



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**JR –MISC APPLICATION NO. 8 OF 2018**

**IN THE MATTER OF THE CHAPTER OF KISII UNIVERSITY NO. 12 OF 2017**

**AND**

**IN THE MATTER OF ARTICLES 10(2) (C), 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOM**

**UNDER ARTICLES 35(1), 43(1)(f), 47(1)(2), 48, 50(1)(2) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTIONS 4 AND 5 OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF SECTIONS 15.1 & 15.3 OF THE KISII UNIVERSITY STUDENT HANDBOOK**

**AND**

**IN THE MATTER OF ONE DAY NOTICE DATED 10/5/2018 BY THE**

**KISII UNIVERSITY GOVERNING COUNCIL OF CLOSURE OF**

**KISII-UNIVERSITY-KISUMU CAMPUS AND RELOCATION**

**OF STUDENTS TO CAMPUSES IN OTHER COUNTIES**

**ODHIAMBO CHRIS MATEMO.....1<sup>ST</sup> APPLICANT**

**PAMELA ODUOR.....2<sup>ND</sup> APPLICANT**

**CALEB NYAMITA.....3<sup>RD</sup> APPLICANT**

**DANIEL OJIJO.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**KISII UNIVERSITY COUNCIL.....1<sup>ST</sup> RESPONDENT**

**THE VICE-CHANCELLOR – KISII UNIVERSITY.....2<sup>ND</sup> RESPONDENT**

## RULING

1. The application before me is for an Order of Judicial Review, which is intended to quash the decision made by the **BOARD OF MANAGEMENT COUNCIL/GOVERNING COUNCIL** of the Respondents on 10<sup>th</sup> May 2018.
  2. The Respondents in this matter are the **KISII UNIVERSITY COUNCIL** and The **VICE-CHANCELLOR OF KISII UNIVERSITY**.
  3. The decision in question is said to have given rise to a One Day Notice to the students of Kisii University, that the **KISUMU CAMPUS** of the said University would be closed, and that the students from the said campus would be transferred to other campuses which were situated outside Kisumu.
  4. The Applicants contend that the decision was arbitrary as the Respondents had not given the students an opportunity to be heard before the decision was made.
  5. As the decision was bound to fundamentally affect the Applicants' pursuit of education, the Applicants termed it as being contrary to the rules of natural justice and to the principles of fair administrative action.
  6. The Respondents have confirmed that they had made a decision to close the Kisumu City Campus of the Kisii University.
  7. The Vice-Chancellor explained that the decision to close the Kisumu Campus was prompted by an Audit/Review which had been carried out by the Commission of University Education.
  8. The Audit/Review is said to have revealed that the number of self-sponsored students had reduced significantly at the Kisumu Campus, thus rendering the campus uneconomical.
  9. He added that if the campus remained open, the quality of education provided to the students would be undermined.
  10. In the replying affidavits and in the submissions filed by the Respondents, I did not trace any explanation that would justify the issuance of a Notice whose duration was **ONE DAY**.
  11. In my considered view, the Respondents were prudent to have refrained from trying to justify the reasonableness of the Notice.
  12. The Respondents have attributed their decision, about the closure of the University's Kisumu City Campus, to the Audit/Review which had been carried out by the Commission of University Education.
  13. However, the Respondents have not provided the Court with particulars about when the Commission of University Education had disclosed to the Respondents, the results of the Audit/Review. If they had made available such information, the Court and the Applicants could have had a better appreciation of the happenings which led the Respondents to issue the impugned notice.
  14. I am not suggesting that there was an obligation on the Respondents to provide the students studying at the University with the full report of the Commission of University Education. If the Report contained confidential information, there could be reason to withhold such confidential information.
  15. But in this new constitutional dispensation, which pervades all spheres of life, fairness is an imperative.
  16. The Respondents appear to acknowledge the fact that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected.
  17. Those words have been borrowed by me from the **Supreme Court Practice 1997 Vol. 53/1-14/6** which Nyamu J. had quoted in the case of **REPUBLIC VS VICE-CHANCELLOR JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY [2008] eKLR**.
- The Respondents quoted those same words in support of their submissions.
18. I acknowledge that it is well settled that Judicial Review is not concerned with the merits of the decision in which the application is made.
  19. But it is equally true that;

***“The function of the Court is to see that lawful authority is not abused by unfair treatment.”***

20. Those were the words of Lord Brington in the case of **CHIEF CONSTABLE OF NORTH WALES POLICE Vs EVANS [1982] 1 WLR 1155** at Page 1173.
21. Therefore, even though the Council for the University had authority to establish or to abolish its campuses, pursuant to the provisions of **Section 20(k) of Kisii University Charter**, the Council cannot exercise the said authority irrationally or arbitrarily.

22. The University had established the Kisumu City Campus. It had enrolled students at the said campus.

23. The students had paid fees to the University and expected the University to offer them quality education at the said campus; that was a legitimate expectation. I so hold because the Applicants have indicated that they enrolled at the Kisumu City Campus due to proximity to their places of work. They had also, specifically enrolled for evening classes, because they had job-related commitments within Kisumu City.

24. In order to work and study within Kisumu City, the Applicants had procured accommodation within the said area.

25. Therefore, when the Respondents required them to shift from Kisumu City, to any of the other campuses, it would only have been fair if the Respondents took into account the Applicants' circumstances.

26. This Court was informed that the nearest campus to Kisumu City was in Kisii Town, which was located about 100 kilometres from Kisumu.

27. For the Respondents to expect the Applicants to make the dramatic shift to Kisii Campus, after receiving a single day notice of the closure of the Kisumu City campus, was shockingly unreasonable.

28. I wish to reiterate that the Applicants have not asked the Court to rescind the Respondents' decision, to close down the Kisumu City campus. The Applicants' complaint is that the notice, which was too short, was unfair.

29. Whilst the University Council has the discretion to open or to abolish campuses, that discretion ought to be used reasonably and in good faith, in a manner that is consistent with public interest.

30. And I find that it is not in public interest to make a decision to have students whom the University had granted admission to its campus, for the purposes of acquiring an education, being told to move out of that campus after a one day notice.

31. Accordingly, I grant an order of Certiorari, and thus do bring into the Court, and quash the decision of the Governing Council of the Kisii University, to close its Kisumu City Campus, after the one day Notice.

32. However, I hasten to add that this Ruling does not constitute a bar to the University from taking appropriate steps in future.

33. Finally, as this is a public interest litigation I order that each party will meet his or her own costs of the application for Judicial Review.

**DATED, SIGNED and DELIVERED at KISUMU this 28<sup>th</sup> day of June 2018.**

**FRED A. OCHIENG**

**JUDGE**