



REPUBLIC OF KENYA

IN THE REPUBLIC OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPL. NO 291 OF 2015

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW ORDERS OF PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF THE UNIVERSITIES ACT NO. 42 OF 2012

AND

**IN THE MATTER OF THE TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING
ACT NO. 29 OF 2013**

AND

IN THE MATTER OF THE KENYA MEDICAL TRAINING COLLEGE ACT, CAP 261

LAWS OF KENYA

EXPARTE

KENYA UNIVERSITIES AND COLLEGES

CENTRAL PLACEMENT SERVICE.....APPLICANT

-VERSUS-

THE KENYA MEDICAL TRAINING COLLEGE1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

RULING

1. The Exparte applicant (“the Applicant”) filed a voluminous 282 - page application seeking orders that the Applicant be granted permission to apply for the Judicial Review orders of prohibition and mandamus. The Applicant also sought orders that permission so granted do operate as stay of the 1st Respondents decision to admit some odd 5,000 students to the 1st Respondent’s programmes. Conversely, the Applicant also sought orders that the 1st Respondent

be directed to admit some 2,302 students who had been selected by the Applicant to the 1st Respondent's programmes.

2. The background to the application can be colourlessly and briefly stated as follows. The Applicant is a body corporate established under the Universities Act 2012. Inter alia, it has the mandate of, selecting finalist secondary students and placing them in post- secondary school institutions. The Applicant claims exclusive rights to this placement mandate. The 1st Respondent is a State body too. It is also a Corporate entity established under the Kenya Medical Training College Act (Cap 261). It claims also to have exclusive jurisdiction when it comes to the selection and placement of students to the various courts it offers.

3. In July 2015 the Applicant selected students for placement in various universities and colleges including the 1st Respondent. Then shortly thereafter on 1st August 2015 the 1st Respondent also advertised for selection students to its various campuses. The Applicant protested. The 1st Respondent refused to budge. Instead the 1st Respondent proceeded to select the students. The 1st Respondent has since invited the successful students to report and be admitted in its various campuses on 15th September 2015. This prompted the Applicant to move the court. That is how this rather unhappy situation arose.

4. There appears to exist a genuine dispute. No findings both of law and fact ought to be made at this stage of the proceedings. I am only concerned with question as to whether I should grant permission to commence Judicial Review proceedings. There is also the auxillary issue as to whether or not such permission ought to operate as stay of the 1st Respondents decision to admit students to its campuses to the exclusion of those selected and placed by the Applicant.

5. At this stage, I am not obliged to make any conclusive findings but I must be satisfied that the papers filed by the Applicant disclose a prima facie and arguable case that a ground for seeking judicial review exists which merits a full investigation at a full hearing with all parties present: see **Sharma –v- Brown Antoine [2007] 1 WLR 780 at paragraph 14 (4)** see also **Aga Khan Education Services Kenya Ltd –v- Republic, Ex parte Seif [2004] eKLR.**

6. On the issue of permission or leave operating as stay, it is to be noted that the parties must always be allowed to argue their cases without fear of the same being rendered nugatory. Stay may thus be issue not only of the process but the decision challenged itself: see **R v Secretary of State for Education Ex parte Avon [1991] 1QB 558.**

7. Counsel for the Applicant has made clear submissions on this point. Placing reliance on the case of **James Mburu Gitau t/a Jambo Merchant –v- Sub County Public Health Officer Kiambu County [2013] eKLR.** Mr. Makokha submitted that if leave is granted but the decision of the 1st Respondent is not stayed then the substantive motion will be rendered nugatory and made merely academic as the students selected and placed by the Applicant will not have any places. Their places would have been taken by the 1st Respondent's students. Counsel also submitted that the Applicant has an arguable case.

8. My view of the matter is clear. There is certainly an arguable case being advanced by the Applicant. There may be a breach of procedure and unreasonableness on the part of the 1st Respondents in selecting and admitting students to the exclusion of the Applicant. This however must be determined at the hearing of the substantive Motion. At the moment it is only a prima facie view which appears sound. I am also of the considered view that if the intended admission proceeds on the 15th day of this month then any determination by the court might be rendered nugatory. Yet I am also conscious of the fact that staying the admission may cause some anxiety not only to the 1st Respondent but also to the students it has invited for admission.

9. Balancing the facts, counsel of prudence would dictate that the status quo is maintained.

There is no better way to do so than to grant a stay for now. It would mean that the two batches of students selected by the Applicant and the 1st Respondent respectively would have to wait for just a little longer. Both would be prejudice but none would be advantaged over the other.

10. I am further conscious of the fact that it may ultimately be impossible to monetarily compensate either batch. The seriousness of the allegations by the applicant which seeks to ensure that some sanity in the education sector is achieved however dictates and calls for a substantive and urgent hearing on merit.

11. The Applicant deserves the orders now sought in so far as they are not mandatory orders as stay orders are only appropriate to restrain a public body from acting rather than compelling a public body to act at this stage of the proceedings.

12. In summary, I order as follows:

a) Leave is granted to the Applicant to commence Judicial Review proceedings against the Respondents in terms of prayers 2 and 3 of the application dated 8th September 2015.

b) The leave so granted shall operate as a stay of the decision of the 1st Respondent to admit only the students selected by the 1st Respondent especially as per the list of students attached and marked as 'JM-6' to the affidavit of John Muraguri sworn on 8th September 2015 and filed in court on 8th September 2015 or any other student selected and scheduled to be admitted by the 1st Respondent on 15th September 2015.

c) The Applicant shall file and serve a substantive Notice of Motion within the next two days.

d) This matter shall be mentioned on 17th September 2015 for further directions.

13. Orders accordingly.

Dated at Nairobi this 9th day of September 2015 and duly delivered in court on the same day.

J.L. ONGUTO

JUDGE

9TH SEPTEMBER 2015

In the Presence of

Mr. Makokha holding brief for Prof. Ojienda for the Applicant.