



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAKURU

PETITION 44 OF 2014

IN THE MATTER OF ARTICLES 2, 3, 19, 20, 21, 22, 23, 24, 27, 43,

47, 48, 159 (1) (2) (a) (b) AND (e) 165 (3) (a) AND (b) OF

THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF SECTION 4 (2) (a), 5(1)(k), 20(1), 39(2) OF THE UNIVERSITIES ACT No.
42 OF 2012**

AND

**IN THE MATTER OF ARTICLE 10 & 26 OF UNIVERSAL DECLARATION OF HUMAN
RIGHTS**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE CONSTITUTION,
UNIVERSITIES ACT,**

AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS EPITOMIZED

AND

**IN THE MATTER OF VIOLATION OF THE RIGHT TO EDUCATION AND, HUMAN
DIGNITY AND FAIR ADMINISTRATIVE ACTION**

AND

IN THE MATTER OF ABUSE OF OFFICE BY THE 1ST AND 2ND AND 3RD RESPONDENTS

BETWEEN

KIPROTICH RAYMOND.....PETITIONER

VERSUS

EGERTON UNIVERSITY1ST RESPONDENT

RULING

1. Raymond Kiprotich (*Petitioner*) is a student at Egerton (*University*), and he is very aggrieved. ***The Petitioner pleads that he enrolled at Egerton University on 12th June 2009, for a Bachelor's Degree in Commerce (B. Com) Accounting Option. He did well in his first year and was promoted to second year where he had to study and be examined in twelve units. He was successful in five but failed six units. The marks in one unit are unaccounted for by the University.***

2. Notwithstanding the failure in half of the twelve units, the University allowed the Applicant to proceed to third and fourth years in which the applicant successfully completed his studies. The applicant, says his counsel, had legitimate expectation that the question of his failed Second Year's course would be resolved and he would graduate in June 2014, particularly after he was even issued with a letter of internship in December 2011.

3. This has however not happened, and he cries foul, that the University has breached his rights to education, personal dignity and security as envisaged under Article 43, of the Constitution, and to fair administrative action as envisaged under Article 47 of the Constitution. So in his Notice of Motion dated 13th June 2014 and brought under Certificate of Urgency he has sought a conservatory order that the decision by the University to exclude the Petitioner's name in the graduation list of 20th June 2014 be stayed pending the hearing and determination of his Petition.

4. However, his petition is opposed by the University. In the Replying Affidavit by Prof. Seth O. Owido, its Academic Registrar sworn 17th June 2014 and filed on 18th June 2014, the University pleads in some detail why the Applicant's name was excluded from the list of students to graduate both in December 2012, and June 2014. The essence of the University's response is that the Applicant had not satisfied the University's academic requirements for the award of a Degree of Bachelor of Commerce. The University concludes that the Applicant's Petition and Application raises no constitutional issue and should be dismissed.

5. At this point in the matter we are not concerned with the merits of or whether the Petition raises any Constitutional issue. The concern at this interlocutory stage is whether the Applicant has established a ***prima facie*** case that entitles him to the maintenance of a status quo pending, the hearing and determination of his Petition.

6. It is no doubt a matter for further investigation to determine whether the University has been in breach of the constitutional provisions or fair administrative action by failing to advise the Applicant on the status of his second year results, or indeed by allowing him to proceed to third and fourth year without first satisfying the University's academic requirements for the second year of study, it raised the Applicant's legitimate expectation that he would be allowed to graduate.

7. A conservatory order is an order of court for maintenance of the status quo, like a temporary injunction (*pending the determination of the Petition*) which restricts the person or body against which it is issued from proceeding on a certain course of action, or staying the implementation of a decision affecting an applicant or petitioner.

8. In this application what the applicant seeks is not a conservatory order but a mandatory order directing the University to include the applicant in the list of persons to graduate on 20th June 2014. This is an order which can only be made in the clearest of cases, this is not one such case.

9. The Universities Act, 2012 sets out minimum standards or pass-mark for award of Degrees and Diplomas at both Public and Private Universities. It would be both against the law and therefore foolhardy for a court to issue an order such as the one sought by the Applicant directing the University to

include a person who has not satisfied the University's minimum academic standard for award of a Degree in any field.

10. For those reasons, I decline to issue any orders sought and dismiss the Applicant's Notice of Motion dated and filed on 13th June 2014.

I direct that each party shall bear its own costs.

11. It is so ordered.

Dated, signed and delivered at Nakuru this 19th day of June, 2014

M. J. ANYARA EMUKULE

JUDGE