



Republic v Egerton University & another (Judicial Review Application 1 of 2014) [2015] KEHC 8554 (KLR) (19 March 2015) (Ruling)

Republic v Egerton University & another [2015] eKLR

Neutral citation: [2015] KEHC 8554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION 1 OF 2014**

A MSHILA, J

MARCH 19, 2015

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION OF THE UNIVERSITIES ACT (NO. 42 OF 2012)

AND IN THE MATTER OF THE DECISION OF THE SENATE, EGERTON UNIVERSITY DATED 11TH OCTOBER 2013 EXPELLING PATEL MAULIK PRASUN

AND

2.

IN THE MATTER OF THE VIOLATION OF HTE APPLICANT'S CONSTITUTIONAL RIGHT TO EDUCATION, UNIVERSITIES ACT AND THE EGERTON UNIVERSITY STATUTES

BETWEEN

REPUBLIC APPLICANT

AND

EGERTON UNIVERSITY RESPONDENT

AND

PATEL MAULIK PRASUN SUBJECT



RULING

1. The Notice of Motion 18th October 2014, is filed under Order 51 Rule 1, Order 8 Rule 4 and Order 53 Rule 4 (2) of the Civil Procedure Rules, 2010. The ex-parte applicant seeks leave to amend his pleadings and that upon the leave being granted, the pleadings annexed to the application be deemed as duly filed. He also sought the costs of this application.
2. The application was supported by his affidavit sworn on 18th October 2014 and Further Affidavit sworn on 7th November 2014. It is premised on the grounds that the Respondent's senate determined on 11th October 2013 to discontinue the ex-parte Applicant from his studies at the university. He subsequently lodged an appeal in the Respondent's Appeals and Grievances Committee, which was dismissed on 30th April 2014 and the decision upheld in the Full Council Meeting held on 5th August 2014.
3. The ex-parte Applicant contends that at 9th January, when he filed the application for leave to commence Judicial Review proceedings against the decision of the Senate to discontinue him, the appeal had not been determined.
4. Following these developments, the ex-parte applicant now wishes to amend his pleadings to include an order of certiorari to quash the decisions of the Appeals and Grievances Committee made on 30th April 2014 and that of the Full Council made on 5th August 2014 and an order of mandamus to restrain the Respondent from implementing these decisions and to re-admit him into the University.
5. The Respondent has opposed the application by a Replying Affidavit sworn 3rd November 2014 by its Deputy Registrar Academic Affairs, Prof. Ndiritu F.G. (Phd). He argued that the application is bad in law, lacks merit and is an abuse of the court process.
6. The Respondent argued that the applicant violated its Statute and was therefore discontinued in terms of its regulations. He failed to meet the academic requirements in order to qualify to continue with the studies. Accordingly, the decision to discontinue him was just and should not be interfered with by the court.

Determination

7. I have considered the application and the rival submissions of the parties. The ex-parte applicant has demonstrated that the circumstances pertaining as at the time when these proceedings were filed have changed which render it necessary to amend the pleadings. The Appeals Committee has since considered his appeal and made a decision but the Exparte applicant alleges as he was not accorded a fair hearing. This decision which is being implemented by the Respondent is one with which he is aggrieved and which he has asked the court to quash.
8. The arguments of the Respondent are substantially against the merits of the substantive suit. It has not disclosed any prejudice it will suffer should the amendments sought be allowed.
9. Accordingly, the interests of justice tilt in favour of allowing the amendment in order to bring into court all the issues that touch on the matter for consideration and determination.
10. For this reason, the application dated 18th October 2014 is hereby allowed.
11. The ex-parte applicant is granted leave to amend the Notice of Motion and Statement of Facts within seventeen (17) days from the date hereof.



12. Costs to abide the outcome of the Judicial Review.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF MARCH, 2015.

A. MSHILA

JUDGE

