



REPUBLIC OF KENYA

IN THE HIGH COURT OF BOMET

PETITION NO. 1 OF 2018

IN THE MATTER OF ARTICLE 10(2), 22, 23(3), 47 AND 50(2) OF THE CONSTITUTION

OF KENYA 2010 FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOM.

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOM

UNDER ARTICLE 22,23(3), 47 AND 50(2) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

THE UNIVERSITIES ACT, 2012

BETWEEN

CHERONO GLADYS.....PETITIONER

VERSUS

UNIVERSITY OF NAIROBI.....RESPONDENT

JUDGMENT

Before the court is a Petition together with Affidavit in support of the Petition dated 10th February, 2018 and filed on 12th February, 2018 whereby the petition seeks for orders that:

- a) A declaration that the Petitioner herein is entitled to her Certificate in Human Resource and academic transcripts therein and that the Respondent to award the same.
- b) A declaration that the Respondent's act by failing to issue the Petitioner with her Certificate and academic transcript in Human Resource upon enrollment and completion of the course, manifestly unreasonable and violated the Petitioner's right to a fair administrative action as enshrined under Article 47 of the Constitution.
- c) A declaration that the Respondent violated the Petitioner's right to human dignity under Article 28 of the Constitution and the right not to be subjected to any form of violence or be treated in a cruel, inhuman or degrading manner under Article 29(c) and (f) of the Constitution.
- d) A declaration that the Respondent violated the Petitioner's right to equal benefit of law under Article 27 of the Constitution, right to a fair administrative action under Article 47 of the Constitution and the right to access justice under Article 48 of the Constitution.
- e) An order for judicial review to quash any decision of the Respondent made by failing to issue the Petitioner herein with her Certificate and academic transcript in Human Resource upon enrolment, completion of the course pursuant to flawed, biased, discriminatory thus unreasonable.

f) An award of general damages for violation of her rights to fair administrative action, pain and suffering, humiliation and distress visited upon the petitioner.

g) An order for the Respondent to compensate the Petitioner in the form of general damages to be computed as court will direct, for the following:

i. Loss of fitting/merited employment opportunities and income.

ii. Loss of opportunities in career growth.

iii. Loss of opportunities to further education.

iv. Anxiety, mental anguish, distress.

v. Loss of reputation among her peers, family and society at large.

h) The costs incidental of this petition be borne by the Respondent.

i) Any other or further relief that this Honorable Court considers appropriate and just to grant.

PETITIONER'S CASE

In both the Petition and in the Affidavit in support of it, the Petitioner states that was a former student of the Respondent having enrolled and admitted on 14th June, 2012 to pursue Certificate in Human Resource Management. Attached copy of admission letter marked as CG 2.

She further states that she paid in full all the prescribed fees, attended her classes until completion of her course and on 6th November, 2013 she was issued with her provisional result slip. Later on she enrolled for her diploma course on the same course and completed and on 15th February, 2015 was issued with her undergraduate Diploma in Human Resource. Attached copy of bank deposit slip, Provisional Result slip and Undergraduate Diploma marked CG 1a-b, CG3 and CG 4a-b respectively.

The Petitioner contends that she is yet to be issued with her University Certificate in Human Resource Management whereas all her class mates have long been given and having utilized all efforts to seek assistance from the Respondent. Attached is a letter raising concerns marked as CG 5.

It is her contention that the Respondent have never accorded her any fair hearing as to why they are unable to issues her with the said certificate therefore, their action has caused her immense pain and suffering in addition, loss of potential employment opportunities. Thus, a continuous violation of her constitutional rights.

The Petitioner further states that since 2015 she has been unable to pursue further studies for reasons that she has incomplete academic transcripts from the Respondent's university.

On the foregoing, the Petitioner contends that failure to be issued with the Certificate in Human Resource upon enrolment and completion of the said course violates her right to equal protection and equal benefit of the law under Article 27 of the Constitution.

It is also contested that the Respondent has violated the Petitioner's right of human dignity as protected under Article 28 of the Constitution. She avers that her dignity has been violated amongst her peers, friends, colleagues, relatives and potential employers who haven't not had a chance to look at her academic documents as and when necessary.

Petitioner avers that the Respondent's actions violates her right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as articulated under Article 47 of the Constitution. She also contends that her right that of access to justice as stipulated under Article 48 has also been violated.

It is therefore Petitioner's prayer that the Respondent be compelled to issue her with the said certificate.

RESPONDENT'S CASE

On 14th June, 2018 the Respondent filed their Replying Affidavit sworn on 13th June, 2018 by Professor Henry W. Mutoro in response to the Petition.

In their response, the Respondent denied Petitioners alleged allegation and in return, stated that the Petitioner had applied for a Certificate Programme in Human Resource Management, which admission was subject to verification of her qualifications. Attached copy of the application form marked as "UON1".

It was averred that the letter of admission bears a statement that states that, ***"This offer is made on the basis of the statement of your qualifications and is therefore subject to satisfactory verification by the University. Any information found to be untrue will automatically lead to nullification of this offer."*** Attached copy of the offer letter marked as "UON 2".

It is further stated that the minimum requirement for admission was mean grade of C-(Minus) which the Petitioner had not obtained as she had mean grade of D+ (Plus) thus, the Petitioner wasn't eligible for the certificate course in Human Resource Management. Attached copy of qualification Manual for Certificate Course and Petitioner's KCSE Certificate marked as "UON 3 and "UON 4" respectively.

In conclusion, it is the Respondent averment that relief sought by the Petitioner are not available for reason that the Petitioner has not disclosed any particulars of violation of her fundamental rights. Therefore, the Petition ought to be dismissed with costs to the Respondent.

The matter was canvassed by way of written submission.

PETITIONER'S SUBMISSION

The Petitioner relies on her submission dated 5th October, 2018 and filed on 8th October, 2018 by her advocate Roger Mugumya P. Sang & Company Advocates.

It is Petitioner's submission that she was enrolled at the Respondent's university and after paying her fees she was admitted at the University. It is further her submission that upon completion of her course and being given a provisional result slip, it follows therefore, that she had legitimate expectations that she would be given her certificate and transcripts.

The petitioner submits that her not being issued with the documents and after doing a follow up through a letter by her advocate, the Respondent are in clear disregard to the rule of law and provisions of Article 47 of the Constitution. Reliance was placed in the cases of **KISUMU, HIGH COURT, PETITION NO.1 OF 2017, INGANGA ALFRED ARUNGA – VERSUS - UNIVERSIRY OF NAIROBI** where it was the court's holding that a declaration is granted to the Petitioner that his right of fair administrative action under Article 47(1) of the Constitution was violated when the Respondent arbitrarily and without due process confiscated his degree certificate and refused to release his original transcripts.

It is Petitioner's submission that by virtue of the fact that the Petitioner was admitted by the Respondent's University, it signifies that indeed there was a contract entered between the two parties.

Petitioner also relied on the case **JESSE WAWERU WAHOME & OTHERS VS. KENYA ENGINEERS REGISTRATION BOARD AND EGERTON UNIVERITY & OTHERS (2012) eKLR** where the court observed and quoted with approval from **NYERI, COURT OF APPEAL, CIVIL APPEAL NO. 52 OF 2014, OINDI ZAIPPELINE & 39 OTHERS VERSUS KARATINA UNIVERSITY & MOI UNIVERSITY** that;

“in a country like ours where citizens place a premium on university education, it is not right to leave graduates in a suspended state where they do not know their fate especially where parents have made sacrifices to educate their children, students have taken out loans from the Higher Education Loan Board and are expected to re-pay these loans and the State has invested taxpayers money....This is a situation that cries out for justice.”

On issue 3 it is submitted that the Petitioner was never accorded an opportunity to defend herself with regards to the allegations leveled against her. It is further submitted that Article 47(1) of the Constitution and Section 4(1) of the Fair Administrative Action Act provide for right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. In addition, Section 4(3) of Fair Administrative Action Act requires a person against whom an administrative action has been taken to be given an opportunity to be heard and to make representations in that regard where an administrative action is likely to affect the fundamental rights and freedoms of that person.

Placing reliance on the case of **ASSOCIATES LIMITED V CAPITAL MARKET AUTHORITY AND ANOTHER NAIROBI PETITION NO. 328 OF 2011, JUDICIAL SERVICE COMMISSION VS. MBALU MUTAVA & ANOTHER NRB CA CIVIL APPEAL NO. 52 OF 2014 (2015) eKLR, KISUMU, HIGH COURT, PETITION NO.1 OF 2017, INGANGA ALFRED ARUNGA – VERSUS - UNIVERSIRY OF NAIROBI, NAIROBI, HIGH COURT** and **CONSTITUTIONAL PETITION NO.7 OF 2018 (CONSOLIDATED WITH PETITION NO. 394 OF 2017 AND JR NO.683 OF 2017) FRANKLIN MITHIKA LINTURI –VERSUS- ETHICS AND ANTI-CORRUPTION COMMISSION, DIRECTOR OF PUBLIC PROSECUTIONS & THE UNIVERSITY OF NAIROBI** the Petitioner submits that the import of Article 47 of the Constitution is that rules of natural justice including the requirement of notice are no longer left within the realm of common law principles, they are now anchored in the Constitution whose intent is to promote the rule of law as a national value under Article 10(2) of the Constitution and to cure the culture of arbitrariness inherent in our administrative processes.

In addition, it is submitted that all other reasons being advanced by the Respondent justifying why the Certificate together with the transcripts were not issued are an afterthought, baseless, unreasonable and are aimed at defeating justice.

On issue 4 it is submitted that Article 19(2) of the Constitution provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. Further Article 20(a) (b) enjoins the courts of law and other authority to adopt the interpretation that promotes the values.

It is argued that the Petitioner is a Kenyan Citizen and have always commanded a lot of respect amongst fellow Kenyans however, the unlawful conduct by the Respondent has caused her a lot of misery, trauma and betrayal on top of making her lose gainful employment opportunities and thus, prays that she be awarded Kshs.800,000/- as damages for pain and suffering, humiliation and distress visited upon her during the period together with other prayers as sought in the Petition.

On this submission, the Petitioner is guided by the case of **BUNGOMA HIGH COURT, CONSTITUTIONAL PETITION NO. 5 OF 2014, JOSEPHINE OUNDO ONGWEN (also known as JOSEPHINE MAJANI) – VERSUS- THE HONOURABLE ATTORNEY GENERAL, THE COUNTY GOVERNMENT OF BUNGONA, THE BUNGOMA COUNTY CABINET SECRETARY FOR HEALTH, THE CABINET SECRETARY MINISTRY OF HEALTH, BUNGOMA COUNTY REFERRAL HOSPITAL, WOMEN'S LINK WORLDWIDE & AFRICAN GENDER AND MEDIA TRUST** where Justice Ali-Aroni awarded the Petitioner Kshs.2,500,000/= as damages for infringement of her rights. Thus, the Petitioner submits that she is entitled to the remedies sought therein.

On issue as to cost, it is submitted that costs should follow the cause and that she be awarded costs of this Petition.

In conclusion it is submitted that the Petitioner has proved her case on a balance of probabilities therefore, the Petition should be allowed with costs to the Respondent.

RESPONDENT'S SUBMISSION

Respondent relies on its submission dated 29th November, 2018 and filed on 3rd December, 2018 by its advocate Donald B. Kipkorir KTK Advocates.

The Respondent submits on the legal and factual basis of the response as follows:

1. That the Petitioner was not qualified to pursue Certificate in Human Resource Management programme at the Respondent's institution.
2. The Petitioner has not demonstrated that her rights have been violated over and above that which cannot be compensated.
3. That the Petitioner fails to establish how and Administrative action is a Constitutional matter.
4. That the Petitioner fails to establish why she opted for a constitutional route while she has channels of appeal within the Respondent's institution and if not satisfied, can file for Judicial Review but not a Constitutional Petition.
5. That the Petitioner's complaints do not amount to violation of Constitutional rights.
6. General damages are not awarded in this matter.

It is submitted that the Respondent has discretionary powers on admission, graduation and conferment of Academic Certificates which are both internal and permissive.

Relying on the case of **REPUBLIC VS. DEDAN KIMATHI UNIVERSITY OF TECHNOLOGY EX-PARTE JUMA OMOLO SIMON (2016) eKLR** where the court held that academic integrity must be protected and dishonesty repudiated. Respondent submits that the Petitioner applied for admission to the course of Certificate in Human Resource Management undoubtedly knowing that she did not meet the qualification as the minimum admission requirement by the Respondent's institution was K.C.S.E Mean Grade of C-(minus) whereas the Petitioner attained D+(plus).

It is their submission that legitimate expectation does not run on an illegality thus, the Respondent's internal quality control process found that the admission into the certificate course was irregular ab initio. Respondent submits that it cannot be faulted for following its internal procedure and ensuring academic excellence in the institution, for that is a statutory mandate under the Universities Act No. 42 of 2012.

Further in reliance on the case of **MUAMAR NABEEL ONYANGO KHAN VS. COUNCIL OF LEGAL EDUCATION & 2 OTHERS (2015) eKLR** where it was held that admission requirement that apply to all other students cannot be said to be unconstitutional. The Respondent submits that the Petitioner's initial admission was irregular therefore, the court should not allow her to benefit from her illegality.

The Respondent submits that right to fair administrative action is enshrined under Article 47 of the Constitution. In quoting the case of **DRY ASSOCIATES LIMITED V CAPITAL MARKET AUTHORITY & ANOTHER (2012) eKLR** it is submitted that the Petitioner has not disputed the reproachful clause in the admission letter to the effect that any untrue information automatically nullifies the admission by the Respondent's institution.

It is also argued that the Respondent's Dean, School of Open and Distance Learning adequately informed the Petitioner reasons as to why she was not issued with the Certificate when she brought the issue to the attention of the ODeL Campus in January, 2018. In that regard, the Petition is vexatious and not maintainable as there was strict observance of the principle of fair administrative action, thus no right of fair administrative action was violated.

It is submitted that it is a misdirection to the court by the Petitioner, that she was denied right to fair hearing and human dignity while, the Respondent went miles to ensure that it followed due process in ensuring that she was informed and given an opportunity to be heard.

Placing reliance on the case of **LINUS SIMIYU WAMALWA Vs. UNIVERSITY OF NAIROBI & ANOTHER (2015) eKLR** where the court found that Article 47(1) and (2) was not breached as it was noted that action was taken on each of his complaints over that period of time. The Respondent submits that the Petitioner has not demonstrated to the court how she was denied her constitutional right to education and the same should not be entertained by this court.

The Respondent submits that the Constitutional remedy is not available to the Petitioner. It is argued that the Petitioner cited only the provisions of the Constitution alleged to be violated however, no indication on manner in which they were violated. Citing the case of **ANARITA KARIMI NJERU NO. 1 OF (1979) 1KLR** as quoted with approval in the Court of Appeal case **MUMO MATEMU VS. TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE CIVIL APPEAL NO. 290 OF (2012) eKLR**, it is submitted that the rule set by this decision is that apart from citing omnibus provisions of the Constitution, the Petitioner should provide the particulars of the alleged complaint, the manner of the alleged complaint, the manner of the alleged infringement or the jurisdictional basis of the action before the court. In short, Constitutional Petition must be pleaded with particularity and adequacy.

Further, the Respondent relying on the case of **MATALINGA & OTHERS VS. ATTORNEY GENERAL (1972) EA 518** where it was stated that before a declaration can be granted there must be a real and not a theoretical question in which the person raising it must have a real interest and there must be someone with a present interest in opposing it. The Respondent submits that if the Petitioner is seeking redress from High Court which invokes reference to the Constitution, it is important that she sets out with reasonable degree of precision that of which she complains, the provision said to be infringed and the manner in which they are alleged to be infringed. In addition, it is argued that not all grievances are violation of human rights and the court cannot interfere with academic matters especially where administrative channels have not been pursued as they are matter of internal policy.

It is submitted that the Petitioner has no audience in seeking any orders by way of judicial review. Placing reliance on the case of **REPUBLIC VS. KENYA NATIONAL EXAMINATIONS COUNCIL EX-PARTE GATHENJI & OTHERS, CIVIL APPEAL NO. 266 OF 1996 eKLR** where it was stated that it is important to understand the scope of the efficacy of an order of certiorari. The court went further to establish that only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons. It is thus submitted that this order cannot issue against the Respondent as no evidence has been established that it acted in error of law, or with irrationality, in excess of jurisdiction or abused power or acted with impropriety.

On issue as to whether the Petitioner is eligible for damages sought, it is submitted that the Petitioner has not discharged her burden of proof on claims for damages as no evidence is produced in favour of quantum of damages. In the case of **KENYA PLANTERS CO-OPERATIVE UNION LIMITED VS. KENYA CO-OPERATIVE COFFEE MILLERS LIMITED & ANOTHER (2016) eKLR**, the court restated that one cannot get Constitutional reliefs if one comes to court with unclean hands. Reliance was also placed in the case of **ROMAULD JAMES V. AGT (2010) UKPC** where it was stated that it must first be shown that there have been damages suffered as a result of the breach of the Constitutional right before the court can exercise its discretion to award damages in the nature of compensatory damages to be assessed.

In conclusion therefore, Respondent prays that the court finds that:

- i. The Petitioner has wholly failed to demonstrate and or establish legal or factual basis that her constitutional rights were violated.
- ii. That the Petitioner has failed to establish why she opted for a constitutional route and not other avenues of the Respondent's institution.
- iii. The Petitioner has not demonstrated that her Petition meets the Constitutional threshold.
- iv. The initial admission of the Petitioner to the Respondent's institution was irregular and she cannot be allowed to benefit from it.
- v. There is no substratum to the prayers sought, the same being premised on an illegality.
- vi. The Petition is filed mala fide and not to advance the Bill of Rights.
- vii. That the reliefs sought are not available to the Petitioner.
- viii. The Petition be dismissed.

ISSUES FOR DETERMINATION

Having considered this Petition, response thereto, submissions by Counsel for both parties and various authorities relied upon. I find that the issues for determination are as follows;

1. whether this court has jurisdiction to grant the reliefs sought in the Petition
2. Who bears the costs of this Petition?

It is well established that jurisdiction of the Court is that authority vested on the court of law to take cognizance of matters brought before it for adjudication. That jurisdiction may be general or specific, limited or unlimited. This jurisdiction may be conferred by the Constitution, Statute or both.

Supreme Court has in **SAMUEL KAMAU MACHARIA & ANOTHER VS. KENYA COMMERCIAL BANK LTD & ANOTHER (2012) eKLR** held that;

“A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise

jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

In this case, the Petitioner has invoked jurisdiction of this court to remedy what she considers to be breach of her fundamental rights and freedom under Articles 10(2), 22, 23(3), 47 and 50(2) of the Constitution of Kenya, 2010.

To address this issue, the starting point must be the Constitution itself. Article 165(1) establishes this court and its jurisdiction conferred to it under Article 165(3). The Petitioner purports to bring her Petition under Article 165(3)(b) which states and reads as follows:

“subject to clause (5), the High Court shall have –

b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;”

It is the Petitioner’s allegation that she is a former student at the Respondent’s institution having enrolled and admitted on 14th June, 2012 to pursue Certificate Course in Human Resource Management. In determining whether the Petitioner is a Student at the Respondent’s institute, it is important to examine the constituting charter. In doing so, this required a proper interpretation of it looking not only at the text but also its context.

The rationale of doing this was considered by Supreme Court of India **RESERVE BANK OF INDIA V. PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD., 1987 SCR (2) 1** where it was held that;

“Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

It is not disputed that the Petitioner applied for a certificate course in Human Resource Management. However, the Respondent indicates that the application was subject to verification. The letter states that; ***“This offer is made on the basis of the statement of your qualifications and is therefore subject to satisfactory verification by the University. Any information found to be untrue will automatically lead to nullification of this offer.”*** It is my opinion that this clearly shows that the Petitioner was informed right from the start that her admission was subject to verification. Therefore, no form of misrepresentation arises.

The Petitioner knew from the beginning that her admission was subject to verification and accepted the offer subject to the terms and commenced her studies with full knowledge of the expressed condition.

It is true that courts have upheld the Constitutional right of every citizen to choose a profession or a course of study subject to a fair, reasonable and academic requirement. But like any other right conferred on people, the same is regulated by the regulating body to safeguard general welfare of the public.

The Respondent produced a copy of qualification manual for certificated course and stated that the Petitioner had not qualified to take the certificate course in Human Resource Management as she had obtained a Mean Grade of D+ whereas the minimum admission grade was C-. This position was not repudiated by the Petitioner. Further the Respondent stated that the Petitioner’s certificate was verified and decreed that she was not qualified for the course. Unfortunately, it is my opinion that the Petitioner took the risk of commencing the course prior to verification of her certificate.

The Board of the Kenya National Examination Council have a duty to ensure that the only persons qualified for the certificate in question are admitted to study the certificate programme. The Respondent cannot be compelled to award a Certificate to the Petitioner against the set standards and more so, a Certificate that cannot be recognized by the regulating body.

In **MAHARASHTRA STATE BOARD VS. KURMARSHETI & OTHERS (1985) CLR 1083**, it was held that; ***“so long as a body entrusted with the task of framing the rules and regulations act within the scope of the authority conferred on it in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules and regulations.”***

It is my opinion therefore, that the court should be reluctant to substitute its own views as what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and departments controlling them.

In many instances, the courts have held that academic decisions are to be distinguished from the administrative decisions of the academic bodies. This is because administrative actions are subject to judicial review while purely academic decisions are treated as beyond the courts reach though in some cases the court can interfere.

In **PENINA WOTHAYA WACHIRA VS. METHODIST UNIVERSITY (2018) eKLR** it was held for the Petitioner to succeed in review in academic matters, these areas are not disturbed by courts unless the decisions under challenge are constitutionally so fragile and unsustainable. If the decision is legal and lawful, the unreasonableness and propriety of the same may not be questionable by the court. In other words, among the Wednesbury principles of illegality, irrationality and impropriety if the decision can get over the first test, it may withstand the other two tests, unless, it is shockingly unreasonable, perverse and improper.

The question as to whether the Respondent's refusal to award Certificate to the Petitioner on ground that her grades were found to be ineligible for the course violated the Petitioner's right in any way. It is my opinion that this nature of the decision is one that falls into the category or areas not disturbed by the courts unless the decision under challenge is constitutionally fragile and unsustainable. The Respondent cannot ignore the decision of the Kenya National Examination Council.

Section 7(2) of the Fair Administrative Action Act provides grounds for review to include bias, procedural impropriety, ulterior motive, failure to take into account relevant matters, abuse or discretion, unreasonableness, violation of legitimate expectation or abuse of power. None of these has been proved by the Petitioner in this case.

The Petitioner averred that she was not given any reason as to why she was not being issued with her Certificate for the course undertaken after doing numerous follow ups. The Respondent on the other hand indicated that the Respondent's Dean, School of Open and Distance Learning adequately informed the Petitioner reasons as to why she was not issued with the Certificate when she brought the issue to the attention of the ODeL Campus in January, 2018. It is my opinion that the Petitioner knew from onset that she was not eligible for the course of Certificate in Human Resource Management and secondly she was in the knowhow of the conditions attached for admission at the Respondent's institute.

As of damages sought by the Petitioner, it is not disputed as to the existence of binding contract between the Petitioner and the Respondent's University. The terms are clear. It is my opinion that the Petitioner was admitted on the strength of her Certificate and offer of acceptance was subject to verification of her certificate.

The Respondent explained to the Petitioner reason as to why she was not being issued with the Certificate. There is no evidence that during the period of study, the Petitioner pursued the issue. As per the rule the burden of prove lies on he or she who asserts. It is my opinion that the court cannot be called to re-write a contract voluntarily executed by the parties. It also cannot be denied that the relationship between the parties in this case is governed by the terms and conditions thereto.

It is trite law that the courts do not make contracts for contracting parties. This position is informed by the concept of freedom of contract. Therefore, it is my opinion that no basis for the court to award the Petitioner with damages as sought has been established.

I tend to agree with the Respondent that the Petitioner has not proved her case in showing that her alleged constitutional rights have been violated or infringed in any way.

I find that the relationship between the parties is founded on a contract which should be enforced under the private law realm by the applicant's filing a civil suit for breach of contract

I find that the Petitioner has failed to prove her case against the Respondent and this Petition is accordingly dismissed with no orders as to costs.

Each party to bear its own costs of this suit.

Delivered and signed in open court in the presence of the parties.

A ONGERI

JUDGE

1/7/2020