

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION
PETITION NO. 563 OF 2012

RECEIVED
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JUDICIAL REVIEW & CONSTITUTIONAL
& HUMAN RIGHTS REGISTRY

IN THE MATTER OF ARTICLES 10, 22, 27, 23, 35 AND 46 OF THE CONSTITUTION OF
KENYA, 2010; THE KENYA INFORMATION AND COMMUNICATIONS ACT NO. 2 OF
1998

BETWEEN

CONSUMER FEDERATION OF KENYA (COFEK) Suing through its officials namely
STEPHEN MUTORO, EPHRAIM GITHINJI KANAKE, and HENERY MESHACH OCHIENG
.....PETITIONER

VERSUS

THE MINISTER FOR INFORMATION
AND COMMUNICATIONS1ST RESPONDENT

HON. ATTORNEY GENERAL2ND RESPONDENT

COMMUNICATIONS COMMISSION OF KENYA 3RD RESPONDENT

FIRST RESPONDENT'S AFFIDAVIT

I, **SAMUEL L. POGHISIO** of Post Office Box Number 30025 – 00100, Nairobi in the
Republic of Kenya do hereby make oath and state as follows –

1. **THAT** I am the Minister for Information and Communications, the first
respondent herein and therefore competent and duly authorised to
make this affidavit.
2. **THAT** I am well versed with the subject matter of the present
proceedings.

3. **THAT** I have read and understood the Petitioner's Certificate of urgency, the Notice of Motion, supporting affidavit thereto, the petition and the verifying affidavit and I swear this affidavit in response thereto.
4. **THAT** the Government of the Republic of Kenya is a signatory to the Geneva 2006 Regional Radio communications Conference (RRC_06) Agreement in which it has committed to migrating all analogue broadcasting services to digital broadcasting services by 2015; the global switch off date.
5. **THAT** further to the foregoing all countries in the East African Community have set 2012 as the target year for the completion of the digital migration.
6. **THAT** in addition, the Government in accordance with the National Information and Communication Technology Policy, 2006, has undertaken to promote the introduction and uptake of digital broadcasting in the country by managing the transition from analogue to digital broadcasts.
7. **THAT** migration from analogue to digital broadcasting is geared to increase Kenya competitiveness in the global Information Communication Technology arena and in the furtherance of achievement of Millennium Development Goals and the Vision 2030.
8. **THAT** the migration process was launched by His Excellency the President on 9th December, 2009 and the same have been progressive over the years. This was a pilot digital television broadcasting that was to cover Nairobi and its environs and then the platform would be rolled out to the rest of the country.
9. **THAT** in response to paragraph 9 of the petition, I reiterate the contents of the foregoing paragraphs of this replying affidavit and further state that appropriate, reasonable and prudent

considerations have been taken into account prior to the intended switch off of the analogue signal in Nairobi by 31st December, 2012.

10. **THAT** paragraphs 10, 11, and 12 of the petition are denied and the said allegations are unfounded, untrue and mischievous.
11. **THAT** further to paragraph 10 hereinabove the Government through its relevant agencies and other stakeholders has been conducting intensive consumer awareness and education campaigns and as such the process has had active participation by the public.
12. **THAT** in response to paragraph 13 of the petition it is a fact that digital signal broadcast is already been received in Nairobi and its environs. It is thus untrue that any segment of the Kenyan population will be cut off from following or participating in important matter or events in the Republic.
13. **THAT** paragraph 14 of the petition is denied and I state that the entire process of digital migration has been in compliance with provisions of the Constitution and particularly in regard to active public participation. Further, the process has not been discriminative in that the Government has already zero-rated the set-top boxes to ensure affordability by ordinary Kenyans.
14. **THAT** in response to paragraph 15 of the Petition, Public Policy considerations have been taken into account by the Digital Television Committee in its numerous education campaigns in the run-up to the switch off date. Further, it is erroneous to equate public participation to membership status in the said Committee.
15. **THAT** paragraph 16 of the petition is denied. The reference given was inferred out of context in that it has been the Government's position to reap the digital dividends arising

from the migration and as such the same was not in reference to the private sector interests as alleged.

16. **THAT** paragraphs 17 and 18 of the petition are denied and I reiterate the contents of the foregoing paragraphs.
17. **THAT** paragraph 19 is denied in toto. The Government has already zero-rated set-top boxes to ensure affordability by ordinary Kenyans.
18. **THAT** paragraphs 20 and 21 of the petition are denied. The intended migration from analogue to digital will free the scarce frequency spectrum for use by many players in the industry, thus enhancing plurality, diversity and increased employment opportunities in the broadcasting sector.
19. **THAT** paragraph 22, of the petition is denied and I reiterate the contents of paragraph 14 herein.
20. **THAT** in response to paragraph 23 of the petition, the first respondent was in the process of responding to the petitioners' said letter when a petition was served. The petitioner's action is thus unjustified, hasty and actuated by ill-will.
21. **THAT** the contents of paragraphs 24 and 25 of the petition are not true.
22. **THAT** in response to paragraph 26 of the petition, the first respondent's action are legal, justified, lawful, reasonable and in good faith for the overall benefit of all Kenyan citizenry and for public Policy considerations.
23. **THAT** in view of the foregoing, the petition herein lacks merit and I urge the Honourable court to exercise its discretion and decline to grant the Orders sought by the Petitioner. The same ought to be dismissed with costs to the first respondent.

24. **THAT** what is deponed to herein is true to the best of my knowledge, save for information and belief the sources and grounds whereof are stated and disclosed.

SWORN at NAIROBI

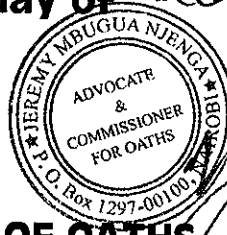
By the said)

SAMUEL L. POGHISIO)

This *19th* day of *December* 2012)

BEFORE ME:)

COMMISSIONER OF OATHS)



DRAWN AND FILED BY:)

The Honourable Attorney General
Sheria House
P. O. Box 40112 – 00100
NAIROBI

TO BE SERVED UPON:

Karauka and Company Advocates
Chester House, 1st Floor, Office No. 1
P. O. Box 17586 – 00100
NAIROBI

Communications Commission of Kenya
C.C. K. Centre
Waiyaki Way
P. O. Box 14448 – 00800
NAIROBI

Samuel Poghisio