commission in charge of all matters concerning the public service.
25. Article 249 of the Constitution spells out the objects, authority and funding of commissions and independent offices, including that they protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles; promote constitutionalism; are subject only to this Constitution and the law; **and are independent and not subject to direction or control by any person or authority.**
26. The petitioner posits that in the circumstances it is conceptually impossible to have the President direct the Public Service Commission without violating Article 249(2) of the Constitution.
27. The 1st respondent, who purports to be the Head of the Public Service, is not qualified to be employed in the public service given:
- 27.1. He is well past the mandatory retirement age of 60 years in the public service.
- 27.2. Contrary to Articles 73(2)(a) as read with Article 232(1)(g) of the Constitution, he was not recruited competitively on merit. Instead, he was handpicked by the President to serve on his private staff and was never vetted by Parliament. In the circumstances he cannot take it upon himself to superintend the public service in any way howsoever.
28. The 1st respondent, having not been interviewed by the PSC, not vetted by Parliament, and being a person H. E. the President, acting *ultra vires* the Constitution and various pieces of legislation, simply handpicked and imposed on the public Service Commission to compromise the Commission’s autonomy, has no powers to superintend the Attorney General, principal secretaries/accounting offices, Comptroller of State House, the

Clerk National Assembly, the Clerk Senate, the Chief Registrar of the Judiciary, the Director-General National Intelligence Service, the Controller of Budget, the Auditor General, and Independent Offices and Commissions, and/or, in any way whatsoever, to take over, control, and/or to direct the functions and operations of the Public Service Commission.

29. Independent Offices and Commissions **are independent and not subject to direction or control by any person or authority** as regards their staff.

30. Having not been vetted by Parliament, the 1st respondent has no capacity under the law and cannot superintend Principal Secretaries and Authorised Officers, and Independent Offices and Commissions, as he purports to do in his impugned circular.

31. Without being given authorisation vide being competitively recruited on merit and interviewed by the PSC in a competitive process, being vetted by Parliament, like, say, the Commissioners of the Public Service Commission were, the 1st Respondent is a stranger to the public service. Hence, he cannot legally superintend the public service, including by issuing the impugned circular.

32. The purported appointment by the President of the Head of the Public Service is outright illegal, unconstitutional and, therefore, invalid, null and void and of no consequence in law. Further:

32.1. The Head of the Public Service must be vetted and approved by the Public Service Commission in a fair, transparent, competitive, merit-based process that takes into account the diversities of Kenya's communities as prescribed, *inter alia*, in Articles 10, 232 and 234 of the Constitution.

32.2. Whereas the Constitution gives the Public Service Commission the exclusive authority to establish offices, the authority granted to the President to establish offices on his personal staff does not extend to offices in the Public Service. He can only create offices in the Public Service with the recommendation and/or approval of the Public Service Commission.

32.3. And where the President creates offices in the Public Service, nothing excludes those appointed to those offices, especially at the very senior levels of authorised officers, from being subjected to the national values and principles of governance in Articles 10 and 232 of the Constitution.

32.4. There's no indication so far that the 1st respondent's appointment by H. E. the President was upon a request or recommendation of the Public Service Commission, and that it was then done in compliance with the law on appointing persons into the public service.

33. Hence, the designation of the 1st respondent as Head of the Public Service is extremely irregular as it undermines the mandate and authority of the PSC and is inconsistent with the Constitution and other laws of Kenya, and therefore, invalid, null and void and of no consequence in law, to the extent of the inconsistency.

34. The public service is the primary means at the disposal of the Government for translating policies into programmes and implementing projects for overall national development. It is the duty of the Public Service Commission (PSC) to ensure there is a professionally managed and functional public service.

35. The 1st respondent's impugned circular constitutes gross misconduct on the part of the 1st respondent, and represents a gross violation of both the Constitution and the Public Service Commission Act 2017.

36. The impugned circular invokes no law and is based on no law.

37. The 1st respondent is not a regulation making authority under the law and, therefore, has absolutely no capacity to issue any directives.

38. **Article 260** of the **Constitution** defines '**legislation**' to include "an Act of Parliament, or a law made under authority conferred by an Act of Parliament."

39. **Section 2** of the **Statutory Instruments Act 2013** defines "statutory instrument" to mean "any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other

statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.”

40. **Section 92(1) of the Public Service Commission Act, 2017** allows the Commission to make regulations prescribing anything required by the Act to be prescribed generally for the better carrying into effect of the provisions of the Act.

41. The 1st respondent’s circular is a void statutory instrument for having been made in violation of the Constitutional imperative for public participation, and for not conforming to the Statutory Instruments Act 2013, which provides an elaborate process for making subsidiary legislation.

42. **THAT** 1st respondent is a busybody with no capacity to oust the mandate of the 2nd respondent.

43. **THAT** that the **Circular Ref. No. OP/CAB.39/1A of 4th June 2018** was issued by the 1st respondent to achieve the collateral purpose of hyping the on-going staged war on corruption, and looking for scapegoats.

44. **THAT** none of the affected officers has been formally accused of any wrongdoing, to be so subjected to collective punishment.

45. **THAT** the biblical doctrine of collective punishment is anathema to Kenya’s constitutional dispensation. Even in the Bible, collective responsibility belongs to the Old Testament.

46. **THAT** the doctrine of personal culpability or liability is expressly enshrined in law at **Articles 19(3)(a) and 226(5) of the Constitution** and legislation, including Leadership and Integrity Act 2012 (which throughout its body addresses public officers in the singular), and **Sections 15(2), 30(2), and 32 of the Public Officer Ethic Act (Cap 183)**.

47. **THAT** the **Circular Ref. No. OP/CAB.39/1A of 4th June 2018** issued by the 1st respondent does not invoke any powers he has under the law as a regulation making authority.

48. **THAT** the 1st respondent is not the Head of the Public Service as such a position does not exist in law.
49. **THAT** 1st respondent is not a regulation making authority.
50. **THAT** the public service is not run on the basis of presidential fiat and roadside declarations, but it is well organised and managed by an independent commission, the 2nd respondent.
51. **THAT** a key plank of the Constitution of Kenya 2010, and which is a major departure from the **Repealed Constitution**, is the autonomy of the public service from political control.
52. **THAT** whereas **Section 25 (1)** of the **repealed Constitution** provided that: *“Save in so far as may be otherwise provided by this Constitution or by any other law, every person who holds office in the service of the Republic of Kenya shall hold that office during the pleasure of the President,”* the Constitution of Kenya 2010 establishes the 2nd respondent at Article 233 and provides at Article 234, for the functions and powers of the Public Service Commission to superintend the public service.
53. **THAT** vetting does not require dismissal from office, unless it is a witch-hunt. In fact, dismissal from office is pre-emptive of any vetting. Dismissal from office can only come after vetting and the establishment that an officer is not suitable to hold a specific office.
54. **THAT** vetting is not a basis for dismissal from office.
55. **THAT** pursuant to **Section 42 (7)** of the **Leadership and Integrity Act**, it is only investigations can occasion the sending of an officer on compulsory leave.
56. **THAT** none of the affected officers is under investigation and so there is no basis for sending any one of them on compulsory leave.
57. **THAT** the demand that they provide information about themselves is tantamount to the State going on a fishing expedition to incriminate people.

58. **THAT** public officers are protected by the Constitution and legislation, and due process must be followed when taking disciplinary action.
59. **THAT** Kenyans have elected due process over dictatorship.
60. **THAT** in the case of *Dr. Christopher Ndarathi Murungaru vs. AG and another, Civil Application No. Nai. 43 of 2006 (24/2006)*, the Court of Appeal, on page 12, ruled that:
- “... the Constitution of the Republic is a reflection of the supreme public interest and its provisions must be upheld by the courts, sometimes even to the annoyance of the public. The only institution charged with the duty to interpret the provisions of the Constitution and to enforce those provisions is the High Court and where it is permissible, with an appeal to the Court of Appeal. We have said before and we will repeat it. The Kenyan nation has chosen the path of democracy: our Constitution itself talks of what is justifiable in a democratic society. Democracy is often an inefficient and at times messy system. A dictatorship, on the other hand, might be quite efficient and less messy. In dictatorship, we could simply round up all these persons we suspect to be involved in corruption and economic crimes and simply lock them up without much ado. That is not the path Kenya has taken. It has opted for the rule of law and the rule of law implies due process. The courts must stick to that path even if the public may in any particular case want a contrary thing and even if those who are mighty and powerful might ignore the court’s decision.”*
61. **THAT** it is totally unreasonable and procedurally unfair for the public officers who have personally not been accused of any wrongdoing to be punished.
62. **THAT** impugned circular is voided by the arbitrariness with which the decision to dismiss the affected officers was taken, and which decision was unlawfully taken with no adherence to the express provisions of the Statutory Instruments Act 2013.
63. **THAT** the forgoing constitutes a gross violation of the rights of the affected officers and the petitioner’s legitimate expectations.

64. The Public Service Commission is in charge of the human resources in the public service as provided in Article 234 of the Constitution. Provisions of Section 5 (3) of the State Corporations Act Cap 446, the specific Acts of Parliament under which individual State corporations are established, the Articles of Association for State corporations established under the Companies Act and the regulations on the appointment of boards of directors for public listed State corporations issued under the Capital Markets Authority Cap. 485A and Section 6(2) of the Act only allow third parties to exercise delegated power pursuant to Article 234 (5) of the Constitution. They do not out the mandate of the PSC in any way whatsoever.
65. Whichever way it is sliced, the impugned circular is irregular, unreasonable, self-serving, malicious, highhanded, unlawful and illegal document, contemptuous of and in gross violation of the Constitution and other laws.
66. The Petitioner posits further that it will be irregular and contrary to both the express provisions of Articles 10, 24, 27, 41(1) and 47 of Constitution and various statutes to allow the 1st respondent's impugned circular to stand.
67. The 1st respondent's impugned circular, is anathema to the rule of law and is outright discriminatory against the affected public servants.
68. In the circumstances, the 1st respondent's impugned circular is irregular and violative of the principle of the rule of law which is enshrined in the Constitution and, therefore, must suffer the fate prescribed in Article 2(4), being that:
- “... any act or omission in contravention of this Constitution is invalid.”***
69. The 1st respondent has a constitutional duty to uphold the rule of law, and the provisions and the spirit of the Constitution.
70. The petitioner is also aggrieved that the 2nd respondent has not lifted a finger to assert its authority and to prevent its turf from being encroached on by the 1st respondent. In fact, the 2nd respondent has been a willing collaborator in the violation of the law and the Constitution by the 1st respondent.

71. On its part, this Honourable Court is enjoined to enforce the rule of law, and the petitioner urges it to, with immediate effect, interdict and quash the 1st respondent's impugned circular.

72. The petitioner is praying for orders declaring the 1st respondent's impugned circular to be inconsistent with the Constitution and other laws of Kenya and, therefore, invalid, null and void *ab initio* to the extent of the inconsistency.

F. VIOLATIONS OF THE CONSTITUTION AND LEGISLATION BY THE 1ST AND 2ND RESPONDENTS

73. Violation of Article 10 of the Constitution

73.1. The national value and principle of the rule of law was violated and continues to be violated and/or threatened to the extent that the 1st respondent has failed to adhere to the Constitution, the Public Service Commission Act, and the Statutory Instruments Act.

73.2. The national values and principles of good governance, integrity, transparency and accountability will be violated or threatened to the extent that the 1st respondent's impugned actions are arbitrary, opaque, unjustified, unreasonable, ultra vires, and outright illegal.

74. Article 25(c) and 50(1) & (2) of the Constitution is violated to the extent that the affected public servants are being denied both a fair trial and a fair hearing.

75. Violation of Article 41(1) of the Constitution: The right to fair labour practices will be violated to the extent that the impugned circular is oppressive and highhanded.

76. Article 47 of the Constitution is violated to the extent that the affected public servants are being condemned unheard.

77. Violation of Article 73 of the Constitution as read with Section 52 of the Leadership and Integrity Act 2012: The circular violates the guiding principles of leadership and

integrity, which demand that selection should be on the basis of competence and suitability, and that there should be objectivity and impartiality in decision making.

78. Violation of Article 232 of the Constitution: The impugned circular, which is a blatant act of impunity, is contrary to the principles of involvement of the people, accountability for administrative acts, and representation of Kenya's diverse communities.

79. Violation of Article 234 of the Constitution: Article 234 was violated to the extent that the impugned circular is contrary to the law which clearly states that the Public Service Commission enforces the values and principles of public service in Article 232.

80. Violation of the **Statutory Instruments Act** (No. 23 of 2013): The Statutory Instruments Act was violated and continues to be violated to the extent that the impugned circular was enacted in defiance of the very clear process for making statutory instruments that is expressly provided in the Statutory Instruments Act 2018.

81. The above state of affairs clearly demonstrates that the respondents have violated the Constitution of Kenya 2010 and the laws developed thereunder.

CASES RELATED TO ISSUES IN THE PETITION

82. There is no case pending in any court involving the parties herein and over the same subject matter the constitutional and legal validity of the **Circular Ref. No. OP/CAB.39/1A** of 4th June 2018 issued by the 1st respondent.

G. RELIEFS SOUGHT BY THE PETITIONER

REASONS WHEREFORE your petitioner therefore humbly prays for:

- (i) **A DECLARATION THAT Circular Ref. No. OP/CAB.39/1A of 4th June 2018 is a statutory instrument subject to the Statutory instruments Act 2013.**
- (ii) **A DECLARATION THAT the 1st respondent has no capacity in law to issue Circular Ref. No. OP/CAB.39/1A of 4th June 2018.**

- (iii) A DECLARATION THAT Circular Ref. No. OP/CAB.39/1A of 4th June 2018 is illegal and unconstitutional and, therefore, invalid, null and void *ab initio*.
- (iv) AN ORDER QUASHING Circular Ref. No. OP/CAB.39/1A of 4th June 2018.
- (v) AN ORDER COMPELLING the respondents to pay the costs of this suit.
- (vi) Any other relief the court may deem just to grant.

DATED at NAIROBI this 6th day of June 2018

OKIYA OMTATAH OKOITI
THE PETITIONER

DRAWN & FILED BY:

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TO BE SERVED UPON:

1. **JOSEPH KINYUA**
OFFICE OF THE PRESIDENT,
HARAMBEE HOUSE,
HARAMBEE AVENUE,
NAIROBI.
2. **THE PUBLIC SERVICE COMMISSION**
THE SECRETARY, PUBLIC SERVICE COMMISSION OF KENYA,
COMMISSION HOUSE,
HARAMBEE AVENUE,
P.O. BOX 30095 – 00100,
NAIROBI.
3. **HON. ATTORNEY GENERAL**
THE HON. ATTORNEY GENERAL'S CHAMBERS,
7TH FLOOR, SHERIA HOUSE
HARAMBEE AVENUE
P. O. BOX 40112
NAIROBI.

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BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

-VERSUS-

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

AFFIDAVIT SUPPORTING THE PETITION

I, OKIYA OMTATAH OKOITI, a citizen of Kenya resident in Nairobi City County, and of care of Room 4, Floor B1, Block A, Western Wing, NSSF Building, Bishops Road, P. O. Box 60286-00200, Nairobi, do hereby solemnly make oath and state as follows:

1. THAT I am an adult male of sound mind and a citizen of Kenya, aware of the matters in issue and, therefore, competent to swear this affidavit on my own behalf as the petitioner.
2. THAT I swear this Affidavit in good faith in support of the amended petition herein.

3. **THAT** I have perused the amended petition herein and confirm that the facts stated therein are true and correct.
4. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the amended petition, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief.
5. **THAT** in support of my averments above, I annex hereto and mark as “**Exhibit - 0001**” a bundle containing copies of the following documents:
 - 5.1. The Circular Ref. No. OP/CAB.39/1A of 4TH June 2018 issued by the 1st respondent, titled “Re: Presidential Proclamation on Fresh Vetting of Public Officers.”
 - 5.2. Newspaper Articles.
 - 5.3. The Court of Appeal decision in Christopher Ndarathi Murungaru v Kenya Anti-Corruption Commission & another [2006] eKLR
6. **THAT** in further support of my averments above, I will also rely on the affidavits and annexure thereto, which I have filed herein in support of the original petition and in response to the pleadings filed variously by the respondents and the interested party.
7. **THAT** what is deponed to herein is true and to my own knowledge save as to facts deponed to on information and belief the sources and grounds whereof have been respectively specified.

SWORN by the said **OKIYA OMTATAH OKOITI**
 at **NAIROBI** this 6th day of **June 2018**
 BEFORE ME

.....
DEPONENT

COMMISSIONER OF OATHS / MAGISTRATE

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI,
 ROOM 4, FLOOR B1, BLOCK A,
 WESTERN WING, NSSF BUILDING,
 BISHOPS ROAD,
 P. O. BOX 60286-00200,
NAIROBI.

Exhibit - 0001