



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 120 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

MAASAI MARA UNIVERSITY COUNCIL.....1ST RESPONDENT

PROF. MOHAMED ABDILE.....2ND RESPONDENT

EX PARTE APPLICANT: OKIYA OMTATAH OKOITI

RULING

The Application

1. The *ex parte* Applicant herein has moved this Court in an application brought by way of a Chamber Summons dated 2nd June 2020, in which he is seeking the following orders:

1. THAT the Court be pleased to certify the application as extremely urgent and hear it *ex-parte* at the earliest opportunity.
2. THAT leave be granted to the *Ex Parte* Applicant to seek by way of Judicial Review, that an order of certiorari do issue, to bring to this Court for purposes of being quashed, and to be quashed:
 - a. The decision made by the 1st Respondent not to refer the matter to the Public Service Commission, which has jurisdiction to sit on appeal over such decisions of the Council, and instead constitute an Ad Hoc Appeals Committee of the Council to hear and determine the 2nd Respondent’s appeal against his summary dismissal by the predecessor Council as the Maasai Mara University’s Deputy Vice Chancellor (Administration, Finance & Planning).
 - b. The decision made by the 1st Respondent’s Ad Hoc Appeals Committee to hear the 2nd Respondent’s appeal, which was filed out of time, against his summary dismissal by the full Council as the Maasai Mara University’s Deputy Vice Chancellor (Administration, Finance & Planning).
 - c. The decision made by the 1st Respondent’s Ad Hoc Appeals Committee to reinstate the 2nd Respondent as the Maasai Mara University’s Deputy Vice Chancellor (Administration, Finance & Planning).
3. THAT leave be granted to the *ex-parte* applicant to seek by way of Judicial Review, that an order of prohibition do issue, prohibiting the respondents herein, and any other person howsoever acting, from implementing, giving effect to, or enforcing:
 - a. The decision made by the 1st Respondent not to refer the matter to the Public Service Commission, which has

jurisdiction to sit on appeal over such decisions of the Council, and instead constitute an Ad Hoc Appeals Committee of the Council to hear and determine the 2nd Respondent's appeal against his summary dismissal by the predecessor Council as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning).

b. The decision made by the 1st Respondent's Ad Hoc Appeals Committee to hear the 2nd Respondent's appeal, which was filed out of time, against his summary dismissal by the full Council as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning).

c. The decision made by the 1st Respondent's Ad Hoc Appeals Committee to reinstate the 2nd Respondent as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning).

4. THAT leave be granted to the *Ex Parte* Applicant to seek by way of Judicial Review, that an order of mandamus do issue, to compel the 1st Respondent to enforce the summary dismissal of the 2nd Respondent.

5. THAT pending the filing, hearing, and the final determination of the substantive Judicial Review Notice of Motion herein, or until further Court Orders, leave so granted do operate as a stay or suspension of:

a. The decision made by the 1st Respondent not to refer the matter to the Public Service Commission, which has jurisdiction to sit on appeal over such decisions of the Council, and instead constitute an Ad Hoc Appeals Committee of the Council to hear and determine the 2nd Respondent's appeal against his summary dismissal by the predecessor Council as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning).

b. The decision made by the 1st Respondent's Ad Hoc Appeals Committee to hear the 2nd Respondent's appeal against his summary dismissal which was filed out of time.

c. The decision made by the 1st Respondent's Ad Hoc Appeals Committee to reinstate the 2nd Respondent.

6. THAT consequent to the grant of the prayers above the Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

7. THAT costs be in the cause."

2. The application is supported by a statutory statement dated 2nd June 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. After a perusal of the *ex parte* Applicant's pleadings, I note that his main grievance and grounds for the application is the reinstatement of the 2nd Respondent to the position of the Maasai Mara University's Deputy Vice Chancellor (Administration), which he claims was done in an *ultra vires* manner by the 1st Respondent's Ad Hoc Appeals Committee.

3. Particulars of illegality claimed by the *ex parte* Applicant including following:

a. The *ultra vires* decision by the 1st Respondent to constitute an Ad Hoc Appeals Committee to hear and determine the 2nd Respondent's appeal against the decision of the whole Council to summarily dismiss him, which appeal can only be heard and determined by the Public Service Commission.

b. The *ultra vires* decision made by the 1st Respondent's Ad Hoc Appeals Committee to hear the 2nd Respondent's appeal, which was filed out of time, against his summary dismissal as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning).

c. The *ultra vires* decision made by the 1st Respondent's Ad Hoc Appeals Committee to reinstate the 2nd Respondent as the Maasai Mara University's Deputy Vice Chancellor (Administration, Finance & Planning) who was summarily dismissed by the immediate former Council for gross misconduct, and which reinstatement process was devoid of merit.

4. I have reproduced these grounds to illustrate the fact that the *ex parte* Applicant is aggrieved with the process of summary dismissal from, and re-appointment of the 2nd Respondent to public office. The *ex parte* Applicant is therefore seeking leave to bring judicial review proceedings in relation to the 2nd Respondent's employment, which falls within the exclusive jurisdiction of the Employment and Labour Relations Court, pursuant to Articles 162(2) (a) and 165(5) of the Constitution, and section 12 of the Employment and Labour Relations Act.

The Orders

5. In the premises I direct and order that this suit be and is hereby transferred to the Employment and Labour Relations Court at Nairobi for further hearing and determination. The *ex parte* Applicants' Chamber Summons dated 2nd June 2020 shall accordingly be placed before the **Duty Judge** at the **Employment and Labour Relations Court at Nairobi** on **9th June 2020** for directions.

6. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the *ex parte* Applicant, and to the Deputy Registrar of the Employment and Labour Relations Court at Nairobi, by close of business on 4th June 2020.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF JUNE 2020

P. NYAMWEYA

JUDGE