



**REPUBLIC OF KENYA**

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

**(CORAM: CHERERE-J)**

**CIVIL CASE NO. 18 OF 2018**

**BETWEEN**

**GREAT LAKES UNIVERSITY OF KISUMU.....PLAINTIFF**

**AND**

**THE REGISTERED TRUSTEES OF THE TROPICAL**

**INSTITUTE OF COMMUNITY HEALTH**

**AND DEVELOPMENT IN AFRICA (TICH).....DEFENDANT**

**JUDGMENT**

**Background**

1. On 30<sup>th</sup> June, 2006, the Commission for Higher Education issued the registered Trustees of the Tropical Institute of Community Health (*TICH*) with an Interim Authority to commence preparations for the establishment of the **Great Lakes University of Kisumu (University)**.
2. Subsequently, the University was established and a Charter dated 19<sup>th</sup> September, 2012 (*Charter*) was issued by the Ministry of Higher Education, Science and Technology.
3. The University commenced its operations and even established a satellite campus in Nairobi.
4. A report dated 23<sup>rd</sup> March, 2017 discloses that the Commission for University Education (*CUE*) conducted an inspection of the University's Nairobi campus and made a finding that it did not meet the provisions of section 45 (1) of the Universities Regulations 2014 relating to establishment of a campus due to severe deficiencies in provision of adequate and appropriate physical resources among others.
5. An Institutional Quality Audit Inspection dated March, 2016 reveals that *CUE* found that the University did not conform to the pre-set standards of both the procedural and transformational qualities. By the same report, the University was given one year to submit its action plan to remedy the situation.
6. The University blames the Defendant for its failure to comply with Rule 54 of the Universities (**Establishment of Universities**) (**Standardization, Accreditation and Supervision**) **Rules 1989**.
7. Flowing from the foregoing, the University by a plaint dated 17<sup>th</sup> October, 2018 and filed on 19<sup>th</sup> October, 2018, the University filed this suit seeking orders for:

- a) **A declaration that the Defendant is in breach of its duty as a sponsor of the Plaintiff as per the University Charter dated 19<sup>th</sup> September, 2012**
- b) **An order of specific performance to compel the Defendant to transfer all assets under the custody and use of the Plaintiff, to the Plaintiff**
- c) **General damages for breach of absconding its duties as a sponsor**

**d) Costs of the suit**

**e) Any other relief that this Honourable Court deems just and expedient to grant**

8. The University presented its case through its Vice Chancellor Prof. Atieno A.Ndede-Amadi who recapped the case as summarized at paragraphs 1 to 6 hereinabove. In addition, the witness testified that the University has utilized and occupied the property owned **TICH** namely:

- i. L.R No. 24810 L.R No. in Kisumu County
- ii. L.R No.654/45 at Kibos in Kisumu County
- iii. L.R No. KISUMU MUNICIPALITY/BLOCK 12/201
- iv. L.R No. KISUMU MUNICIPALITY/BLOCK 12/2143
- v. L.R No. 209/11452 in Nairobi
- vi. L.R No. 11280/16 at Kibos in Kisumu County

9. According to the witness, **TICH's** failure to transfer the aforementioned land parcels to the University was in breach of its duty as a sponsor of the **Charter**. The defendant (**TICH**) neither filed its defence nor defended the suit.

**Plaintiff's submissions**

10. The University holds the view that **TICH** with all intents and purposes both impliedly and expressly indicated that it will be the sponsor of the University and that it would procure and provide the minimum required size of the land for the University at the time of accreditation thereby creating a legitimate expectation on the part of the University which **TICH** failure has failed to honour.

11. Reliance was placed on **Kenya Revenue Authority & 2 Others v Darasa Investments Limited [2018] eKLR**, Pollard, Parpworth And Hughes writing at page 583 in the 4<sup>th</sup> edition of Constitutional And Administrative Law: Text with Material, 4th Edition, Vol. 1 (1) at page 151, paragraph 81 of Halsbury's Laws Of England, **Nelson Kazungu Chai & 9 Others v Pwani University College [2017] eKLR**, Communications **Commission of Kenya & 5 others v Royal Media Services & 5 Others [2014] eKLR**, Republic v Nairobi City County & Another exparte Wainaina Kigathi Mungai [2014] eKLR, **South Bucks District Council vs. Flanagan [2002] EWCA Civ. 690 [2002] WLR 2601, Republic vs. Attorney General & Another Ex Parte Waswa & 2 Others [2005] 1 KLR 28**, Jane Kiongo & 15 others v Laikipia University & 6 others [2019] eKLR, Canada in Canada ( Attorney General) v. Mavi, [2011] 2 S.C.R. 504 and National Director of Public Prosecutions v Phillips and Others. [2002] (4) SA 60 (W) para 28.

**ANALYSIS AND DETERMINATION**

12. I have carefully considered the evidence on record, the written submissions made on behalf of the University and the cited authorities. I have deduced the issues for determination as hereunder:

- a) Whether TICH is in breach of its duty as a sponsor of the University**
- b) Whether an order of specific performance to compel the Defendant to transfer all assets under the custody and use of the Plaintiff, to the Plaintiff ought to issue**
- c) Whether an order of General damages for breach of absconding its duties as a sponsor ought to issue against TICH**

13. Rule 54 of the Universities (**Establishment of Universities**) (**Standardization, Accreditation and Supervision**) **Rules 1989 provides as follows:**

**54. Every university shall show evidence of owning land on freehold terms, or for a leasehold term of not less than 45 years; and the land shall, in addition-**

- (a) be free from all encumbrances other than those of a statutory nature;**
- (b) be vested in a trusteeship of university, which shall own such land as non-profit making body and in perpetual succession.**

14. From the evidence on record, it is apparent that as at the time of its establishment and issuance of the Charter dated 19<sup>th</sup> September, 2012 by the Ministry of Higher Education, Science and Technology, the University was in compliance with the foregoing provision relating to ownership of land.

15. The record demonstrates that **TICH** owns various properties including L.R No. 24810 L.R No. in Kisumu County, L.R No.654/45 at Kibos in Kisumu County, L.R No. KISUMU MUNICIPALITY/BLOCK 12/201, L.R No. KISUMU MUNICIPALITY/BLOCK 12/2143, L.R No. 209/11452 in Nairobi and L.R No. 11280/16 at Kibos in Kisumu County. None of these properties is registered in the name of the

trusteeship of University.

16. I have perused through all the documents filed by the University and what I deduce is the establishment of a University that had not met the Universities (**Establishment of Universities**) (**Standardization, Accreditation and Supervision**) **Rules 1989**.

17. The foregoing rules require that land shall be vested **not** in the university but in a trusteeship of university, which shall own such land as non-profit making body and in perpetual succession.

18. That being the case therefore, I find that the University has neither established any breach of sponsorship by TICH nor made out a case for an order of specific performance to compel TICH to transfer all assets under the custody and use of the University and therefore an order for general damages for breach of absconding its duties as a sponsor cannot therefore issue against as TICH. I also find that the University has not placed itself within the principle of the doctrine of legitimate expectation for the reason that the right relating to ownership of land ought to be enforced not by the University but by its registered trustees. Hence, I find that the University has no locus to bring this suit as against TICH.

19. Even if the University had a legitimate expectation, the legal position is that legitimate expectation cannot override the law and this was the position in **Republic vs. Kenya Revenue Authority ex parte Aberdare Freight Services Limited [2004] 2 KLR 530**.

20. I have not seen any evidence that TICH promised or assured the University that it would transfer its land to the University. The mere fact that TICH has allowed the University to utilize its land does not in my considered view entitle the University to demand transfer of the same to its name.

21. From the foregoing analysis, I have come to the conclusion that the University has not proved its case to the required standard. The case fails and it is accordingly dismissed.

**DELIVERED AND SIGNED IN KISUMU THIS 06<sup>th</sup> DAY OF February 2020**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Amondi/Okodoi

For the Plaintiff - Mr. Maganga hb for Mr. Kago

For the Defendant - N/A