



Lempaa v Council of Maasai Mara University & 3 others (Employment and Labour Relations Petition E182 of 2021) [2024] KEELRC 1326 (KLR) (30 May 2024) (Judgment)

Neutral citation: [2024] KEELRC 1326 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E182 OF 2021**

**MN NDUMA, J
MAY 30, 2024**

BETWEEN

VINCENT SUYIANKA LEMPAA PETITIONER

AND

COUNCIL OF MAASAI MARA UNIVERSITY 1ST RESPONDENT

ONYANGO KICHE MAGAK 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

CABINET SECRETARY, MINISTRY OF EDUCATION 4TH RESPONDENT

JUDGMENT

1. The petitioner brought this suit seeking the following reliefs:-
 - a. An order of Judicial Review in the nature of certiorari to bring into this honourable court and quash the appointment of the said Prof. Onyango Kiche Magak as professor and subsequently as acting Vice Chancellor of Masai Mara University.
 - b. A declaration that the position of Vice Chancellor of Maasai Mara University fell vacant upon the expiry of 180 days from the date of appointment of the 2nd respondent.
 - c. An order of mandamus compelling the 1st respondent to recommend for appointment of Vice Chancellor of the Maasai Mara University through competitive process as provided for under section 35(1)(a)(v) of the *Universities Act*, 2012.
 - d. A declaration of violation of consumer rights of Maasai Mara University students and staff for having an unqualified person serve as the head of the institution.
 - e. Compensation for violation of the petitioner's rights as guaranteed under *the constitution*.



- f. Costs and interests thereof of this petition
- g. Such further, other and consequential orders as this honourable court may deem fit to make.

Facts of the petition.

2. That on or about September 2019, the substantive holder of office of Vice Chancellor of Maasai Mara University was sent on compulsory leave following an expose alleging massive embezzlement of funds.
3. The 2nd respondent who was the University's Deputy Vice Chancellor in charge of Academic Affairs was appointed to the position of Vice Chancellor in an acting capacity a position which he holds to date effective 10th September 2019. On 6/3/2020, the 1st respondent extended the appointment of 2nd respondent as acting Vice-Chancellor for a period of six (6) months with effect from 6/3/2020.
4. On 12/5/2020 the position was again extended for a period of six months with effect from 12/11/2020.
5. That the matter was raised in parliament on 24/6/202 and a response was given on the floor of the house.
6. That the 2nd respondent was competitively hired as a professor following an advertisement in March 2008. The petitioner states that he has received information that the 2nd respondent holds invalid qualification having attained a doctorate degree from Washington International University which university is neither accredited by the American Education Authority nor by the Kenyan Commission for University Education.
7. That the 1st respondent failed to exercise due diligence in hiring the 2nd respondent as a professor and in the impugned position. That there were 3 full professors considered before the 2nd respondent was deemed most qualified.
8. That section 26(3) of Maasai Mara University Charter 2013, provides that an appointee can only perform the functions of the Vice Chancellor for a maximum period of 180 calendar days. That the 1st respondent was confirmed to extend the impugned appointment beyond the said 180 days.
9. That by a petition dated 18/10/2021, the Kenya University Staff Union submitted a petition to the National Assembly seeking inter alia, the immediate recall of the 2nd respondent as the acting Vice Chancellor of Maasai Mara University and that a substantive holder of the position be appointed on a fast track basis.
10. That the petitioner's rights have been denied, violated, infringed or are threatened by the unqualified appointment of the 2nd respondent and the unlawful extension of his appointment violating Article 41 of *the Constitution* and thus has a negative impact on the academic and administrative leadership of the university.
11. The petition is buttressed by the supporting affidavit and documentation attached thereto. That the petition be granted as prayed.

Reply.

12. The respondent filed a replying affidavit on 6/6/2023, sworn to by Simon Nabukwesi, the Principal Secretary, State Department of University Education and Research in the Ministry of Education who deposes that the 2nd respondent, Prof. Kiche Magak, then an Associate Professor of Maseno University was employed as a professor of Maasai Mara University through a meeting of council held on 13th October 2019 after competitive recruitment.



13. That following the Mara Heist expose, the substantive Vice Chancellor took leave of absence upon which the university council met on 9/9/2019 to appoint an acting Vice-Chancellor. That both the Deputy Vice Chancellor Administration Finance and Planning (DVC-AF&P) and Deputy Vice Chancellor Academics and Student Affairs (DVC-ASA) were invited for an interview per section 26(1) of the Maasai Mara University Charter.
14. The council found both to be unsuitable for appointment and the council considered the second option of appointing a principal as guided by section 26(2) of the Maasai Mara University Charter if the DVCs are not suitable to hold office. This was not feasible as the university does not have any constituent college.
15. The council then relied on section 26(3) of the Charter which empowers the council to appoint a full professor to perform the functions of the Vice Chancellor during their incapacity.
16. The council considered the full professors in the university and found the 2nd respondent as the most suitable person to be appointed to the position of Ag. Vice Chancellor.
17. On 18/1/2022, the council terminated the acting appointment of Prof. Kiche Magak, the 2nd respondent as the acting Vice Chancellor of the university and appointed Prof. Joseph S. Chacha as the Acting Vice Chancellor of the University.
18. That the main order of certiorari sought by the petitioner to quash the appointment of Prof. Onyango Kiche Magak has been spent and/or overtaken by events.
19. That the petitioner lacks locus standi to commence the proceedings as has been clearly set out by the Court of Appeal in Civil Appeal No. 119 of 2017, Public Service Commission and 2 others versus Eunice Cheruiyot and others and so the court lacks jurisdiction to hear and determine the matter.
20. That there is no valid cause of action as the subject matter of this petition does not exist. That the petition lack merit, is an abuse of the court process and it be dismissed with costs.
21. The 2nd respondent also filed an affidavit in reply to the petition in which he states that the petition has already been rendered mortant fait accompli as the same has been overtaken by events since the 1st respondent is no longer acting as the Vice-Chancellor of Maasai Mara University. That prayer (a) (b) and (c) in the petition have all been overtaken by events.
22. That in any event the petition does not disclose any cause of action nor any violation or threat to the rights or fundamental rights of the petitioner being the threshold established in the case of Mumo Matemu versus Trusted Society of Human Rights Alliance and 5 others [2013] eKLR and the case of Anarita Karimi. That the petition be dismissed for lack of merit.

Determination

23. The parties filed written submissions which the court has carefully considered together with the pleadings, depositions and supporting documents filed by the petitioner and those filed by the respondents.
24. The issues for determination are:-
 - i. Whether the petition is spent and therefore not justiciable
 - ii. Whether the petitioner is entitled to the reliefs sought.



25. The court has found that there is uncontroverted evidence that the 2nd respondent the key subject of the dispute raised in the petition by the petitioner has been removed from the impugned position of Acting Vice Chancellor of Maasai Mara University on 18/1/2022 and replaced by Prof. Joseph S. Chacha who is now the Acting Vice Chancellor of Maasai Mara University.
26. The petitioner did not appraise the court of this development nor did the petitioner make any application to amend the petition to join Prof. Joseph S. Chacha to this suit.
27. Furthermore, the petition does not disclose with specificity the Article(s) of *the constitution* that have been violated by the respondents and the manner in which the said provision(S) of *the constitution* have been violated.
28. Clearly this petition falls foul to the threshold set out in the case of Mumo Matemu versus Trusted Society of Human Rights Alliance and 5 others.
29. The petition does not disclose any cause of action against the respondents well elaborated in the body of the petition with clarity and specificity suitable for the court to adjudicate the matter judiciary.
30. Almost the entire body of the petition deals with facts concerning the suitability of the 2nd respondent to hold the position of Acting Vice Chancellor of Maasai Mara University.
31. ELRC, being a court of equity does not act in vain and ought not to be engaged in academic exercise.
32. The petitioner filed written submissions dated 5/12/2023 in which it attempts to impugn the position of Prof. Joseph S. Chacha, who is not a party to this suit, the petitioner having not applied to amend and/or withdraw the petition. These submissions by the petitioner are untenable and an abuse of the court process.
33. Without substantive amendment to the petition, the court is not in a position to grant any of the prayers sought by the petitioner in this matter.
34. Accordingly, the petition is dismissed for lack of merit and an abuse of the court process.
35. This being a public litigation, each party to bear their own costs of the suit.

DATED AT NAIROBI THIS 30TH DAY OF MAY, 2024.

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Kariuki for petitioner

Ms. Mbilo for 1st, 3rd and 4th respondent

Mr. Kahiga for 2nd respondent

Mr. Kemboi, Court Assistant

