



IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NO.16 OF 2014

IN THE MATTER OF ARTICLES 19, 20, 22 & 35 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE TEACHERS SERVICE COMMISSION ACT

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL

FREEDOMS UNDER ARTICLE 35(1)(b) and (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR PRESERVATORY

ORDERS AND/OR PRODUCTION ORDERS

PATRICK MATOGO OGUGU.....APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

The notice of motion dated 11/3/2013, among other prayers, seeks to compel the respondent to supply the applicant with certified copies of the documents enclosed in file TSC NO.341140 in relation to his personal records or any communication and/or correspondences pertinent to the file and the entire disciplinary proceedings together with the documents adduced in support of the disciplinary proceedings within a period of time to be specified by the court. Prayer 2 of the application was abandoned at the hearing.

The application is supported by the affidavit of the applicant, Patrick Matogo Ogutu, and is premised on the grounds that: He had been a teacher, employed by the respondent till 27/6/2005 when he was interdicted; That on 10/2/2006 a tribunal was set up to consider his case following which he was dismissed from service. On 30th August, 2013, the applicant requested for the disciplinary proceedings before the respondent's tribunal; that the respondent sent him a copy of the proceedings which was incomplete, not properly certified and had a lot of discrepancies. Further, that the applicant is unable to

pursue any legal options available to him because the information given to him by the respondent is scanty and insufficient to enable him sustain any legal arguments.

The application is opposed through the affidavit of the Director in Charge of Administration at the respondent, Simon Musyimi Kavisi, sworn on 24th March, 2014. In that affidavit the deponent has, inter alia, deposed as follows:-

- 1. That the applicant was employed on 1st February, 1994 and posted to Nyansakia primary school;**
- 2. That on 10th February, 2006, the applicant was dismissed from the teaching service on the grounds that he is of immoral behaviour;**
- 3. That the applicant appealed against the respondent's decision but the respondent after careful consideration of the applicant's appeal rejected it and promptly communicated its decision to him through its letter dated 31st August, 2006;**
- 4. That on 4th September, 2013, the respondent received a letter from the applicant requesting for copies of proceedings in respect of his disciplinary case;**
- 5. That in compliance with the relevant law, the respondent, vide its letter dated 26th November, 2013 promptly furnished the applicant with certified copies of the entire proceedings of his case as requested;**
- 6. That the Applicant's allegations that the proceedings were incomplete and improperly certified are not only dishonest and/or inaccurate but misguided;**
- 7. That the commission has granted the applicant every request he has made and responded to all his letters;**
- 8. That the motion is bad in law, incurably defective and does not disclose any reasonable cause of action against the respondent;**
- 9. That as regards prayer 3, the applicant has failed, ignored and/or neglected to identify the specific document/s he requires from the commission; and that the applicant has not demonstrated that he has requested any document from the commission and failed to obtain the same; and**
- 10. That the applicant has failed and/or ignored to cite with precision the specific constitutional rights and freedoms which have been violated and the manner in which the rights have been infringed.**

In reply to the issues raised in the respondent's replying affidavit, the applicant filed the supplementary affidavit sworn on 21st March, 2014. In that affidavit, the applicant has, inter alia, deposed that on 10th August, 2013, he wrote to the respondent requesting for his full case file and case documents, inclusive of statements for the case; that the respondent served him with incomplete proceedings; that his right to access to justice and information has been violated by the respondent; that it is of utmost importance that he is provided with the required documentation to enable him pursue further his legal rights. The applicant has reiterated his contention that unless the court compels the respondent to provide him with all the documents he requires, he stands to suffer irreparable loss.

I have read and considered the contention by both parties. No doubt the applicant has a right of access to information held by the respondent by dint of **Article 35** of the **Constitution** of Kenya.

Article 35 of the **Constitution** of Kenya, 2010, provides:-

“(1). Every citizen has the right of access to-

(b) information held by another person and required for exercise or protection of any right or fundamental freedom.

(2).Every person has the right to the correction or deletion of untrue or misleading information that affects the person.”

Whether the respondent refused and/or failed to provide the respondent with information; Whereas the applicant contends that his request for full information regarding his case file was not properly addressed by the respondent, the respondent has, inter alia, deposed that the applicant has failed, ignored and/or neglected to identify the specific document/s he requires from the respondent; and that the applicant has not demonstrated that he has requested for any document from the respondent and failed to obtain the same.

I have perused the application and reviewed the evidence adduced in support thereof. It seems the applicant wrote two letters requesting for proceedings. The purported letter marked as ‘PMO4’ dated 10/8/2013, was not exhibited. It was later exhibited to the supplementary affidavit dated 21/3/2013 (PMO1). The letter reads:-

“REQUEST FOR MY FULL FILE CASE DOCUMENTS/STATEMENT FOR CASE NO. 1066/07/05 TSC NO. 341140.

I am requesting for the above stated documents/statements which was used as evidence to determine my case decision on 10/2/2006.”

The above letter was a bit vague as to what was required. However, the applicant wrote another letter which the respondent admits receiving. The letter dated 30/08/2013 attached to the replying affidavit as SMK4 had addressed the respondent as follows:-

“The secretary

Teachers Service Commission

Private Bag

Nairobi-Kenya.

RE: REQUEST FOR PROCEEDINGS OF DISMISSAL CASE NO.TSC/1066/7/07 TSC NO.341140

“I am hereby requesting for the proceedings of the above case No.TSC/1066/7/05 which resulted to the above decision on 10/2/2006. I'm ready to bear any costs for the above request if required.”

The above letter is clear, that the applicant required all the proceedings in relation to his case. In reply, the respondent wrote the letter dated 26th November, 2013. In that letter the respondent addressed the applicant as follows:-

“Patrick M. Ogugu

P.O Box 14629-20100

NAKURU.

RE:REQUEST FOR PROCEEDINGS

Reference is made to your letter dated 30th August, 2013 regarding the above stated subject.

Attached please find a certified copy of proceedings of your Discipline Case No.1066/7/05.”

From the documents attached to the respondent's letter above, it is clear that, the respondent failed to attach the witness statements and the other documents relied on in the disciplinary proceedings.

Although there is no evidence that the applicant complained to the respondent about receiving incomplete proceedings, it was unreasonable for the respondent to construe the applicant's letter as requesting merely for the hand written proceedings. For the proceedings to have been complete, the respondent ought to have supplied the witnesses statements which are clearly referred to in what was supplied and all the evidence adduced in support thereof. It did not do that. I am in agreement with the applicant.

Consequently, I allow the application in terms of prayer 3. I direct that the respondent do supply the applicant with the information sought in prayer 3 within thirty (30) days from the date of this ruling.

Each party bears its own costs.

DATED and DELIVERED this 30th day of May, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Oumo holding brief for Mr. Wambeyi for the applicant

Ms Busienei for the respondent

Kennedy – Court Assistant