



**Mullah v Masinde Muliro University of Science & Technology (Constitutional  
Petition E002 of 2022) [2022] KEHC 14885 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14885 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CONSTITUTIONAL PETITION E002 OF 2022  
PJO OTIENO, J  
OCTOBER 31, 2022**

**BETWEEN**

**PAUL MTONYI MULLAH ..... PETITIONER**

**AND**

**MASINDE MULIRO UNIVERSITY OF SCIENCE &  
TECHNOLOGY ..... RESPONDENT**

**JUDGMENT**

1. In the petition, the cause against the respondent is set out to be that the petitioner did apply and was registered as a student at the institution, underwent through the academic programmes of the institution, sat examinations as assigned by the respondent, did satisfy the examiners and therefore was certified to have successfully completed his undergraduate studies leading to the award of Bachelors of Science in journalist and mass communication and was placed in the graduation list for the ceremony scheduled and conducted on the 6.12.2019.
2. Thereafter the petitioner assert that he repeatedly sought to be issued with academic transcripts and the degree certificate but all was in vain for more than two years thus being compelled to approach the court with the current petition.
3. For that failure, the Petitioner contend that his Constitutional rights to livelihood, equal treatment before the law, right to human dignity as well as economic and social rights have been violated. It is equally alleged that his right to access information and fair administrative actions have been violated and denied in that no reasons have been given to him as much as he was denied the opportunity to be heard.
4. For those alleged breaches the petitioner pray that the Court grants to him:-



- a) A declaration that the petitioner’s fundamental rights and freedoms as enshrined under articles 26, 27, 28, 35, 43 and 47 of the Constitution of Kenya 2010, have been contravened and infringed upon by the respondent.
  - b) A declaration that the petitioner is entitled to the payment of damages and compensation to be assessed by the court for violation and contravention of his fundamental human rights by the respondent herein as provided for under articles 26, 27, 28, 35, 43 and 47 of the Constitution of Kenya, 2010.
  - c) A compulsory order compelling the respondent to unconditionally release to the petitioner the official transcripts of Bachelor of Science in Journalism and Mass Communication.
  - d) Costs of Petition.
  - e) Aggravated damages for stagnation of career and loss of career growth and the internship opportunity.
  - f) Any other relief that this Honourable Court may deem just to grant.
5. In support of the petition an Affidavit was sworn by the Petitioner reiterating the facts in the petition and exhibiting his letter of admission, Identity Card, a clearance certificate on completion/termination of studies, graduation list and his photo taken during the event, demand letter to the Respondent dated 15/12/2020, a copy of the degree certificate collected after the demand letter, a further demand for transcripts, and a letter from Public Service Commission appointing the Petitioner under the Public Service Internship Programme which opportunity was lost due to lack of transcripts. It is therefore the contention of the Petitioner that due to failure by the Respondent to issue the documents in time and at all the petitioner has lost the opportunity to get any employment opportunity and thus suffered loss and damages inflicted by the Respondent.
  6. The petition was responded to by the respondent by a replying affidavit sworn by Prof. Thomas Sakwa on the 3.5.2022. In that affidavit, the deponent admits all the complaints by the petitioner save that the degree certificate was collected by the petitioner on 21.01.2021 upon clearing fees in November 2019 and that there was delay occasioned by system migration but the same had been made ready and available by the date the Affidavit was sworn. It is also alleged that the Petitioner had been invited by way of a telephone call to go and collect the certificate, after the Petition was filed but he has never collected same and that the transcripts are personal documents that must be collected in person. No date nor particulars of the call and caller were disclosed.
  7. The Respondent then attempts to justify the delay in the preparation of the academic transcripts on the basis that the Petitioner joined the University on a credit transfer and in second year but denied that the delay in availing the documents had in any way violated the Petitioner’s fundamental rights and freedoms under the Constitution nor did the respondent violated any provisions of the Fair Administrative Actions Act, and lastly that the Petitioner does not deserve any of the orders sought in the Petition but the Petitioner ought to be dismissed with costs.
  8. The Petition was directed to be heard on the basis of Affidavits and documents filed by the parties and written submissions. Pursuant to which directions the petitioner filed submission on the 16.5.2022 while the respondent did so on the 5.7.2022.
  9. In the submissions while the petitioner identifies issues for determination to be three the respondent only sees two issues. The submissions were therefore fashioned along the issues as identified and framed by each side.



10. For the petitioner, energy was spent on the questions whether the petitioner was a student at the respondent's institution and if he completed his Degree Course. Those are non-issues in this Petition as the Respondent actually admit same unequivocally. It is however understandable that the petitioner's submissions were filed long before the respondent filed his replying affidavit.
11. On whether he is entitled to the remedies sought the Petitioner asserts that having completed his Course and was put in the graduation list and that he attended the ceremony, he was not issued with the certificate and transcripts on the basis of the information by the academic registrar that the documents were missing and the situation persisted despite incessant visit by him to the Respondents a situation that constrained him to seek the services of an advocate. Upon receipt of the demand letter and a visit to the Respondent, the academic certificate was ready but not the transcripts which the office concerned, the examination office, said had not been forwarded by the relevant departments.
12. Despite further visits no success was forthcoming hence the petition was filed on the basis that the petitioner believed that his rights under articles 35 and 47 of *the Constitution* as well as section 4 of the *Fair Administrative Actions Act* had been violated in that he was denied a hearing before the adverse action could be taken against him.
13. The petitioner then cited the decision in *Inganga Alfred Irungu -vs- University of Nairobi* [2017] eKLR for the proposition of law that the rules of natural justice including requirement for notice are now constitutional requirement and not merely common law dictates and *Florence Amunga Omukanda -vs- Attorney General* [2016] eKLR for the proposition that treating persons who had undergone the same calamity differently is tantamount to forbidden discrimination.
14. The decision in *Douglas Moturi Nyairo -Vs- University of Nairobi* [2018] eKLR was also cited for the proposition that the provisions of *the Constitution* guarantee education as a basic minimum foundation for the attainment of a dignified and reasonable livelihood.
15. Based on the facts, the law cited and decisions relied upon the Petitioner underscored that he had lost valuable time and prospects to join the job market, even at the basic level of internship and proposed that the court awards to him a sum higher than those awarded in the cited cases because in those cited cases, no loss of job opportunity had been proved.
16. For the Respondent, the submissions are that the Petition only present two issues for determination of the court as being whether any constitutional rights and freedoms had been violated or denied and if the Petitioner is entitled to any of the remedies sought.
17. On whether the rights had been violated, the court was urged to answer the question in the negative as the Petitioner duly attached and participated in the graduation ceremony. The Respondent sought to distinguish the facts of this case with those in *Douglas Moturi Nyairo* (Supra) case where the Petitioner's list was excluded from the graduation list. The Petitioner was accused of failure to demonstrate differential treatment accorded to him. The petition was viewed not to meet the threshold on pleadings established by the court in *Anarita Karimi Njeru -Vs- Republic* [1976-80] 1 KLR.
18. On whether the Petitioner is entitled to damages, it was submitted that the Petitioner had not met the threshold of establishing a most appropriate case for the award of general damages, citing the decision in *Joyce Chepkoech Too -vs- Egerton University* [2021] eKLR. However, the Respondent conceded that declaratory orders would suffice for any violation as a way to vindicate the Petitioner. It was concluded that there was no proof of violation or denial and therefore that the Petition ought to be dismissed.



## Analysis:

19. I have anxiously perused the petition, the affidavit sworn in support and the documents exhibited in support of the grievances of the petitioner as well as the replying affidavit and i find that the fact of registration, satisfactory completion of the course capped at the graduation ceremony are all admitted. Even the delay to prepare and give out the academic certificate in time and total failure to avail the transcripts to date are not in contention.
20. The only contention is whether the failure to avail the academic certificate in time and that on academic transcripts to date constitute an infringement a right or denial of a fundamental freedom under the bill of rights.
21. The Court is of the view and opinion that most Kenyans pursue University education not just for prestige but as an important pedestal upon which fortunes and upward wealth creation and livelihood progression is built. Kenyans go to school and pursue higher education as a ticket to better compete in the job market. The only documents that would identify one to possess the qualifications a prospective employer has prescribed is the certificate issued by the institution offering the Course leading to that qualification. It is therefore not unreasonable for one who has undergone training in such an institution like the Respondent to reasonably and legitimately expect that upon completion of the Course everything is done to have the certificate and where necessary, the supporting transcripts are awarded and issued timeously without any undue impediments.
22. In this matter the petitioner and the respondent agree that the petitioner completed his academic obligations prior to and was cleared by the respondents before end of October 2019 and was listed and participated for the graduation ceremony staged on the 6.12.2019. However, the academic certificate certifying that the qualification was conferred upon the petitioner was not issued and given out till the 21.01.2021.
23. The court calculates the time taken to prepare and issue the certificate to be a period in excess of thirteen months. That is the duration the court views and considered not reasonable for the Respondent to avail a certificate to its alumnus. It is not reasonable in that in receiving fees, administering examinations and assessing each student before conferring the qualifications, the respondent ought to have put in place steps and preparation to issue the certificate not later than the graduation day. I say the ideal day the certificates ought to issue and handed over is the graduation day because it is on that day that the graduands are told they are bestowed with the power to read, write and do all which appertains to the award.
24. It is thus not expected that one graduates then expected to demand the release of his awarded certificate; not for any reason. Least of all, it cannot be a reason that the Petitioner joined the Respondent on credit transfer, that a department failed to transmit the transcripts to the academic section nor that the respondent opted to migrate from one operating computer system to another. Those two are more of excuses other than reasons to justify very unjustifiable injury to the Petitioner.
25. It is the appreciation of the court that the relationship between a student and a learning institution is contractual which vests rights and imposes obligations on both sides. One of the obligations on an institution is to award the certificate once the student earns it. That obligation runs and it cannot be a defence, even on a simple litigation based on contract for a party to cite a self imposed a difficulty hence it be allowed to renege or resile upon its bargain.
26. In any event, that the petitioner was joining the Respondent on credit transfer was not a new matter but the very foundation of the relationship. The credit transfers must have been concluded before the



letter of admission was issued. Further that there was system migration as a defence is nothing but an outrage. Outrage because migration is not an accident but a planned enterprise one migrates for a better habitat. Migration must have been intended to better the operating system not make it less efficacious. Here the court has not been told when the system migration took place or that the data necessary for generating the Petitioner's transcripts and certificate were lost, left behind and thus not migrated. What has been done is to make a bare statement regarding migration.

27. The court finds that there is no reasonable and justifiable explanation in the delay to release the petitioner's certificate and transcripts and that by failure to release the same timeously the Petitioner has had his rights violated and has suffered loss and damage in that he was not able to meet the demands from the Public Service Commission to join the Public Service Internship Programme. The court notes that the very first requirement by the Public Service Commission, one of the largest, if not actually the highest employer, was that one produces both degree certificate and transcripts. It follows therefore that without the documents delayed by the respondent, the petitioner was denied the opportunity not just to earn the stipend but also to develop in the practical execution of his profession and thereby develop a Curriculum Vitae. I consider that a violation of not only the right to equal treatment before the law but also the violation of the right to protection against arbitrary deprivation of property and the right to fair administrative action.
28. For such violation, the petitioner can only be vindicated by a declaration that he was differentially treated from his cohorts; that the day to communicate to him a valid reason why he could not be issued with the certificate and transcripts denied him the right to fair administrative action and that keeping the said documents in fact amount to arbitrary deprivation of property. It is therefore found and held that the petitioner's constitutional rights were indeed violated and so violated in an injurious manner.
29. As a consequence of the violation, he was, without doubt, injured, in that he lost an opportunity to take up internship which would have enabled him to not only earn money but also develop the career and acquire skills in his budding career. That injury would entitle the Petitioner to not only general damages but even special damages had the same been sought. However, no evidence was led to demonstration that the violations were accentuated by ill will or just to oppress the Petitioner. Without evidence of oppression and malice, no aggravated and exemplary damages are awardable.
30. In conclusion, Judgment is entered for the petitioner for:-
  - a) A declaration that the petitioner's constitutional rights under articles 27, 40 and 47 of *the Constitution* were violated by the Respondent.
  - b) An order of mandamus compelling the Respondent to release to the Petitioner his withheld academic transcripts within 14 days from today. Let the Petitioner visit the offices of the Respondent to pick the documents at the earliest opportunity available.
  - c) General damages in the sum of Kshs. 300,000/= for violation of the rights.
  - d) Costs of the petition to be agreed and on failure to agree within thirty (30) days from today and in default of such agreement a bill of costs be filed within sixty (60) days from today.
  - e) Mention on 17.2.2023 to confirm that the court file may be closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31<sup>ST</sup> DAY OF OCTOBER 2022.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**



Mr. Were for the Petitioner

No appearance for AG for the Respondent

Court Assistant: Polycap

