



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**PETITION NO. 21 OF 2017**

**SOGOMO ALLAN & 14 OTHERS.....APPLICANTS**

**VERSUS**

**MOI UNIVERSITY (FORMERLY CHEPKOILEL UNIVERSITY COLLEGE**

**CONSTITUENT OF MOI UNIVERSITY..... 1<sup>ST</sup> RESPONDENT**

**UNIVERSITY OF ELDORET.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant filed this petition dated 13<sup>th</sup> November 2017 seeking the following orders;

- i. That pending the hearing and determination of this motion, the court be pleased to issue an order of injunction restraining the 2<sup>nd</sup> Respondent from graduating the petitioners in its graduation ceremony to be held on the 24<sup>th</sup> of November, 2017.
- ii. That the court be pleased to issue an order compelling 2<sup>nd</sup> Respondent to forward the list and or names of the petitioners to the 1<sup>st</sup> Respondent and thereby include the forwarded names of the Applicants in the graduation list set to be held on 24/11/2017.
- iii. That an order does issue compelling the 1<sup>st</sup> Respondent to graduate the petitioners in a manner consistent with other graduands and thereafter issue the petitioners with degree certificates.

2. The said petition is based on the grounds that the petitioners were admitted to study their respective courses by Moi university and were directed to learn at its constituent college, Chepkoilel university college a constituent of MOI UNIVERSITY

3. The petitioners further avers that having satisfied the requirement, they are entitled to graduate at Moi University and be awarded degrees by Moi University in its graduation to be held on 8/12/2017.

4. That on or about the 1/11/2017 the 2<sup>nd</sup> Respondent communicated to the petitioners that they would graduate and be awarded with bachelor of engineering degrees from University of Eldoret.

5. That the engineering programmes to be awarded by the University of Eldoret is yet to receive accreditation from the Engineers Board of Kenya.

6. That the 2<sup>nd</sup> Respondent have thus prepared a graduation list which includes the petitioner for a graduation to be held on 24/11/2017 depriving the petitioners of their right to graduate with degrees from Moi University.

7. The Respondent's awarded engineering graduands to Moi University in 2013, 2014, 2015 and 2016 who were all admitted under Moi University programmes, with degrees from Moi University whereas for 2017 group they intend award them with degrees of University of Eldoret depriving them the right to graduate with degrees from Moi University.

8. The Respondents opposed the said application through a replying affidavit sworn on 20<sup>th</sup> November, 2017 by *Eng. S. Simiyu Sitati*, school of engineering.

9. He stated that the 2<sup>nd</sup> respondent was initially a constituent college of the 1<sup>st</sup> Respondent. It became a fully-fledged university and fully independent upon receiving a charter on 11/2/2013.

10. As per their letters of admission, the Applicants were admitted by the 2<sup>nd</sup> Respondents Chepkoilel University as its students and not Moi University.
11. That Chepkoilel University has ever since admission been in charge of their studies, supervised their internal examination and therefore is the best institution to graduate the applicants.
12. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are separate distinct learning institutions and therefore the 1<sup>st</sup> Respondent has no power to supervise the 2<sup>nd</sup> Respondents activities. It is clear that the Applicants have not made out a case against the 1<sup>st</sup> Respondent.
13. It is true that the 1<sup>st</sup> Respondent did graduate students from the 2<sup>nd</sup> Respondents institution upto 2016 because even though the graduands were from the 2<sup>nd</sup> Respondents institution, they had been admitted by the 1<sup>st</sup> Respondent.
14. Lastly, by virtue of Clause 3 of the Moi University Charter, the enlistment of student's into the 1<sup>st</sup> Respondent's graduation list is the preserve of the 1<sup>st</sup> Respondents Senate, upon each student satisfying the criteria set out for conferment of a degree and the petitioners cannot use the court to obtain degrees from a separate and distinct institution.
15. In their submissions, the Applicants stated that sometimes in 2012 they were admitted by the 1<sup>st</sup> Respondent and posted/referred to Chepkoilel college which was later issued with a charter and became a fully-fledged University.
16. It is their submissions that they pursued their studies, and were taught by the 1<sup>st</sup> Respondent's lecturers and also sat exams offered by the 1<sup>st</sup> Respondent, and thus at the completion of their studies, it was their expectation to be graduated by the 1<sup>st</sup> Respondent and issued with degree certificates from Moi University.
17. The Applicants are apprehensive that the engineering degrees offered by University of Eldoret are yet to receive accreditation from the Engineers Board of Kenya and as such their qualification may not be recognized.
18. Further, that it is not in contention that upon the 2<sup>nd</sup> Respondent being granted a charter, the 2<sup>nd</sup> Respondent assumed the responsibility of graduating the petitioners, a move that violated their rights to fair administration.
19. The 1<sup>st</sup> Respondent on their part submitted that the petitioners are former students of the 1<sup>st</sup> Respondent formerly known as Chepkoilel University College and thus have no basis to sue the 1<sup>st</sup> Respondent
20. Secondly, that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are two separate entities and therefore the 1<sup>st</sup> Respondent has no obligation and or power to supervise the 2<sup>nd</sup> Respondent's activities.
21. Lastly, that the 2<sup>nd</sup> Respondent not being accredited by the Engineers Board of Kenya is no reason to compel the 1<sup>st</sup> Respondent to graduate students who were neither admitted nor studied their curriculum.
22. The 2<sup>nd</sup> Respondent on their part stated that upon receipt of the Charter in 2013, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents became distinct learning institutions.
23. That neither the 1<sup>st</sup> nor 2<sup>nd</sup> Respondents have ever given the Applicants an express promise of having the petitioners graduate and be conferred degrees by the 1<sup>st</sup> Respondent and therefore fails to satisfy any of the 4 tests set out by the supreme court of Kenya.
24. The prayers herein by petitioners have already been overtaken by events since the petitioners were already conferred with the degree certificates on 24/11/2017.
25. The petitioners right to fair administrative actions entails elaborating on whether the 2<sup>nd</sup> respondent adhered to the law and all legal provisions therefrom with regards to the processes and procedures involved in conferment of the degrees.
26. Lastly, that 2<sup>nd</sup> Respondents engineering degrees have been accredited by both the Engineers Board of Kenya and The commission of University Education hence valid and marketable.

#### **ISSUES FOR DETERMINATION**

- a. Whether the petitioners are students of the 2<sup>nd</sup> respondent
- b. Whether as such the petitioners have a legitimate expectation that they will graduate and be issued with certificates by the 1<sup>st</sup> Respondent.

#### **DETERMINATION**

##### **Whether the petitioners are students of the 2<sup>nd</sup> respondent**

27. With respect, question whether the petitioners were students of Chepkoilel University College must be contextualized. The 1<sup>st</sup> respondent is accredited by the Engineer's Board to offer engineering courses. By the invitation notice, the students were offered to undertake engineering courses at the 1<sup>st</sup> respondent's constituent college, Chepkoilel University.

28. The 2<sup>nd</sup> respondent or its predecessor on its own; had no capacity to register students for engineering courses as they were not accredited by the Engineers' Board in accordance with the Engineers Act, then.

29. The petitioners were, therefore, registered for the engineering course of the 1<sup>st</sup> Respondent as students of the 2<sup>nd</sup> Respondent which was not accredited by the Engineer's Board to offer engineering courses. They were therefore students of the 1<sup>st</sup> Respondent.

**Whether as such students the petitioners have a legitimate expectation to be graduated by the 1<sup>st</sup> Respondent.**

30. The Court of Appeal (Visram, Koome & Otieno-Odek, JJ.A) in Oindi Zaippeline & 39 Ors., v. Karatina University (2015) EKLK found legitimate expectation to exist in similar circumstances–

**“In the instant case, the appellant has undertaken study and education as a student of the 2<sup>nd</sup> respondent since 2009, he has invested time, energy and resources; two months to completion of his study the 2<sup>nd</sup> respondent disowns him as its student and asserts that he is a student of the 1<sup>st</sup> respondent who was neither in existence in 2009 nor taught and examined the appellant. This situation invites the court to intervene and injunct the 2<sup>nd</sup> respondent from renegeing on its contractual obligations and the legitimate expectation of the appellant.”**

31. The petitioners having registered for engineering course with the 2<sup>nd</sup> respondent as a constituent college of the 1<sup>st</sup> respondent since 2012 and having undertaken the training conducted by the 2<sup>nd</sup> respondent's predecessor as the 1<sup>st</sup> respondent constituent college, and having passed the relevant examinations have a legitimate expectation to be graduated and awarded degree certificates by the 1<sup>st</sup> respondent whose students they were since admission to the 1<sup>st</sup> respondent constituent college, even after the 2<sup>nd</sup> respondent obtained its own Charter as a full-fledged University.

32. As shown above, the attempt by the 1<sup>st</sup> Respondent to disown the petitioners as its students long after they have completed their studies awaiting only graduation and certification has no proper basis in law or fact.

33. This requires a proper interpretation of these statutes, looking at not only the text, but also the context of the statutes. The importance of considering both text and context in interpreting statutes was emphasized by the **Supreme Court of India in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., 1987 SCR (2) 1** thus;

**“Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”**

34. The same Court pointed out in Commercial Tax Officer, Rajasthan v M/s Binan Cement Ltd [2014] SCR that the Court should be mindful of the principle that it should examine every word of a statute in its context and must use context in its widest sense.

35. It is also imperative that when interpreting a statute, the Court takes a holistic approach to that interpretation. This was stated by the Court of Appeal in the case of The Engineers Board of Kenya v Jesse Waweru Wahome & others Civil Appeal No 240 of 2013 thus;

**“One of the canons of statutory interpretation is a holistic approach. As stated in Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 44 paragraph 1484, no provision of any legislation should be treated as ‘stand -alone’. An Act of parliament should be read as a whole, the essence being that a proposition in one part of the Act is by implication modified by another proposition elsewhere in the Act.”**

36. The 2<sup>nd</sup> respondent is established under section 3(2) of its statute, University of Eldoret, L.N 125/2010. Section 2(1) of the Act has several definitions which are relevant to this petition. For instance, the word “**university**” is defined to mean the Moi University. “**University college**” is defined to mean the Chepkoilel University College. The word “**student**” is defined as a person registered by the University college for the purposes of obtaining a qualification of the University college or any other person who is determined by the academic board to be a student.

37. **Section 3(2)** of *Legal Notice No 125 of 2010*, on the other hand, established the university college as a constituent college of the 1<sup>st</sup> Respondent, and a body corporate pursuant to section 3(2) of the Order. **Section 5** on conferment of degrees and other academic certificates was material and provided;

**“(1) The degrees and postgraduate diplomas to be awarded by the University College shall be the degrees and post graduate diplomas conferred by Moi University.**

**(2) Notwithstanding subparagraph (1), the University College shall have powers to grant diplomas, certificates or other academic qualifications which may, for the time being, be authorized by the statutes of the University College.”**

38. The above provision was clear that degrees to be awarded by the University College were degrees conferred by the 1<sup>st</sup> Respondent. The university college’s power was to award diplomas and certificates. In this regard. **Section 2** of the Order defined the word “**University**” to mean the 1<sup>st</sup> Respondent. This meant that graduates from the University College would be awarded degrees of the 1<sup>st</sup> Respondent. A reading of **Section 5(2)** of the Order is clear that the university college would only award diplomas and certificates or other academic qualifications but not degrees

39. When the petitioners commenced their studies in the university college they were by law entitled, upon completion of studies to degrees of the 1<sup>st</sup> Respondent. The Legal Order did not make it a condition that this would be the case only if the petitioners completed their studies while the university college was still a constituent college.

40. Although the petitioners received admission letters from the university college which would ordinarily make them students of the college, Legal Notice No 125 of 2010 was unequivocal that they would be awarded degrees of the 1<sup>st</sup> Respondent. This can also be implied from the transitional clause in the charter which left out students who were pursuing degrees at the university college among those who would be awarded academic certificates of the 2<sup>nd</sup> respondent at commencement of the charter.

41. From a factual and practical point of view therefore, the university college had no legal power to award its own degrees. It is then clear that the intention discernible from the statutes is that the petitioners were students of the 1<sup>st</sup> respondent for purposes of award of degrees.

42. Therefore, the legal order gave the petitioners the right to be awarded degrees of the 1<sup>st</sup> respondent and as such were entitled to her degrees. In ***Oindi Zaippeline & 39 others V Karatina University and Another (Supra)*** where the appellant was admitted to Moi University and placed at Central campus, (Karatina town) of Chepkoilel university college then a constituent college of Moi university. Later the campus became Karatina university college, a constituent of Moi University and then Karatina university. The appellant filed a petition contending that he was not a student of Karatina University but the court ruled that he was. On appeal, the Court of Appeal reversed that decision holding that there was no relationship between the appellant and Karatina University and therefore the appellant was a student of Moi University.

43. After analyzing the facts of the case and statutes, the Court of Appeal observed;

**“On a factual basis, we find that the appellant was never a student of Karatina University College or Karatina University. Legal Notice No. 163 of 2010 at paragraph 5 acknowledges this position and created an exception by stipulating that the degrees to be awarded by Karatina University College were to be degrees of Moi University. The status of the appellant as a student of Moi University was preserved by Paragraph 5 of the Legal Notice.”**

I therefore do find that the Petitioners/Applicants had a good case which ought to have succeeded but given that it is now overtaken by events as they were conferred with degree certificates on 24<sup>th</sup> November 2017, it might as well be just and fair to let the sleeping dog lie, but with costs to the Petitioners/Applicants.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 17<sup>th</sup> day of October, 2019.**

In the presence of:-

Mr. Korir for the Petitioner absent

Mr. Kibii holding brief for Mr. Githaiga for 2<sup>nd</sup> Respondent

Mr. Mukabane for the 1<sup>st</sup> Respondent

Ms Abigail - Court Assistant