



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW MISC. CIVIL APP. NO.13 OF 2015

IN THE MATTER OF AN APPLICATION BY ELIZABETH MWANGI FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS

IN THE NATURE OF CERTIORARI TO QUASH THE DECISION OF THE EGERTON UNIVERSITY SUSPENDING HER FROM THE UNIVERSITY

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT

ELIZABETH WANGECHI MWANGI.....SUBJECT/APPLICANT

VERSUS

EGERTON UNIVERSITY..... RESPONDENT

JUDGMENT

1. By application, dated 5th May 2015, the applicant sought orders of certiorari and prohibition to quash the decision of the respondent to suspend her from **Egerton university** where she is pursuing the **Bachelor of Education (Arts) Degree** program.
2. Grounds on the face of the application are that the applicant was admitted to **Egerton university** on 19th August 2011 having received a letter form the said university on 7th June 2011 and the applicant joined the university to pursue the said program and has been in the university for 4 years and was due to sit for her final exams starting from 4th May 2015.
3. The dean of faculty demanded her original certificates which she stated she submitted on joining the university and that the university has failed to avail the certificates in its custody and has continued to insist she submits and that she ought to be allowed to do exams which were slated for 4th May 2015.
4. In response, the respondent filed replying affidavit dated 24th July 2015 sworn by **Janet C. Bii** the legal officer of the respondent. She averred that in the years 2014/2015, academic year, several students had difficulties with registration process as a result of shared registration numbers shared among students.
5. She averred that as a result of the above, the respondent constituted a committee headed by one **Prof. N. Mungai** to investigate the double registration of its students and irregular admissions; that the committee prepared a report dated 19th December 2015 outlining its findings.
6. She averred that among the findings of the committed was fraudulent registration of student bearing registration number **E13/01821/11** who is the applicant herein.
7. She averred that upon interview done on 31st October 2014, the committee it emerged that the student was registered in Bachelor of Arts Education 2011A class specializing in History and Geography; that she deferred her studies for one semester and was in teaching practice with 2011B class and that she was an in-service student paying regular fees; that she however did not have requisite admission documents such as letter of offer from the respondent and students' academic certificates.

8. She averred that during the said meeting, the applicant informed the committee that she had KASNEB diploma in ICT from Comboni Polytechnic Gilgil but when requested to submit letter of offer, the said diploma certificate and original KCSE certificates she did not.

9. She averred that despite several reminders, the applicant has failed to submit the said documents. She confirmed that she was called to the Dean of Faculty on 3rd February 2015 and asked to submit the said documents by 6th February 2015 which she failed to comply. Further that on 17th February 2015, the applicant appeared before faculty of Education and Community Studies Committee where she tendered unsigned copy of letter of offer and copy of identity card; that she stated that the documents were in Nyahururu and following her averments, she was again summoned and requested to submit the original documents but she instead wrote a letter referring the dean to admissions office for the documents and threatened to take legal action. In a meeting held on 2nd March 2015 by a special board of examiners, the matter was discussed and the board found admissions of the applicant was irregular and suspended him. The committee found that the unsigned letter submitted by the applicant was irregular and that of a JAB student and not an in-service student as her status was.

10. She further averred that she believed the applicant has not made any efforts to recover the said original documents if any from the said admission office either in writing and/or orally and has only played tactics of referring the dean to admissions office despite knowing very well that she never tendered the documents; and moreover the applicant's file with the respondent did not have any admission documents compounding the suspicion on the credibility of having been tendered.

11. She averred that the applicant is the author of her misfortunes as since 2014 she has been offered numerous opportunities by the dean and various committees to tender academic certificates and letter of offer which up to date she has not tendered; that the suspense of the applicant was only to the extent of establishing admission status and until it is determined, it would be unjust, unfair and unprocedural to allow the rights of properly admitted students.

12. She averred that the Court of law can only interfere with decisions of quasi-judicial body where there is proof that rules of natural justice were flouted and constitutional rights have been contravened which is not the case herein; that the respondent owes a duty to the public to ensure that only students who are properly admitted and who are successful complete their studies and abide by the rules of the institution; that the purpose of judicial review is to ensure that individuals receive fair treatment which was the case herein. She urged Court to find the application unmerited and abusive of the Court process. The respondent attached to the affidavit report of the committee and minutes of meeting by board of examiners.

13. Parties agreed to proceed by way off written submissions. Applicant filed submissions on 16th November 2015 and the respondent filed submissions on 26th January 2016.

APPLICANT'S SUBMISSIONS

14. The Applicant's restated the averments in affidavit filed. The petitioner submitted that she was offered an opportunity to study at the respondent's institution for a regular course in Bachelor of Education (Art). She submitted that her 4 year academic course was to commence on 19th August 2011 and her admission was E13/0182/11 and that she proceeded with her degree up to 3rd February 2015 where she proceeded on the 4 year course until 3rd February 2011 when she was summoned by the Dean of the Faculty of Education.

15. The process to establish how she had been admitted in the institution commenced; she was not able to avail original certificates requested and her contention is that she had submitted the originals certificates to the admission office for verification as per the university policy. She submitted that the respondent decided to suspend her.

16. On 23rd April 2015 even before her file which was misplaced by and/or missing in the institution containing her original documents could be found and having been a performing student she was frustrated. She submitted that the issue of the applicant's missing file was corroborated by the Deputy AA **Professor Nderitu**. She stated that the fact that the students file has not been traced to date is unchallenged.

17. She urged the Court to quash the respondent's decision of 10th April 2015 suspending the applicant since it was unfair, unjust and ultra vires, and allow the application dated 6th May 2015 with costs to the subject.

RESPONDENT'S SUBMISSIONS

18. The respondent submits the applicant was subjected to the laid down channels and procedures of individuals who have contravened its rules and regulations including discontinuing any student on the basis of fraudulent registration in the university, before she was suspended from the institution; that she was given a chance to defend herself, rebut the claim of irregular or fraudulent registration and avail original documents before the ad-hoc committee but she was not able to support her claim that she had been rightly registered as a student in the university.

19. Respondent further submitted that before the decision to suspend the Applicant was reached, the committee had investigated and established that some students had been irregularly and/or fraudulently registered making the school system to jam and other students were experiencing difficulties in registering.

20. Respondent submitted that upon investigation, the applicant was found to be one of the students who had irregularly and/or fraudulently registered in the institution. The respondent cited the case of **Nyongesa & 4 Others v Egerton University College(1990) KLR 692** where the Court held that the duty of the Court is to make sure that lawful authority is not abused by unfair treatment and Courts will only interfere with the decisions of quasi-judicial bodies and should only be moved to interfere when it is manifest that the its decisions are made unfairly and without justly hearing the person concerned.

21. Further that supervisory duty of a High Court over tribunals and other quasi-judicial bodies is to check if the decision arrived at was lawful or not; and should not go into the merits of the decision. And in the case of **Duncan Murono Walucho V Egerton University College Misc. Civil Appl. Case No. 69 of 2001** where **D. M. Rimita, Judge** (as he then was) stated as follows:-

“I have no business interfering with domestic tribunals where the tribunals cannot be accused of breaking the law, exceeding their jurisdiction or acting in breach of natural justice.”

22. The respondent submitted that the applicant is unable to convince the Honorable Court how her right to natural justice were breached; that the decision to suspend the applicant was reached by the committee and adopted by the Senate as she was unable to show or demonstrate to the committee how she was enrolled in the institution without the required certificates.

23. The respondent submitted that the applicant’s right to education was not curtailed as it was subject to the applicant abiding by the laid down rules and regulations in respect to registration and/or admission to the respondent’s institution; that the applicant failed to comply with the admission requirements.

24. The Respondent’s urged the Court to find that the Applicant was accorded a fair and just opportunity during the hearing and principles of natural justice were upheld and the Applicant does not deserve the orders being sort in the application.

ANALYSIS AND DETERMINATION

25. I have perused and considered averments by the parties herein together with annexures to affidavits filed. I have also considered submissions by parties herein through their Advocates.

26. The applicant is challenging decision by the respondent to suspend her in her 4th year of study at the institution. What prompted investigation was suspicion of irregular registration which interfered with the system of the university. The applicant having been suspected as having irregularly registered, she was asked to avail her original certificates.

27. There is no dispute that the applicant failed to avail her original certificates being KASNEB diploma certificate in ICT, KCSE certificate and her original identity card. Minutes attached to the replying affidavit confirm that she was given an opportunity to present her documents before committee set up. Minutes show that she never availed the documents to the committee not the dean but instead alleged that she presented them to admission office for verification.

28. Even though the applicant allege that her file was not traced to confirm whether the documents were in the file, she never demonstrated that she made any attempts to use any other format to confirm that indeed she sat for her KCSE examination and diploma in ICT. In my view if the original documents could not be traced, the schools/college she attended would have issued confirmation that she was a student and sat for examinations. Further, it is not also difficult to get verification from the examination body. The applicant failed to demonstrate that she made attempts to verify her allegation that she indeed was issued with the said original certificates.

29. From the foregoing, I find that it was within the respondent’s duty to verify the genuineness of applicant’s certificate to ascertain if she qualified to join the institution and was indeed regularly admitted. The respondent therefore rightfully suspended the applicant.

30. FINAL ORDER

1. The applicant was procedurally suspended by the respondent.
2. The Application herein is hereby dismissed.
3. Costs to the respondent.

Judgment dated, signed and delivered via zoom at Nakuru This 30th day of July, 2020

.....

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Nancy Njoroge Counsel for Applicant

Kisila Counsel for Respondent