



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 11 OF 2018

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI,
MANDAMUS AND PROHIBITION**

AND

IN THE MATTER OF GREAT LAKES UNIVERSITY OF KISUMU

AND

**IN THE MATTER OF THE DECISION BY GREAT LAKES UNIVERSITY OF KISUMU TO SUSPEND STUDENT COUNCIL
AND TO COME WITH INTERIM STUDENTS COUNCIL**

AND

**IN THE MATTER OF APPLICATION BY JOHN ODHIAMBO MARAMBA, FELIX MUREITHI, ROBERT ORERO, DENNIS
ABOKA, FELIX OKOTH OTIENO AND PATRICK MWANGI**

AND

IN THE MATTER OF THE UNIVERSITY ACT 2016, THE UNIVERSITY STATUTES AND THE CHARTER

AND

**IN THE MATTER OF: ARTICLES 1,2,3(1), 10,12(1),19,20,21,22,23(1) &(3),43,47(1),48,160(1),165(3)(B) AND 258(1) OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: RULES 11,12,13,20, AND 21 OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE
AND PROCEDURE RULES, 2016**

REPUBLIC.....APPLICANT

VERSUS

THE VICE CHANCELLOR,

GREAT LAKES UNIVERSITY OF KISUMU.....1ST RESPONDENT

THE GOVERNING COUNCIL,

GREAT LAKES UNIVERSITY OF KISUMU.....2ND RESPONDENT

THE SENATE,

RULING

1. JOHN ODHIAMBO MARAMBA, FELIX MUREITHI, ROBERT ORERO, DENNIS ABOKA, FELIX OKOTH OTIENO, and PATRICK MWANGI have asked the Court to quash the decision which was made by GOVERNING COUNCIL and the VICE CHANCELLOR of the GREAT LAKES UNIVERSITY, on 2nd May 2018. The said decision was that the Health Science Programmes be suspended temporarily, to enable the Milimani Campus undergo renovations.
2. The exparte applicants also asked the Court to quash the decision made on 8th April 2018, by the Governing Council and the Vice Chancellor of the Great Lakes University. By that decision, the two respondents are said to have suspended the exparte applicants, together with all the student leaders.
3. Thirdly, the Court was asked to quash the decision made on 3rd May 2018, to move the Health Sciences Faculty from the Milimani Campus to the Kibos Campus. The said decision had been made by the Governing Council and the Vice Chancellor of the Great Lakes University.
4. The applicants are Kenyan students.
5. As their counterparts who hail from South Sudan had been facilitated to continue with learning, the applicants contend that that decision was discriminatory.
6. The applicants main complaint was that the respondents had failed to give a fair hearing to the applicants before the respondents made the decisions in issue.
7. The applicants consider the relocation of the Health Sciences Faculty, from Milimani Campus to the Kibos Campus, as being unprocedural, misinformed, unfair, unreasonable and lacking in sound legal reasoning.
8. JOHN ODHIAMBO MARAMBA, the 1st applicant described himself as the President of the Great Lakes University of Kisumu Student Organization (BLUKSO). However, I noted that in document exhibited by the said 1st applicant, which lists 17 officials of GLUKSO, for the period 2017/2018, he is cited as the CHAIRMAN.
9. Nonetheless, I do not think that any substantive issue arises from the matter of title.
10. After all, dreams are valid.
11. When canvassing the application, Mr. Mwamu, the learned advocate for the applicants, submitted that his clients were challenging the decision of the University Council, to suspend the student leaders and to close the University for 3 months.
12. He also stated that his clients wished to stop the transfer of the Department of Tropical Medicine from Kisumu to Kibos.
13. In relation to the decision allegedly made by the Governing Council and the Vice Chancellor on 8th April 2018, the applicants exhibited letters dated 8th April 2018.
14. Those letters were signed by the Registrar Academics, Mr. Daniel Onyango. The said letters, which were addressed individually to each of the students who were being suspended, contained the following statement:

“At a duly convened Special Senate meeting held on Sunday 7th April 2018 and in consultation with the University Governing Council, it was discussed and resolved that:.....”
15. In her response to the application herein, the VICE CHANCELLOR of the Great Lakes University of Kisumu, PROF. ATIENO ANNE NDEDE AMADI, Stated that neither she nor the Governing Council made any decision on 8th April 2018.
16. Based upon the documents provided by the applicants, it is clear that a decision was made by the SENATE, and the said decision was made on 7th April, 2018.
17. As the applicants have not provided the court with any proof that the Governing Council or the Vice Chancellor made a decision on 8th April 2018, this court cannot make orders to quash such a decision.
18. The applicants also exhibited a letter dated 3rd May 2018, which was signed by Acting Deputy Vice Chancellor Academic Affairs, Philip Rotich. The letter was addressed to all Milimani Students.
19. The subject matter of the letter was the Temporary Closure and Suspension of classes at the Milimani Campus.

20. The reason for the said temporary closure was that there was a need to:

“...renovate the facility as well as upscale and upgrade the faculty and staff for the programmes currently housed at the facility.”

21. The students were informed that classes would resume in September 2018.

22. The letter did not mention anything about the alleged relocation of the Health Sciences Faculty from Milimani to Kibos.

23. Therefore, the Court is unable to understand why it was being called upon to quash a decision which does not appear to have been made at all.

24. Secondly, the decision for the temporary closure of the Milimani campus and the suspension of classes was not made by the Governing Council or the Vice Chancellor of the Great Lakes University.

25. The Deputy Vice Chancellor Academic Affairs informed the students thus;

“Following the University Management Board (UMB) and Senate meetings of 2nd and 3rd May 2018, respectively, it was resolved that the Milimani Facility be temporarily closed during the May-August 2018 Semester.”

26. As the applicants wish to have quashed, a decision which has not been shown to exist, the application cannot be allowed.

27. The applicants submitted that the body which made the decision to suspend them from the University was not properly constituted.

28. It is noteworthy that in their submissions, the Applicants state that it is the Senate which made the decision to suspend the students.

29. First, that submission is not in accord with the Applicants' pleadings. I say so because the pleadings clearly take issue with decisions which had been allegedly made by the Governing Council and the Vice Chancellor.

30 The application does not make any reference to a decision made by the Senate.

31. It is a cardinal rule that parties are bound by their pleadings. Therefore, the submissions premised on the improper composition of the Senate were irrelevant to the complaint which was directed against the Governing Council and the Vice Chancellor.

32. Similarly, the submissions premised on the improper composition of the Students Tribunal cannot advance the Applicants' case, because the Applicants had not lodged any complaint against the Tribunal.

33. If the substantive complaint had been directed against the Senate and the Students Tribunal, and if those two organs had been improperly constituted, the decisions emanating from the said organs could have been amenable to an order quashing them.

Relocation of the Health Sciences Faculty

34. The Applicants produced absolutely no evidence to demonstrate that a decision had been made by the Respondents or by any other organ of the University, to relocate the Health Sciences Faculty from Milimani, Kisumu, to Kibos.

35. If anything, the evidence made available by the Applicants shows that the faculty in question was only being closed between May and August 2018.

36. The Applicants purported to analyze the real intentions or motives of the University. They asserted that the alleged temporary closure was only a smokescreen, to hide the truth.

37. It is important that it be reiterated that in an application for Judicial Review, where the Court was being called upon to quash a decision, the Applicant must precisely identify the decision in issue, and then place it before the Court.

38. The Court would then concern itself with the process through which the decision in issue had been arrived at.

39. The conduct of the administrative or quasi judicial process must be procedurally fair and lawful. In order to enable the Court determine whether or not the process was procedurally fair and lawful, it is necessary that the Applicants specify the precise process complained about.

40. An Applicant cannot expect the Court to make a determination to quash a decision by either the Senate or by the Students Tribunal, when the application had only made reference to the decisions made by the Governing Council and the Vice-Chancellor.

Composition of the Disciplinary Committee of the Senate

41. The Applicants took issue with the Chief Security Officer and an Administrative Assistant sat in the Committee.

42. The Respondents did not answer that particular submission.

However, I note that the criticism raised by the Applicants was premised on the composition of the Senate, rather than on the composition of the Disciplinary Committee.

43. The Applicants did not demonstrate to the Court how the Respondents violated the composition of the Committee of the Senate, which is responsible for disciplinary matters.

44. In the final analysis, I find no merit in the application. It is therefore dismissed.

45. However, I order that each party will pay his or her own costs of the Judicial Review Application.

This order on the issue of costs is informed by the overall policy consideration, that persons who have a legitimate desire to ensure that the natural or juristic person or authority exercising administrative or quasi-judicial functions, do so in a manner that was procedurally fair and lawful, ought not to be condemned to pay costs. Such persons must, of course, not be seeking personal reliefs such as compensation.

DATED, SIGNED and DELIVERED at KISUMU this 31st day of July 2018.

FRED A. OCHIENG

JUDGE