REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

PETITION NO. 1 OF 2020

PRAXIDES MUSUNJI BULEMI.....PETITIONER

VERSUS

THE COMMISSIONER OF PRISONS.....1ST RESPONDENT

THE KENYA PRISONS SERVICE.....2ND RESPONDENT

THE COMMANDANT,

PRISONS STAFF TRAINING COLLEGE, RUIRU.....3RD RESPONDENT

RULING

1. The petition, dated 4th February 2020, was brought at the instance of Praxides Musunji Bulemi, to be known hereafter as the petitioner, citing several constitutional violations of her rights. She has brought the suit against the Kenya Prions Service, the Commissioner of Prisons and the Commandant of the Prisons Training College, Ruiru.

2. Her case is that is that the respondents conducted a recruitment exercise in 2019 for admission to the Kenya Prisons Training College at Ruiru, to be referred hereafter as the college. Such exercise was carried out at Isolio grounds, within Shinyalu Sub-County of Kakamega County, on 9th October 2019, which the petitioner attended, and was recruited and issued with a recruitment card. She was initially due to report for training on 17th December 2019, but the same was brought forward to 30th October 2019. She duly reported and classes commenced. On 13th December 2019, she was summoned to the office of the 3rd respondent, where she was verbally informed that her recruitment card was not genuine, and she was asked to leave the college. She was required to abide by that verbal directive without any questions.

3. She has attached to her affidavit, in support of the petition, several documents to support her case. The first is copy of a recruitment card issued by the 2nd respondent, serial number 2583, which required her to report to the college on 17th December 2019. The second document is a bundle of notes that she took at various classes or lessons that she attended at the college after she successfully reported. The third document is a general out-patient health record card issued, on an unknown date, by the college health centre, bearing serial number 555, and identifying her as outpatient number 9079. The fourth document is the petitioner's national identify card. The last annexure is a demand letter written on 15th January 2020, by the petitioner's advocates, addressed to the 1st respondent, demanding to be furnished, in writing, with the reasons for the discontinuation of the petitioner's training and studies.

4. The petitioner finally contends that the procedure that was used to arrive at that decision to discontinue her training was not genuine, and was illegal and discriminatory. She contends that the respondents did not observe the provisions of the Fair Administration Act, No. 4 of 2015, as they never gave her a written decision, despite her request for it. She also contends that her rights under Article 47 of the Constitution were violated. She avers that the act of discontinuing her training was discriminatory, to the extent that it only affected her out of all the recruits undergoing training at that time. She says that she has lost her legitimate expectation to be gainfully employed and to participate in nation building, and has affected her rights to equal opportunity provided for under the Constitution.

5. The Petitioner seeks the following reliefs:

(1) general damages for violation of her constitutional rights; and

(2) Costs.

6. The Attorney General responded to the petition, by way of an affidavit, sworn, on 4st March 2020, by Joseph Mutevesi, a Deputy Commissioner of Prisons and Director of Administration and Personnel. It is conceded that the 2nd respondent had carried out an exercise to

recruit prison constables. It is averred that the potential candidates were warned against engaging in corrupt activities in a quest to influence the recruiting officers. It is conceded that the petitioner participated in the exercise that was undertaken at Isolio, and that she reported at the college for training. He avers that after the recruitment exercise the 2nd respondent received intelligence to the effect that the recruitment exercise had been marred by malpractice, and that the petitioner had canvassed and given a bribe to the recruiting officers prior to the recruitment day. It is stated that the petitioner was subsequently discontinued as per the 2nd respondent's regulations. He also states that the 2nd respondent took action against all the recruitment officers affected. Attached to that affidavit are copies of the advertisement for the positions the subject of these proceedings, and a copy of an excerpt of the Prisons Act, Cap 19, Laws of Kenya.

7. Contemporaneously filed with the petition was a Motion, dated 4th February 2020, seeking that the respondents be restrained from discontinuing the petitioner from the college and for an order to readmit her, pending the hearing and determination of the petition. The affidavit that is sworn in support of the Motion is worded similarly with that sworn and filed in support of the petition, and the annexures attached to support it are the same as those annexed to the affidavit in support of the petition.

8. The petition and the motion were placed before Njagi J, under certificate of urgency, on 4th February 2020. It was certified urgent, and a date for *inter partes* hearing given. The *inter partes* hearing did not happen due to the intervention of the Covid-19 pandemic.

9. The petitioner then lodged another Motion at the registry, dated 14th May 2020, seeking that the matter, without specifying whether by matter she meant the petition or the motion, be disposed of by way of written submissions. The matter was placed before me on 15th May 2020. I directed that the petition, dated 4th February 2020, be disposed of by way of written submissions. Both sides did comply by filing their respective written submissions.

10. The petitioner's written submissions are dated 19th May 2020. The said written submissions appear to be confined to the motion rather than to the petition. This is contrary to the directions that I made on 15th May 2020. I directed the parties to file written submissions on the petition, and not on the motion, for reasons that shall become clear in the course of this determination, but it would appear that the petitioner chose to follow her own directions. I feel I should repeat again, what I have stated in decisions in other matters, that parties should always stick to what a court orders or directs. Court orders or directions are commands from the court that the parties must adhere to and obey. They are not suggestions or propositions, which the parties can choose whether to abide by or not. Parties disregard court orders and directions at their own peril.

11. The respondents, on their part, filed written submissions dated 8th June 2020. In their written submissions they were careful to respond to both the application and the petition, although the directions were that they submit only on the petition. Perhaps, the filing, by the petitioner, of written submissions limited to the application, goaded them towards responding to the application as well.

12. Be that as it may. So what should I do in the circumstances, seeing that the written submissions filed by the petitioner do not say a word about the merits of the petition? I had given directions on how the matter was to be handled. It is my responsibility, as the judicial officer seized of the matter, to manage the case based on the pleadings and other filings by the parties. Logically, the matter ought to proceed according to the directions that I gave on 15th May 2020. The fact that the petitioner disregarded the directions should be to her own peril. However, I am also alive to Article 159 of the Constitution, on technicalities of procedure, and the need for the court to look at the substance rather than the procedure. I shall, accordingly, albeit reluctantly, proceed to consider the Motion on its merits.

13. The Motion, dated 4th February 2020, is interlocutory, in the sense that it is filed within the cause. It has no independent life of its own. The proceedings herein were initiated by way of the petition. The Motion draws its life from the petition, and whatever prayers are sought in the Motion, or any other interlocutory application, must be in sync with the petition. A court cannot possibly grant interlocutory orders which do not flow naturally from or are anchored on the principal and originating pleading, in this case the petition, dated 4th February 2020.

14. The petitioner, in her petition, complains that the respondents discontinued her training at the college without affording her fair administrative action. The fact that she was discontinued from the college in December 2020 is not disputed by the respondents. As at the time the petition, dated 4th February 2020, was being filed, on even date, she was no longer a recruit in the college. Yet, her petition does not seek that she be re-admitted or reinstated back to her position as trainee in the college. She appears to treat her discontinuance or expulsion as a *fait accompli*, for what she makes, in her petition, is a prayer for general damages, presumably as compensation for her discontinuance or expulsion, and not the setting aside or quashing of the decision to discontinue her training or expulsion from the college. Since the principal prayer is for damages or compensation, and not readmission, then the Motion, dated 4th February 2020, cannot be said to be in sync with the petition. It cannot possibly stand. The motion seeks orders that do not draw from the prayers in the petition. Indeed, it seeks interlocutory orders whose effect would be to defeat the prayers sought in the petition, for once an order is made for her readmission there would be no basis to pursue damages since the wrong complained of would have been remedied. The petitioner ought to have sought readmission as a principal prayer in the petition, if she intended to seek readmission in the interim.

15. In paragraph 14, above. I have not dwelt much on the prayer to restrain the respondents from discontinuing the petitioner's studies, because the said prayer is spent. The petitioner was discontinued in December 2019; the Motion was brought in February 2020. The discontinuance had already happened by then, and, therefore, there is nothing to stop. On "continuing to discontinue," I would say that discontinuance is a one off event. It is not a continuing event. It happened in December 2019, there was no other discontinuance thereafter.

16. The Motion, dated 4th February 2020, is not properly conceived, for the reasons given above. That had been taken into account when I gave directions on 15th May 2020, that we should proceed to deal directly with the petition on its merits. The Motion is, therefore, without merit. It is hereby dismissed. Let the petitioner file her written submissions on the petition, dated 4th February 2020, within fourteen (14) days.

17. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 26th DAY OF June 2020

W MUSYOKA

JUDGE