



**REPUBLIC OF KENYA  
IN THE HIGH COURT  
AT NAIROBI  
MILIMANI LAW COURTS**

**Petition 254 of 2011**

**HAKI FOCUS ..... PETITIONER**

**AND**

**THE MULTI MEDIA UNIVERSITY**

**COLLEGE OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE MINISTER FOR  
HIGHER EDUCATION ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Petitioner's Case**

1. Haki Focus is a civil society organization. It brings this petition to challenge the mode of appointments of the Principal of the Multimedia University College of Kenya ("MUCK"). In the petition dated 18<sup>th</sup> November 2011, the petitioner seeks the following orders;

*(a) A declaration that the participation of Prof. Romanus O Odhiambo in the 1<sup>st</sup> respondent's council meeting held on 1<sup>st</sup> November 2011 to interview candidates for the position of Principal for the 1<sup>st</sup> respondent was and remains illegal, illegitimate, null and void.*

*(b) An order directing the Council of the 1<sup>st</sup> respondent to delete and expunge the scores awarded by the said Prof Romanus O Odhiambo against all the candidates and subsequently to re-aggregate the scores awarded only by the bona fide members of the Council.*

*(c) An order restraining the 2<sup>nd</sup> respondent from appointing any person recommended to the Minister with the containing the score input of Prof Romanus O Odhiambo to the position of the Principal of the 1<sup>st</sup> respondent.*

*(d) In the event this petition is not successful, for the reason that it is brought in the public and 1<sup>st</sup> respondent's interest, an order that no costs are awarded against the petitioner.*

2. The petition is supported by the affidavit of Geoffrey Birundu sworn on 16<sup>th</sup> November 2011. In the affidavit he depones that MUCK advertised the position of its Principal through a recruitment company, Hawkins Associates Ltd. The company received applications and shortlisted candidates for consideration by the MUCK Council ("the Council"). After short listing the Council convened to consider the applications.

3. Mr Birundu states that the Vice Chancellor of Jomo Kenyatta University College of Agriculture and Technology ("JKUAT"), Prof Mabel Imbuga and Prof Romanus Odhiambo also attended on behalf of JKUAT sat in the interviews and awarded scores and marks. Mr Birundu contends that they did this knowing that two of their colleagues were sitting for the interviews when he ought not to have sat.

4. The petitioner's contention is that the inclusion of Prof Romanus Odhiambo was illegal and polluted the scores received by each candidate. The petitioners assert that participation of Prof Odhiambo made the whole process of appointment illegitimate.

### **1<sup>st</sup> Respondent's Case**

5. In opposition to the petition, the 1<sup>st</sup> respondent relies on the affidavit of Ambassador Green Josiah sworn on 15<sup>th</sup> December 2011. He is a member of the MUCK Council. He denies all the allegations. He avers that amongst other members of the Council, MUCK has individual and institutional representation. Prof Imbuga is entitled to attend meetings as the Vice Chancellor of JKUAT of which MUCK is a constituent college and Prof Odhiambo is a representative of JKUAT and the MUCK senate.

6. Mr Josiah contends that the Council interviewing prospective candidates was properly constituted and the interview conducted in accordance with the standard practice and procedure. Upon completion of the interview, the Council made its recommendation to the Minister for Higher Education who appointed Prof Oyawa as the Principal.

### **Determination**

7. I directed the parties to file written submissions but when the matter came up for hearing only the 1<sup>st</sup> respondent has complied with my order. The petitioner subsequently filed its submissions on 4<sup>th</sup> June 2012 after I had reserved my judgment.

8. The petition before the Court is not clear whether it is made under **Article 22** to enforce fundamental rights and freedoms protected under the bill of rights or is one made under **Article 258** for enforcement of the Constitution. It is an established principle that where a party alleges a breach of fundamental rights and freedoms, he or she must state and identify the right infringed and how it is infringed in respect to him. This same principle applies in respect of an action to enforce the Constitution. (See the case of **Anarita K Njeru v Republic (No. 1) [1979] KLR 154**)

9. The petition itself is rather vague and my understanding is that it seeks to void the appointment of the Principal of MUCK on the basis of the participation of Prof Romanus Odhiambo in the interviewing panel on the basis that it was in contravention of **Article 73(2)(b)** of the Constitution.

10. **Article 73** deals with the responsibilities of leadership and is part of **Chapter Six** of the Constitution titled "**Leadership and Integrity**" and it provides as follows;

**73. (1) Authority assigned to a State officer—**

**(a) is a public trust to be exercised in a manner that—**

- (i) *is consistent with the purposes and objects of this Constitution;*
  - (ii) *demonstrates respect for the people;*
  - (iii) *brings honour to the nation and dignity to the office; and*
  - (iv) *promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.*
- (2) *The guiding principles of leadership and integrity include—*
- (a) *selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*
  - (b) *objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;*
  - (c) *selfless service based solely on the public interest, demonstrated by—*
    - (i) *honesty in the execution of public duties; and*
    - (ii) *the declaration of any personal interest that may conflict with public duties;*
    - (d) *accountability to the public for decisions and actions; and*
    - (e) *discipline and commitment in service to the people.*

11. I will reiterate what I stated in the case of ***John Githinji and Others v Coffee Board of Kenya and Others Nairobi Petition No. 255 of 2011 (Unreported)*** that “[70] As regards **Article 73**, which is concerned with the responsibilities of leadership, I find and hold that the petitioners have not made out a case to demonstrate that the elements set out therein have been breached by the Minister or any other person in relation to appointment of the Board. **Article 73** contains several detailed provisions and it is important that a party who relies on these provisions to set out with particularity the provision infringed and how it is infringed. **Article 73** imposes specific obligations on a State Officer and therefore a vague and generalized averment, allegation or accusation that there is a violation of **Article 73** is inadequate and embarrassing and must be dismissed.”

12. The affidavit in support of petition is vague to the extent that it relies on unsubstantiated hearsay statements and is devoid of any material facts that would assist the court in making a determination. Even assuming that **Article 73** applies to the circumstances of this case, my analysis of the material before the Court on behalf of the 1<sup>st</sup> respondent demonstrates that the decision to appoint the principal of MUCK was on the basis of the prescribed statutory procedures contained in the ***Multimedia University College of Kenya Order, 2008 (LN No. 155 of 2008)*** and was conducted in a fair, impartial and objective manner and there is no basis for impugning the conduct of the MUCK University Council in process of appointing the principal.

### **Conclusion**

13. I can only conclude that the petition is frivolous and lacks merit. I am aware that this is a case for the enforcement of fundamental rights and freedoms and I should be slow to award costs of the suit against it. The court retains discretion, in an appropriate case, to impose costs. I am of the view that this case was ill founded and entirely frivolous and an order for costs should be granted.

14. The petition be and is hereby dismissed with costs to the 1<sup>st</sup> respondent.

**DATED** and **DELIVERED** at **NAIROBI** this 19<sup>th</sup> day of June 2012.

**D.S. MAJANJA**

**JUDGE**

Mr Kurauka instructed by H Ndubi and Company Advocates for the petitioner.

Mr Ndambiri instructed by Thongori and Company Advocates for the 1<sup>st</sup> respondent.