



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW APPLICATION NO. 16 OF 2018

IN THE MATTER OF APPLICATION FOR THE ORDER OF MANDAMUS

AND IN THE MATTER OF LAW REFORM ACT SECTION 8 AND 9 (CHAPTER 6)

LAWS OF KENYA

(UNDER ORDER 53, RULES 1, 2 & 3 OF THE CIVIL PROCEDURE RULES

CAP. 21 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF UNIVERSITIES ACT NO. 42 OF 2012

AND

IN THE MATTER OF SECTION 10(a) OF THE KISII UNIVERSITY CHARTER

AND

IN THE MATTER OF ARTICLES 10, 22, 23, 47 AND 48 OF THE

CONSTITUTION OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KISII UNIVERSITYRESPONDENT

AND

JAMES WERE OYUUEX-PARTE-APPLICANT

JUDGMENT

The Applicant, **JAMES WERE OYOO**, commenced these proceedings by an application dated 26th November 2018.

1. The Chamber Summons by which the proceedings were commenced, sought leave of the Court to enable the Applicant lodge an Application seeking Orders of Mandamus to compel the **KISII UNIVERSITY** to release the Applicant's **ACADEMIC CERTIFICATES**.

2. On 27th November 2018 the Court granted leave to the Applicant to commence proceedings, seeking Mandamus against the Kisii University.

3. When granting leave to the Applicant, the Court directed him to institute the substantive action within 14 days.

4. Finally, the Court ordered that the costs of the Chamber Summons dated 26th November 2018 would be in the cause, in the substantive proceedings.

5. The record of the proceedings shows that on 18th December 2018 the learned Deputy Registrar issued Directions, that the;

“Notice of Motion dated 26/11/2018 is hereby fixed for hearing in Court 1 on 29th January 2019.”

6. However, on 29th January 2019, the parties failed to attend court, resulting in an order, that the application dated 26th November 2018 be mentioned on 19th March 2019.

7. On 6th June 2019 the court recorded a consent, for the filing of a Replying Affidavit and a Further Affidavit.

8. Ultimately, on 16th July 2019, the Court recorded a consent, for the filing of submissions.

9. On 9th October 2019, the parties informed the Court that they had filed their respective submissions.

10. I have set out the foregoing history of the case, at some length, because the Respondent has now pointed out that the Applicant never lodged any Substantive Application pursuant to the leave which the Court had granted on 27th November 2018.

11. I have carefully perused the record herein, and I found that subsequent to 27th November 2018, when the Court granted leave to the Applicant, no substantive Notice of Motion for Mandamus was filed.

12. However, there is on record a Notice of Motion dated 26th November 2018, pursuant to which the Applicant sought an Order of Mandamus directed at the Vice Chancellor of Kisii University or the Academic Registrar of Kisii University, to compel them to release the Academic Certificate belonging to the Applicant.

13. The specific Certificate being sought by the Applicant is the one issued in respect to Stores and Supplies Management.

14. Upon a strict interpretation of the relevant orders made on 27th November 2018, the Applicant could only have lodged a substantive motion after the Court had granted leave.

15. Therefore, the Motion which was lodged on 26th November 2018 was lodged without leave of the Court and it ought therefore to be struck out.

16. Nonetheless, I note that the learned Deputy Registrar and the Respondent conducted themselves as if the Applicant had actually lodged a substantive Motion.

17. The Respondent filed a comprehensive Replying Affidavit of **SETH ONG’UTI**, the Assistant Legal Officer of Kisii University.

18. Therefore, I find that the Respondent would not be prejudiced at all if the Applicant is deemed to have filed a legitimate substantive Motion.

19. Mr. Seth Ong’uti deponed thus, in his further Affidavit sworn on 18th June 2019;

“5. THAT in response to paragraph 4 of the Further Affidavit, I wish to state that the Ex-parte Applicant’s certificate in Stores and Supplies Management was processed way back in 2015 and the Respondent has had no reason to withhold it, once the Ex-Parte Applicant had complied with the requirements for issuance of his certificate.....”

20. In the prevailing circumstances, I have come to the conclusion that Justice would be best served by ordering the Respondent to forthwith release to the Ex-parte Applicant, **JAMES WERE OYUU**, his academic Certificate in Stores and Supplies Management.

21. Each party will meet his own costs of these proceedings

DATED, SIGNED AND DELIVERED AT KISUMU

This 28th day of **November** 2019

FRED A. OCHIENG

JUDGE