



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL PETITION NO 28 OF 2015

ADRIAN KAMOTHO NJENGAPETITIONER

VERSUS

UNIVERSITY OF NAIROBI1ST RESPONDENT

VICE-CHANCELLOR, UNIVERSITY OF NAIROBI....2ND RESPONDENT

RULING

1. The petitioner filed the present petition on 30th January 2015 under certificate of urgency. In the petition, he sought the following orders:

- i) A declaration that the acts of the 1st and 2nd respondent in failing to release the petitioner's examination results is unconstitutional and a flagrant breach to the petitioner's right to education as enshrined in the Constitution.*
- ii) An order compelling the 1st respondent to release the petitioner's examination results for the paper research methods in Business (DCC 702)*
- iii) General damages for wrongful retention of examination results for more than 18 months*
- iv) Exemplary damages for wrongful and unjustified refusal to release the subject results despite numerous requests by the Petitioner to do so.*
- v) Aggravated damages for stagnation of career and loss of career growth opportunities*
- vi) Any other relief that the court may deem fit to grant*
- vii) Costs of the petition.*

2. In his affidavit in support of the petition, the petitioner states that he is 34 years old and pursuing a degree of Doctor of Philosophy in Business Administration at the respondent University. He further states that he holds a Master of Business Administration Degree in Management Information Systems, is a Certified Cyber Security Associate (CCSA) and Certified Public Accountant of Kenya (CPAK). He is also widely published, and has taught at various universities in Kenya.

3. The petitioner alleges violation of his constitutional rights by the respondent in that the respondents have withheld some of his examination results, namely his results in Research Methods in Business (DCC 702) for a period of eighteen months. He contends that he inquired from the respondents about the missing results and was informed that they would be promptly updated. This was, however, not done, as a result of which he contends that his academic progress has ground to a halt, hence the present petition.

4. The petitioner claims that he has suffered immense psychological torture and lost numerous opportunities of self-development; that he has been subjected to torture, inhuman and degrading treatment in violation of his rights under Article 25 as read with Article 29 of the Constitution, as well as his right to education under Article 43 of the Constitution. He also alleges violation of various other provisions of the Constitution.

5. The matter came before me for directions on 5th February 2015 in the presence of Mr. Ngaira for the petitioner and Mr. Lutta for the respondents when I directed that the parties mention the matter on 23rd February to enable the respondents file a response. The matter was not listed on that date but when the parties appeared before me on 10th March 2015, Mr. Lutta informed the Court that the respondents had supplied the petitioner with the missing results, and that the results had been uploaded on the system, and were now accessible to the petitioner.

6. While agreeing that the results had indeed been released to the petitioner, his Counsel, Mr. Ngaira, took the view that the matter was not settled, and that he required a determination of the issues raised in the petition, including the claim for aggravated and exemplary damages and costs. I therefore directed the parties to file skeleton submissions on these issues for consideration.

7. I have considered the submissions of the parties dated 12th and 18th March 2015 respectively, as well as the petition and the affidavit in support. The respondents did not file an affidavit in reply to the petition.

8. The crux of the petitioner's submissions is that the respondents have sabotaged his career progression by failing to release his results in the said unit for over 18 months, that the sabotage was aimed at frustrating young and dynamic scholars from completing their studies in good time, and that the actions of the respondents amounted to "scholarly and career incarceration of the petitioner."

9. The respondents submit that there has been no violation of the petitioner's rights demonstrated, that the petitioner and respondents recorded a partial consent when the matter came up for mention, and the results were released. Their submission is that there is no basis for claiming any damages from them, and that there is no basis for the Court granting damages for alleged lack of career progression in the future.

10. In my view, and bearing in mind the conduct of the parties in this matter, there is no ulterior motive, such as sabotage, demonstrated in the conduct of the respondents that would justify an award of either aggravated, exemplary, or indeed any damages to the petitioner.

11. At the worst, the respondents are guilty of gross incompetence in failing to upload the petitioner's examination results in time, or in having in their employ persons who do not perform their duties competently. I take this view because, as soon as this matter was filed in Court, the respondents roused themselves and furnished the petitioner with the results that he had been seeking for eighteen months within a period of a month.

12. I also take note of the fact that the 1st respondent is a public university, funded primarily by tax payers' money. In my view, it would be against the public interest, at least in a matter such as is currently before me, to award exemplary and aggravated damages for delays in release of results when no loss or damage has been established.

13. That view, however, should not be seen as a carte blanche for the respondents, or any other public educational institutions, to blithely conduct its affairs with regard to students in a careless and cavalier manner. There may be circumstances in which failures of the respondents with respect to students' results may well attract an award in damages. This is not one such case.

14. The respondents may also wish to consider firmer action against those of their teaching and administrative staff who place them in the position they are in now by failing to furnish students with their results in good time. Such conduct, in fact, may well raise questions about the quality or authenticity of the results that are released in obedience to a court order, or pursuant to court proceedings, as in the present case.

15. Nonetheless, in the present circumstances, I decline to make an award of damages in this matter.

16. However, I am satisfied that the petitioner is entitled to some costs for the aggravation of having to file a claim in court in order to get his results

17. Given that the matter was settled at a very early stage, the respondents shall bear the petitioner's costs assessed at Kenya Shillings Fifty Thousand (Kshs 50,000).

18. It is so ordered.

Dated, Delivered and Signed at Nairobi this 27th day of May 2015

MUMBI NGUGI

JUDGE

Mr. Ngaira instructed by the firm of Kabathi & Co. Advocates for the petitioner

Mr. Lutta instructed by the firm of Lutta & Co. Advocates for the respondent