



**Wamalwa & another v Cabinet Secretary, Ministry of Education & 12  
others (Constitutional Petition E011 of 2024 & Petition E009 of 2024  
(Consolidated)) [2025] KEELRC 2615 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2615 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
CONSTITUTIONAL PETITION E011 OF 2024  
& PETITION E009 OF 2024 (CONSOLIDATED)**

**DN NDERITU, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**EUGINE ANTIPAH WAMALWA ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL SOLOMON I  
SHIBAIRO ..... 2<sup>ND</sup> RESPONDENT**

**VC MASINDE MULIRO UNIVERSITY ..... 3<sup>RD</sup> RESPONDENT**

**DR PAMELA SITIENEI ..... 4<sup>TH</sup> RESPONDENT**

**MS SUSAN NYABOKE NYASINGA ..... 5<sup>TH</sup> RESPONDENT**

**GEORGE LUTOMIA ..... 6<sup>TH</sup> RESPONDENT**

**KENNEDY OCHIENG OLUNGO ..... 7<sup>TH</sup> RESPONDENT**

**PETER MUHIA WANJIKU ..... 8<sup>TH</sup> RESPONDENT**

**GRACE WANJA KIMOTHO ..... 9<sup>TH</sup> RESPONDENT**

**DOROTHY KIMEU ..... 10<sup>TH</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
PETITION E009 OF 2024**

**BETWEEN**

**JOHNSON SIMIYU LITIEMA ..... PETITIONER**



**AND**

**VC MASINDE MULIRO UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**COUNCIL CHAIRPERSON, MASINDE MULIRO UNIVERSITY ... 2<sup>ND</sup>  
RESPONDENT**

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND  
TECHNOLOGY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. On 19th December 2024 the court directed that the above two petitions be consolidated for purposes of hearing and disposal and that the two proceed under Petition No. E011 of 2024 as the lead file. This order was made after the court studied the two petitions and concluded that they raised the same or similar issues for consideration and determination and sought for the same or similar remedies and reliefs as shall be discussed hereunder.
2. Although the petitioners filed applications alongside the petitions seeking for some interlocutory orders, the said applications were withdrawn in favour of expeditious hearing and disposal of the petitions.
3. The petitioner in Petition No. E011 of 2024, Eugene Antipah Wamalwa, acting in person, commenced the proceedings by way of undated and unsigned petition seeking for the following reliefs –
  1. A declaration that the appointment of the 3<sup>rd</sup> respondent herein in the VC, 4<sup>th</sup> respondent herein Pamela Sitienei (Dr.) as the Masinde Muliro University of Science and Technology, University, Council VC, Chairperson and the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> respondents herein as Members of the said University Council is invalid, null and void ab initio.
  2. An order of certiorary to remove Solomon Igosangwa Shibairo as VC and Secretary to the Council, Pamela Sitienei (Dr.), 3<sup>rd</sup> respondent herein as the Masinde Muliro University of Science and Technology Chairperson, And the 5<sup>th</sup> to the 10<sup>th</sup> respondents herein as Members of the said University Council.
  3. An order of prohibiting Solomon Igosangwa Shibairo, from occupying the position of VC and Secretary to the University Council, Pamela Sitienei, 3<sup>rd</sup> Respondent herein from occupying and performing the functions of the officer of the Masinde Muliro University of Science and Technology, University Council Chairperson and the 5<sup>th</sup> to the 10<sup>th</sup> Respondents as Members to the said Council and barring them from performing the functions of the offices they occupy illegally and irregularly.
  4. An order of certiorary to remove into this court for purpose of being quashed, the purported appointment and subsequent gazettment of the said Pamela Sitienei (Dr.) as the Masinde Muliro University of Science and Technology University Council Chairperson and the 5<sup>th</sup> to 10<sup>th</sup> respondents as its Members vide Gazette Notice Number 119.
  5. An order that costs upon this Petition be borne by all the respondents.



4. The petition is supported with an affidavit signed by the petitioner on 23rd November 2024 but not commissioned. There are several annexures to the affidavit.
5. Upon receipt of this petition the 1st respondent through the Attorney General filed a replying affidavit sworn by Dr. Beatrice Muganda Inyangala, Principal Secretary State Department for Higher Education and Research in the Ministry of Education, sworn on 27th January 2025 with several annexures thereto.
6. The 3rd to 10th respondents through Malalah & Company Advocates filed a joint notice of preliminary objection to the two petitions dated 9th January 2025 alongside a list of documents and a bundle of copies of the listed documents.
7. Further, the 3rd respondent filed a replying affidavit sworn by Prof. Solomon Igosangwa Shibairo on 22nd January 2025 with several annexures thereto. The same deponent swore a supplementary affidavit on 12th May 2025 with one annexure thereto (this affidavit was filed without the leave of the court).
8. The petitioner in petition E009 of 2024, Johnson Simiyu Litema, acting in person, commenced the proceedings by way of a petition dated 27th November 2024 seeking for the following reliefs –
  - i. A declaration that the 1<sup>st</sup> respondent is in office illegally and in contravention of the [Universities Act](#) (No.42 of 2012), Section 39(1), and should not be allowed to transact any business on behalf of the Interested Party.
  - ii. A declaration that the 2<sup>nd</sup> respondent does not hold an earned PhD degree from a recognized university, requisite experience, and not qualified to hold the position of university council chairperson as enshrined in the University Act (No.42 of 2012), Section 7(1)(a), and should not be allowed to transact any business on behalf of the Interested Party.
  - iii. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have contravened Article 10, 27, 35, and 232 of [the Constitution](#) in that the outlined national values and principles of governance set out have not been observed and that the decisions regarding the irregular appointment of the 1<sup>st</sup> and 2<sup>nd</sup> respondents require fair competition, merit, participation, and general approval of the public and people of Kenya.
  - iv. A declaration that the decision to gazette and consequently appoint the 2<sup>nd</sup> respondent as the chairperson of Masinde Muliro University of Science and Technology University Council violates the fundamental rights and freedoms as envisaged under Articles 27, 35, and 47 of the Kenyan Constitution and is therefore null and void.
  - v. An order of certiorari do issue quashing the Gazette Notice No.6762, whose import was to purport to appoint the 2<sup>nd</sup> respondent as chairperson of Masinde Muliro University of Science and Technology Council.
  - vi. Conservatory orders in respect of the Interested Party until further or other orders of the Honourable Court are issued. Alternatively, the order of prohibition or injunction against the respondents restraining them from undertaking or implementing any actions or policies until safeguards and remedies in respect of the subject matter of the declaration above are put in place to the satisfaction of this Honourable court.
  - vii. A declaration that all the decisions and actions undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, vice chancellor, and council chairperson respectively of Masinde Muliro University of Science and Technology, including purported appointments of three substantive Deputy Vice-



Chancellors, three substantive Registrars and one substantive Internal Auditor are null and void.

- viii. An order of mandamus compelling the 1<sup>st</sup> and the 2<sup>nd</sup> respondents as vice chancellor and council chairperson respectively of Masinde Muliro University of Science and Technology to furnish accounts of all salaries and allowances and monies handled by them since their purported appointments to be paid back by the respondents.
  - ix. An order of mandamus declaring vacant the positions of vice chancellor and the council chairperson of Masinde Muliro University of Science and Technology and duly advertise for the recruitment of the same to be done as per the law.
9. This second petition is supported with an affidavit sworn by the petitioner on 27th November 2024 with several annexures thereto.
  10. Upon receipt of this petition the 1st respondent through G. Ombito Advocate filed a notice of preliminary objection dated 18th November 2024 raising the following issues for consideration –
    1. That the petition is substantially defective in law as orders sought primarily prohibition mandamus and certiorari are judicial review orders which cannot be entertained in the petition hereby.
    2. That the orders sought exhibit a thorough mix up in law and procedure making the whole petition totally defective.
    3. That the petition and application is hanging and incapable of enforcement, hence defective as it lacks proper enjoiner.
    4. That the petition offends the establishment law “The Mutunga rule” and is thus void “abinitio”
  11. The 1st respondent further filed a response to the petition and a notice of preliminary objection dated 28th November 2024 and another notice of preliminary objection dated 18th December 2024.
  12. Likewise, the 2nd respondent through Wafula Wawire & Co Advocates filed a notice of preliminary objection dated 2nd December 2024 raising the following issues for determination –
    1. That the applicant’s application is bad in law and defective as it is not supported by a substantive petition.
    2. That the applicant’s application is bad in law and defective for being rejudicata in view of Kakamega High Court Petition No. E016 OF 2024.
    3. That the applicant’s application is bad in law and defective as the applicant lacks locus standi to institute the same.
    4. That the applicant’s application is bad in law and defective for being frivolous, vexatious and an outright abuse of the court process.
  13. On 5th March 2025 the court directed that the two petitions be canvassed by way of written submissions and that the preliminary objections raised by the respondents be subsumed in opposition to the petitions.
  14. The petitioner in the first petition filed written submissions dated 28th March 2025 and the petitioner in the second petition filed submissions dated 13th March 2025. Mr. Tarus for the 1st and 2nd respondents in the first petition filed submissions dated 7th May 2025 while Miss Mburu for the 3rd



to 10th respondents filed submissions dated 22nd April 2025. The petitioner in the second petition filed a rejoinder dated 5th May 2025.

## II. Preliminary Issues

15. As noted in the foregoing part of this judgment the petition in E011 of 2024 is undated and unsigned by the petitioner. Likewise, while the supporting affidavit is purportedly signed by the first petitioner the same is not signed and witnessed by a commissioner for oaths or a person so authorized as provided for in the [Oaths and Statutory Declarations Act](#).
16. When the court noted the above I directed that copies of the petition and the supporting affidavit be obtained from the Case Tracking System (CTS). Again, the copies from the CTS confirmed that the petition was not signed and the supporting affidavit was not commissioned as demanded by the law.
17. It is a requirement of the law that all pleadings filed in court be authenticated by way of a signature of the litigant or a duly and lawfully recognized agent, such as a licenced advocate, guardian, trustee, or administrator of an estate of a deceased person. In addition, every pleading shall be dated. The dating and signing give authenticity and ownership of the pleading and association of the same with the party who purports to file the same and to present the same to court as such. It is only through such signing and dating that a court and the adverse party shall hold the pleader accountable for the contents of such pleadings.
18. Rule 10(2)(f) of [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of [the Constitution](#)) Practice and Procedure Rules (the Mutunga Rules) provides that a petition shall be signed by the petitioner.
19. An affidavit entails written evidence by the deponent as witnessed by a duly authorized commissioner for oaths or a legally recognized agent under the [Oaths and Statutory Declarations Act](#). As noted above, while the affidavit purported to support the petition is signed by the deponent and dated 23rd November 2024 the same is not witnessed and commissioned as per the law.
20. From the foregoing, it is evidently clear that Petition E011 of 2024 as presented and filed is incompetent, untenable, and incomplete. It is fatally defective and improperly before court and the same is hereby dismissed at this preliminary stage.
21. In the circumstances, it is petition E009 of 2024 by Johnson Simiyu Litiema (hereinafter the petitioner) that is left for hearing and determination by the court.

## III. Pleadings & Evidence

22. The petitioner states that on 7th November 2024 he wrote to the 1st respondent seeking to access information about the gazette notice appointing the holder of the office of the 1st respondent into that position and further seeking for a copy of the doctorate (PhD) degree for the holder of the office of the 2nd respondent. It is stated that the two requests in the letter were not responded to and or were ignored leading the petitioner to conclude that the holders of the two offices did not meet the minimum qualifications and were holding the positions illegally.
23. It is on the basis of the foregoing that the petitioner is seeking for the reliefs set out in the introductory part of this judgment.
24. It is important at this juncture to note that the occupants of the two impugned offices are not named and or joined as parties in the petition.



25. In the affidavit in support of the petition the letter dated 7th November 2024 is annexed and it is deposed that in denying the petitioner the information sought in the said letter, the respondents contravened Article 35 of *the Constitution* for denying him access to public information.
26. It is further deposed that the petitioner has perused all gazette notices concerning the interested party since its inauguration on 12th November 2021 and did not come across one appointing substantive holder to the office of the 1st respondent.
27. It is further deposed that the petitioner accessed the profile of the holder of the office of the 2nd respondent online and found that she does not hold an “earned” doctoral degree but holds an honorary doctorate degree from a college in the United States. It is deposed that the foregoing notwithstanding, the occupant of this office was appointed to the same vide gazette notice No. 6762 of 22nd May 2023 for a period of three years. A copy of the said notice is annexed.
28. It is further deposed that the advert for the vacancy in the office of the 2nd respondent stipulated that the ideal candidate shall be a holder of an “earned” PhD degree from a recognized university. A copy of the advert is annexed. It is deposed that these minimum qualifications are provided for in Section 7(1)(a) of the *Universities Act*.
29. It is on the basis of the foregoing that the petitioner is seeking for the orders and reliefs as reproduced in the introductory part of this judgment.
30. As noted elsewhere in this judgment, the two petitions were consolidating for the hearing and disposal and the respondents thus filed responses that answered to both. However, in view of the dismissal of the first petition in the foregoing part of this judgment the court shall only dwell in the parts relevant to the second petition.
31. In an affidavit sworn on 27th January 2025 by Dr Beatrice Muganda Inyangala, the Principal Secretary in the relevant government department, in response to the two petitions, it is deposed that the appointment of the occupants of the two impugned offices, the 1st and the 2nd respondents, was done in accordance with the provisions of the *Universities Act*. The adverts for the vacancies in the two offices, the names of the shortlisted candidates, and the notices of appointment into the positions are annexed.
32. Further, Prof Solomon Igosagwa Shibairo, the holder of the office of the 1st respondent, swore a replying affidavit on 22nd January 2025 to the effect that the petition as filed is defective and incompetent for offending Rules 2, 4, & 10 of *the constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (the Mutunga Rules).
33. He deposed that once the vacancy was advertised he applied since he was qualified for the same. He was subsequently interviewed on 10th August 2021 and appointed to the position on 23rd September 2021. Documents in support of these averments are annexed to the affidavit. It is further deposed that prior to the appointment he had held the position in acting capacity since 20th March 2020. It is further deposed that he was recruited and appointed to the position in a transparent and competitive process contrary to the unsubstantiated allegations and claims made in the petition.
34. It is deposed that the appointment into the office of the 1st respondent is carried out by the Public Service Commission (the Commission) in collaboration with the University Council. It is further deposed that the Commission has not been joined as a party in the petition.
35. On the basis of the foregoing, the court is urged to dismiss the two petitions.



#### IV. Submissions

36. The petitioner in his submissions dated 13th March 2025 stated that he wrote to the 1st respondent on 7th November 2022 exercising his rights under Article 35 of *the Constitution* on two requests. This letter is reproduced elsewhere in this judgment.
37. It is submitted that the petitioner has brought this petition as a layman but in the public interest as envisaged under Article 22 of *the Constitution*. It is submitted that once the 1st respondent failed and or refused to supply the information sought the petitioner concluded that the occupants of the 1st and 2nd respondents were in office illegally.
38. The petitioner identified the following issues for determination by the court –
- i. Whether Articles 10, 27, 35, and 232 of *the constitution* of Kenya, and Sections 7(1) (a), 36(2), and 39(1)(a) of the University Act 2012 on fundamental rights have been contravened.
  - ii. Whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents are in office constitutionally, lawfully, legally, regularly, and merit with requisite experience to run a university.
  - iii. Whether all decisions and actions undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, including appointments of three substantive Deputy Vice-Chancellors, three substantive Registrars, and one substantive Internal Auditor should be nullified.
  - iv. Whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents should pay back salaries, allowances, and all monies handled by them since their purported appointments.
39. It is submitted that by failing to avail and supply the information sought the 1st respondent violated Articles 10, 27, 35, and 232 of *the Constitution*. It is further submitted that in view of the foregoing, the persons occupying the office of the 1st and 2nd respondents are doing so illegally and unlawfully and in contravention of the national values and principles of governance.
40. It is further submitted that the holder of the office of the 2nd respondent does not hold the minimum qualifications for appointment into that office as she only holds a bachelor’s degree in journalism as her highest earned academic achievement.
41. On the second issue it is submitted that the Cabinet Secretary did not appoint the holder of the office of the 1st respondent vide a gazette notice and that without such notice the person occupying that office is therein illegally and unlawfully, contrary to Section 39(1) of the *Universities Act* and Article 47(1) of *the Constitution*. It is submitted that the appointment lacked merit, transparency, and accountability.
42. It is further submitted that since the appointments of persons into the office of the 1st and 2nd respondents were un-procedural, illegal, and unlawful, all decisions, actions, and processes executed by those persons should be revoked and nullified. It is further argued that all salaries, emoluments, and allowances earned and or paid to the said persons should be recovered.
43. It is further submitted that the occupant of the office of the 2nd respondent has failed to avail to the court a duly “earned” doctoral decree from a university recognized in Kenya and as such her continued holding of that office is outrightly illegal and unlawful.
44. The respondents’ counsel filed submissions dated 22nd April 2024(sic!) and listed the following issues for the determination of the court –
1. Jurisdiction of the Employment and Labour Relations Court in Constitutional Petitions.
  2. The Doctrine of the Presumption of Regularity.



3. The qualifications and procedure for appointment of: -
    - a. Chairperson of the University Council
    - b. Members of University Council
    - c. The Vice Chancellor
  4. Whether the appointment of the 3<sup>rd</sup> to 10<sup>th</sup> respondents was in violation of *the constitution* and statutes.
  5. The format of the petition before this court vis a vis principles that govern Constitutional Petitions as espoused in Anarita Karimi Njeru vs. Republic, (1979) KLR 154 and *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as ‘the Mutunga Rules’)
  6. Whether the petitioner is entitled to the orders sought herein.
45. On the first issue it is submitted that the petitioner has not established an employer-employee in dispute and as such this court lacks jurisdiction to hear and determine the issues raised. Counsel cited the Supreme Court in Republic V Karisa Chengo & Another (2017) eKLR and County Assemblies Forum V Attorney General & 3 Others (2022) KESC 66 (KLR) in support of this argument amongst other decisions.
  46. On the second issue it is submitted that this court is through this petition being called upon to review the decision made by the Commission, the University Council, and the Cabinet Secretary in appointing the two individuals to the offices of the 1st and 2nd respondents. It is submitted that under the doctrine of the presumption of regularity a court should presume that all actions taken are regular and procedural and in accordance with the law unless and until a complainant or a challenger avails evidence to the contrary. Counsel cited Chief Land Registrar & 4 Others V Nathan Tirop Koech & 4 Others (2018) eKLR in support of this doctrine.
  47. It is submitted that the affidavit by Dr Beatrice Muganda Inyangala has detailed and provided the documents for the entire process of the recruitment and appointment of the occupants of the office of the 1st and 2nd respondents. The court is warned not to sit on review or appeal over the said recruitment and appointments.
  48. It is further submitted that it was upon the petitioner to provide cogent and clear evidence in support of the alleged irregularities for the court to interfere with the said appointments bearing the necessity of the court to respect and observe the doctrine of separation of powers as stated in Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR. It is submitted that no evidence of irregularity or impropriety in the recruitment and appointment of the said officers has been presented in court and hence the petitioner has failed to prove his case to the required standard.
  49. On the third issue it is submitted that the recruitment and appointment of the persons holding the office of the 1st and 2nd respondent was carried out and executed in accordance with the law and in line with the Public Service Manual (PSM). It is submitted that the documentation and details of the entire recruitment process has been supplied and explained in the two replying affidavits filed in answer to the petition alongside the annexures thereto. It is further submitted that the appointment into the office of the 2nd respondent was published by the Cabinet Secretary vide Gazette Notice No. 6762 of 23rd May 2023.



50. It is submitted that the procedure and process explained in the affidavits applied to all universities and campuses in Kenya and unless the court was to annul the appointments across the country it is illogical and unreasonable for the petitioner to make the unfounded and baseless allegations in the petition. It is submitted that the petitioner has miserably failed to substantiate and prove his case.
51. It is further submitted that the appointment of the chairperson and members of the university council is based on Section 36 of the *Universities Act*. It is submitted that the law only recommends that the person to be appointed the chair shall be a holder of a doctorate degree from a university recognized in Kenya. It is submitted that the law does not provide that such a degree be “earned” as opposed to honorary. It is submitted that from the records availed and supplied Dr Pamela Sitienei is academically and professionally qualified to hold the office of the 2nd respondent.
52. It is further submitted that no gazette notice is required upon the appointment of a person to the office of the 1st respondent and such proposal or allegation by the petition is ignorant and baseless in law.
53. On the format of the petition as filed, it is submitted that the same fails to meet the threshold set in *Anarita Karimi Njeru V Republic (1979) KLR* and the *Mutunga Rules*. It is submitted that the petition lacks specifics and reasonable precision making it fatally defective and untenable. Counsel also cited *Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others (supra)* in emphasizing this point. It is submitted that other than citing numerous provisions in *the Constitution* the petition fails to demonstrate how the said provisions have either been threatened, infringed, breached, and or violated.
54. On the reliefs sought, it is submitted that judicial review orders are not available to the petitioner for these proceedings are not judicial review proceedings. Counsel cited *R V Liverpool Corporation Ex parte Liverpool Taxi Fleet Operators Association (1870) LR 5QB 466* arguing that the petitioner is a mere busybody with intent of meddling with the affairs and the management of the interested party.
55. Citing *Republic V Kenya National Examination Council Ex parte Gathenji & Others* the court is urged not to be concerned with the merit of the outcome of the impugned recruitment and appointments but find that the procedure adopted and the decision made was fair, reasonable, and lawful. It is further argued that if the court was to allow the petition the management and operations of the interested party shall come to a halt. It is submitted that the recruitment and the appointments are being challenged too late in the day. It is submitted that allowing the petition shall bring substantial hardship, disruption, mayhem, and uncertainty in the management and administration of the university.
56. Mr. Tarus for the 1st and 2nd respondent in the dismissed petition filed submissions 7th May 2025 and for that reason the court does not wish to summarize the same as that shall add no value to this judgment and the proceedings. Likewise, the court shall not summarize the submissions dated 28th March 2025 by the petitioner in the dismissed petition as the same adds no value at this stage.
57. The court notes that the 3rd respondent in the dismissed petition filed, without the leave of the court, a supplementary affidavit sworn on 12th May 2025 with one annexure thereto. That affidavit is improperly on record and the same is hereby struck off the record.

## V. Issues For Determination

58. As summarized in the foregoing parts of this judgment, the court has gone through the pleadings and evidence filed by the parties and the submissions made. The reliefs sought by the petitioner as also set out in the introductory part of this judgment. In my considered view the following main issues commend themselves to the court for determination –



- a. Is the petition herein properly before the court both in form and substance?
- b. Is the petitioner deserving of the reliefs sought?
- c. Costs.

## VI. The Form & Substance

59. Rule 10 of the of the Employment and Labour Relations Court (Procedure) Rules provides that a constitutional petition to this court shall be presented in accordance with the Mutunga Rules. Rule 4 of the Mutunga Rules provides that a person acting in the public interest may file a constitutional petition and that is the category wherein the petitioner hinges this petition. Rule 10 of the Mutunga Rules provides for the Form of Petition in the following terms –
- 1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
  - (2) The petition shall disclose the following—
    - (a) the petitioner’s name and address;
    - (b) the facts relied upon;
    - (c) the constitutional provision violated;
    - (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
    - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
    - (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
    - (g) the relief sought by the petitioner.
  - (3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.
  - (4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.
60. The court has studied the petition and the same fairly meets the above provisions although it is noted that the parties are not properly and or adequately described. For example, the occupants of the 1st and 2nd respondents are not named by their names yet it their appointments into those offices that are challenged. It is also important to note that the petitioner does not disclose the capacity in which he has filed and presented the petition to court. It is in the submissions that the petitioner states that he has filed the petition in the public interest. These are serious omissions that in the strict sense diminish the standing of the petition.
61. However, the petitioner is acting in person and in the interest of justice the court opts to ignore the technicalities in favour of the substance in the spirit of Rule 3 of the Mutunga Rules.
62. The respondents raised the issue of lack of jurisdiction for this court to deal with the subject matter. It is submitted that there is no established employer-employee relationship and as such this court should not entertain the same. The delineation of the jurisdiction of this court has been debated and



re-debated in various fora including in decisions by superior courts – the Court of Appeal and the Supreme Court – yet the jurisprudence on this issue does not seem to have crystallized. Counsel for the respondents cited some of those decisions as summarized in the foregoing part of this judgment.

63. The preamble to the *Employment and Labour Relations Court Act* provides that it is “An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes”. Further, Section 2 of the *Employment Act* defines an employee as “a person employed for wages or a salary”. An employer is defined as “any person public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company”.
64. It is a fact that the dispute in issue is not about the employer-employee relationship between the 1st and 2nd respondents and their employer, the University or whoever pays their remuneration. However, the jurisdiction of this court, based on the above provisions and upon good reading of Article 162 of *the Constitution*, the *Employment Act*, the *Employment and Labour Relations Court Act*, and other applicable and relevant laws, confirms that it is not all about employer-employee relationship as implied by counsel for the respondents.
65. In my considered view, any matter that relates to employment and labour relations falls within the jurisdiction of this court whether filed by way of a constitutional petition, judicial review, or an ordinary cause. For avoidance of doubt, matters recruitment and appointment are matters employment and labour relations and no one can take away the jurisdiction of this court to adjudicate on the same.
66. The subject matter of this petition is about the validity of the recruitment and appointment of the two named individuals into the offices that they now occupy of the 1st and 2nd respondents. It is not denied that the two individuals earn a salary, wage, allowances, or whatever emoluments for their services. The University is a public institution running on public funding from taxes. In my view, and in broad interpretation of the jurisdiction of this court as delineated above, this court has jurisdiction over the subject matter. It is on this basis that the court has entertained and heard and disposed the two petitions as per this judgment. This court makes this finding and holding in full knowledge and cognizance of the binding conclusions of the Supreme Court in *Karis Chengo & Another v Republic (supra)* and *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited (2012) eKLR*.
67. Last but not least on this single issue, each case has to be considered on its own peculiar circumstances for the court to determine whether it falls within the ambit of the jurisdiction of this court. While an employer-employee is a main and central theme in determining whether a matter belongs in the jurisdiction of this court, it is equally important to note and appreciate that the court also deals with matters of labour relations and those incidental to the two above.
68. On the substance, and as far as the court understands and appreciates the petition as filed and presented, the petitioner wrote a letter dated 7th November 2024 to the 1st respondent seeking for specific information in exercise of his rights as provided for in Article 35 of *the Constitution*. For ease of reference the said letter stated as follows –

Johnson Simiyu Litiema

Box 50-50107,

Shinyalu.

Email:litimaj@gmail.com



07<sup>th</sup> November 2024

To: The Vice Chancellor And Council Chairperson  
Masinde Muliro University Of Science & Technology  
Box 190 -50100,  
Kakamega.

Email:vc@mmust.ac.ke

Council@mmust.ac.ke

Dear Sir/madam

Re: Reuest For The Gazette Notice Appointing Prof. Solomon Igosangwa Shibairo Substantive Vice Chancellor And A Certified Copy Of Dr. Pamela Sitienei (council Chairperson) Doctorate Decree Certificate Earned From A Recognized University

The above quoted matter refers.

Kindly note that I'm urgently requesting for this vital public information as enshrined in Article 35 of [the constitution](#) of Kenya on access to information to ascertain if Prof. Solomon Igosangwa Shibairo and Dr. Pamela Sitienei are in the office legally before the forth coming 21<sup>st</sup> graduation ceremony in December 2024 is conducted.

This is necessitated by the fact that I have not seen the gazette notice appointing Prof. Solomon Igosangwa Shibairo prior to his inauguration on 12<sup>th</sup> November 2021 as substantive vice chancellor of Masinde Muliro University of Science and Technology. Perusing Dr. Pamela Sitienei's profile on google, I have learned that she holds an honorary doctorate in divinity from My Life Bible College in Maryland, USA.

This is in contravention of the qualifications of a University Council Chairperson, who is supposed to hold a minimum of an earned PhD. Degree from a recognized university, and has at least fifteen years' experience in matters relating to management of university education.

Kindly note that if this public information is not availed to me within 7 days from the day of receipt of this request, I will seek the intervention of the court of law to stop the upcoming 21<sup>st</sup> graduation ceremony in December 2024, until my demands are met at your own peril as to attendance incidentals and to all costs. Bear in mind that it will be a public interest litigation.

Thank you in advance for your consideration of my request.

Yours faithfully,

Johnson Simiyu Litiema

TEL. 0722-XXXXXX

69. It is the petitioner's case that after the above letter failed to elicit a response he concluded that the persons occupying the impugned positions were holding the same irregularly, un-procedurally, illegally, and unlawfully. It is upon that conclusion that the petitioner filed these proceedings seeking for the reliefs set out in the introductory part of this judgment.



70. It is the petitioner’s case that the appointment of Prof Solomon Igosangwa Shibairo and Dr Pamela Sitienei to hold the offices in the 1st and 2nd respondents respectively were shrouded in secrecy and lack of transparency and accountability. It is the petitioner’s case that Dr Pamela Sitienei fails does not meet the minimum qualifications for appointment to the position that she holds for she does not hold an “earned” doctoral degree from a university recognized in Kenya. It is the petitioner’s case that Prof Solomon Igosangwa Shibairo is not legally and lawfully in office as the Cabinet Secretary did not issue a gazette notice upon his appointment.
71. The petitioner annexed Gazette Notice No. 6762 of 22nd May 2023 by which the Cabinet Secretary, among other appointments, appointed Dr Pamela Sitienei to hold the office in the 2nd respondent.
72. The appointment of suitably qualified persons to hold the impugned positions is governed and regulated by Section 36 of the *Universities Act*. In the filed replying affidavits, and further in the written submissions, the respondents have explained in detail and provided documentation detailing the entire process of recruitment and appointment of the two named persons into the positions that they now hold. Presumably, those are the very details and information that the petitioner sought in the letter reproduced above.
73. Section 36 of the *Universities Act* provides as follows –
- (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—
    - (a) Chairperson;
    - (b) the Principal Secretary in the Ministry for the time being responsible for the university education;
    - (c) the Principal Secretary in the Ministry for the time being responsible for Finance;
    - (d) five members appointed by the Cabinet Secretary through an open process in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary; and
    - (e) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.
  - (1A) Notwithstanding subsection (1) the Vice-Chancellor of a public university shall be an ex officio member of the councils of the constituent colleges of that university.
  - (2) The provisions relating to the qualifications of the Chairperson and members of the Commission in section 7 shall apply, with necessary modifications, to the Chairperson and members appointed under subsection (1)(d).
  - (3) In making appointments under this section the appointing authority shall have regard to the objectives of the development of university education, ensuring that there are balanced competencies, gender equity, and the inclusion of stakeholders, persons with disabilities, the marginalized and other minority groups.
  - (4) The provisions of section (8) relating to the vacancy of office of the Chairperson and members of the Commission shall apply with necessary modifications to the Chairperson and members appointed under subsection (1)(a) and (d).



- (5) The members of the Council appointed under section 36(1) shall at their first meeting after appointment determine by lot which two of their number shall vacate office after a period of three and four years respectively to ensure continuity in the activities of the Council.
- (6) The provisions of the First Schedule shall apply with necessary modifications, to the conduct of the business and affairs of the Council.
74. The court has read the relevant provisions regarding the appointment of qualified persons to the offices of the 1st and 2nd respondents. I have no doubts in my mind, and it has been illustrated in the replying affidavits and the written submissions by counsel, that Prof Solomon Igosangwa Shibairo was lawfully and procedurally appointed as the vice chancellor and that he is suitably qualified to hold that position. The evidence availed in the affidavits, as summarized elsewhere in this judgment, and the detailed step by step explanation of the recruitment process and appointment leaves no doubt in the mind of the court that the said individual holds the said position on merit following a competitive and transparent process.
75. There is no law that provides that the Cabinet Secretary ought to have notified or published the said appointment in the Kenya Gazette and the petitioner has provided no precedent or legal provisions in support of that assertion. In any event, the information and the details that the petitioner was seeking have now been availed through the affidavits and annexures filed by the respondents herein.
76. Turning to the appointment of Dr Pamela Sitienei to chair the University Council, it is the petitioner's contention that the appointee falls short of the minimum requirements for she does not hold an "earned" doctoral degree. However, it is admitted by the petitioner that the said appointee holds an honorary doctorate from a university in the United States.
77. It is germane to note that the Public Service Commission (the Commission) and the Council for University Education (CUE) have not been joined as parties in this petition. The relevant law does not distinguish between the so called "earned" doctorate and an honorary one. There is no evidence by the petitioner that the university wherein the appointee was awarded the doctoral degree is not recognized in Kenya. There is also no provision in the law to the effect that the referenced doctoral degree shall be "earned" and not honorary.
78. In view of the foregoing, the court finds no grounds upon which to either nullify and or revoke the appointments of the said two individuals into the impugned positions. There are no reasons warranting the court to interfere with the process as carried out by the Commission, the University Council, and the Cabinet Secretary, culminating in the impugned appointments.
79. The court calls upon the respondents, the interested party, all public institutions, bodies, agencies, et al, to wake up and appreciate the rights, freedoms, and fundamental rights that were ushered in upon promulgation of the 2010 Constitution. Had the respondents supplied the petitioner with the information that he sought in the letter reproduced above, probably the time and the money spent on this litigation would have been saved and or applied to more appropriate and prudent use. The public interest and individual freedoms and fundamental rights are now constitutional imperatives that no one can run away from.
80. Counsel for the respondent raised two important points that may not determine the petition but are worth noting. The impugned appointments were actioned in May 2023 but the petitioner did not commence the search for the relevant information until 7th November 2024 when he wrote the impugned letter. Even if the petition had merits, which is however not the case, the court should have considered the lapse of time and the disruption and hardship that an adverse decision should have heard on the management and operations of the University.



81. The court has this far demonstrated and established that the petition herein has no merits and the same is hereby dismissed.

## **VII. Orders**

82. The court makes the following orders –

- a. Petition No. EO11 of 2024 is hereby dismissed for being incompetent and incurably and fatally defective for the reasons detailed in the judgment.
- b. Petition No. EOO9 of 2024 is also dismissed on merits for the reasons detailed in the judgment.
- c. The two being petitions in the realm of public litigation, there are no orders as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

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**DAVID NDERITU**

**JUDGE**

