



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

PETITION NO. 21 OF 2016

KIBII SALLY JERUIYOT.....PETITIONER

VERSUS

THE CHANCELLOR, VICE CHANCELLOR,

**SENATE & MOI UNIVERSITY COUNCIL.....
RESPONDENTS**

RULING

1. The petitioner is aggrieved by a decision of Moi University made on 28th July 2015. The university decided that the petitioner was *irregularly* admitted into its *mature entry scheme*; and, varied her status to that of a *privately sponsored student [PSSP]*.
2. On 16th November 2016 the petitioner lodged a petition at the High Court challenging the decision. Contemporaneously with the petition, the petitioner filed a notice of motion praying for a *single* relief: an order of *injunction* to restrain the university from holding its convocation or graduation ceremonies slated for the 15th December 2016.
3. The petitioner avers that she was a student of Moi University between 29th July 2010 and the year 2015. She was enrolled in the School of Education for a course leading to the award of Bachelor of Education (Arts). She has annexed the letter of admission marked *KSJ1*. She contends that she has complied with all the conditions of the offer; and, has paid all the requisite fees for the *mature entry scheme*. A statement of account as at 3rd August 2015 is attached marked *KJS3*.
4. The petitioner completed her final year of study sometime in the year 2015. She avers that she was entitled to graduate the same year. The petitioner was thus surprised to receive a letter from the Deputy Vice Chancellor informing her that she was irregularly admitted into the *mature entry scheme*; and, varying her position to a *privately sponsored student [PSSP]*. The petitioner wrote to the university on 11th August 2015 to reconsider the matter. Nothing came out of it. The petitioner's case is that she was not *heard*; that no *reasons* were given; and, that the decision was *unreasonable* and *unconstitutional*.
5. The respondents were served with the pleadings and a hearing notice. They did *not* file a reply or appear at the hearing. The court heard the petitioner *ex parte* on 8th December 2016; and, reserved its ruling for 14th December 2016. On 9th December 2016, the respondents purported to file a notice of motion to *arrest* the ruling or to *stay* further proceedings. The parties briefly appeared in court on 13th December 2016. For the reasons on the record; and, in the interests of justice, I *declined* to arrest this ruling.

6. I have considered the notice of motion, the depositions and submissions. By dint of Articles 22, 23 and 47 of the Constitution and *The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013*, the petitioners are entitled to bring this petition. The main petition remains unheard. It would thus be premature and prejudicial to make a final finding at this stage. That will be the true province of the trial court.

7. Like I stated, the respondents have not filed a response to the action. The averments in the deposition dated 15th November 2016 are thus *uncontroverted*. That is *not* the same as saying that they are proved or true. That will be determined further down the road during the hearing of the main petition.

8. I find that the petition and notice of motion were lodged late in the day: to be exact, *thirty days* before the disputed graduation ceremonies. The petitioner had *known* about the impugned decision of the university since the 28th July 2015 or thereabouts; *more than a year* ago. No explanation for the delay has been tendered.

9. As a general rule, when delay is established, unless it is well explained, it is deemed to be inexcusable. See *Ivita v Kyumbu* [1984] KLR 441, *Raiply Woods Ltd v Baringo County Government*, Eldoret, High Court, Petition 4 of 2016 [2016] eKLR. I therefore find that there has been undue laches. That in turn prejudices the grant the discretionary remedy sought at this stage by the petitioner.

10. I am satisfied that the decision to *re-classify* the petitioner constituted an *administrative action*. See Article 47 of the Constitution. To the extent that the petitioners are challenging an *administrative decision*, the petition is an action in *judicial review*. I say so because the main petition prays for the writs of *certiorari*; *prohibition*; and *mandamus*. In order to succeed in an application for judicial review, the applicant has to show that the impugned decision is tainted with *illegality*, *irrationality* or *procedural impropriety*. See *Republic v Inspector General of Police Ex-parte Patrick Nderitu* Nairobi, High Court Judicial Review 130 of 2013 [2015] eKLR.

11. At the core of this dispute is a tussle between a *public university* and a student over *fees* or governing *scheme*. The court has to tread with caution to avoid interfering with internal accounting or administration of a university. But if the actions are capricious or unreasonable; or, the petitioner's constitutional rights have been infringed; the court is entitled to intervene. See *Nyongesa & 4 others v Egerton University College* [1990] KLR 692. A key question, for example, will be whether the petitioner got a *fair* hearing. That will be a matter to be determined at the hearing of the main petition.

12. The gravamen of the notice of motion is to halt the convocation or graduation ceremonies altogether. The petitioner seeks *no* other relief. She could, for example, have sought to compel the university to add her name onto the list of graduands. I am entitled, by dint of section 60 (o) of the Evidence Act, to take judicial notice of the fact that graduation ceremonies involve many students and parents. The petitioner has chosen a remedy that would adversely affect innocent students who are far removed from her dispute with the respondents. The interlocutory order sought is thus extreme; or, too drastic in the circumstances.

13. In the end, I am not satisfied that the petitioner has made out a *prima facie* case for grant of an interlocutory injunction. See *Flemish Investments Limited v Town Council of Mariakani*, Mombasa High Court Case 459 of 2010 (unreported), *Suleiman v Amboseli Resort Limited* [2004] 2 KLR 589, *Giella v Cassman Brown and Company Limited* [1973] E.A 358.

14. The upshot is that the notice of motion dated 15th November 2016 is *dismissed*. In the interests of justice; and, considering the plight of the petitioner, I make *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 14th day of December 2016.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:-

Mr. Korir for the petitioner instructed by Bundotich Korir & Company Advocates.

Mr. Mukhabane for Mr. Nyairo for the respondents instructed by Nyairo & Company Advocates.

Mr. J. Kemboi, Court Clerk.