



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**JUDICIAL REVIEW NO. 9 OF 2013**

**IN THE MATTER OF AN APPLICATION BY FELESIA ANINDO OMANI FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE UNIVERSITY ACT**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MASINDE MULIRO UNIVERSITY OF**

**SCIENCE AND TECHNOLOGY ..... RESPONDENT**

**EX-PARTE**

**FELESIA ANINDO OMANI ..... EX-PARTE APPLICANT**

**RULING**

Yesterday this court granted leave to the applicant to file Judicial Review proceedings as requested in a Chamber Summons for leave dated 29<sup>th</sup> November, 2013. However, the court ordered that the request for stay under prayer (iv) of the Chamber Summons be heard inter-partes today after service.

The said prayer is in the following terms –

***“That the grant of this leave do operate as stay of the decision of the Ad Hoc Committee of the Senate of Masinde Muliro University of Science and Technology expelling the applicant from the university and consequently excluding her from the graduation ceremony scheduled for 6/12/2013.”***

It has been raised and not contested that the Chamber Summons was not served. Instead the substantive Notice of Motion was served on the respondent.

At the hearing of the request for stay above, Mr. Namatsi appeared for the applicant while Mr. Ombaye appeared for the respondent. Mr. Ombaye asked to be granted more time for the respondent to file a response. However, as the graduation is scheduled to take place tomorrow (6/12/13), I told counsel to address the court on the request and they did so. I have considered the respective submissions of counsel.

In my view, from the facts and issues disclosed in this matter, the prayer for stay requested cannot be granted at this stage. Firstly, granting the said prayer will determine the substantive issues in contest in the main motion, without granting the respondent an opportunity to substantively respond. Orders as those requested in the said prayer, in my view, should not be granted at an interlocutory stage.

Secondly, the applicant knew vide letter to her dated 13/11/2013, that she was subject to a disciplinary case, and that her appeal against the decision of a Senate Ad Hoc Committee had been dismissed. The decision of the Ad Hoc Committee had been upheld. If she had an interest of protecting her interests quickly through the courts, she should have moved the court earlier, and not file an application for leave on 29/11/13 just a week before the graduation ceremony. The delay cannot be blamed on anybody other than the applicant.

Considering the above facts and circumstances, I am of the view that the stay orders sought in the Chamber Summons for leave, are not merited. I decline to grant the stay sought.

*Dated and delivered at Kakamega this 5<sup>th</sup> day of December, 2013*

**GEORGE DULU**

**JUDGE**