

**IN THE COURT OF  
APPEAL AT KISUMU**

**(CORAM: ASIKE-MAKHANDIA, OMONDI & MUCHELULE,**

**JJ.A.) CIVIL APPEAL NO. E087 OF 2021**

**BETWEEN**

**PROFESSOR CHARLES CHUNGE.....APPELLANT**

**AND**

**MASINDE MULIRO UNIVERSITY**

**OF  
SCIENCE & TECHNOLOGY.....RESPONDENT**

*(An appeal against the judgment and decree of the Employment and  
Labour Relations Court at Kisumu (S. Radido, J.) dated 10<sup>th</sup> March 2021  
in*

***ELRC Case No. 295 of 2017)***

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**JUDGMENT OF THE COURT**

1. Following an advertisement No. AD/19/01/15 by the Masinde Muliro University of Science and Technology (the respondent) asking for applications for the position of Executive Dean, School of Medicine, the appellant, Doctor Charles Chunge, applied and was interviewed on 25<sup>th</sup> June 2015 by the Appointments and Promotions Committee. This was a five-year renewable contract position. The successful candidate would be appointed a professor at the same time, if the candidate qualified to be appointed as such, in his teaching specialisation.

2. The appellant was successful in his interview and received a letter of offer dated 27<sup>th</sup> July 2015 addressing him as

“Professor”. The letter of offer was for appointment as Executive Dean, School of Medicine. He took up the appointment.

3. By letter dated 10<sup>th</sup> March 2017, the respondent wrote to the appellant this time addressing him as “Dr. Change” saying that he had been interviewed for the position of Executive Dean and not for Professor in the School of Medicine, and that the reference to him as “Professor” in the letter of offer of appointment was an error which was regretted. The letter went on to state that: -

***“...if you wish to be considered for the position of Associate Professor in the School of Medicine, kindly tender your candidature for consideration.”***

4. There was a flurry of correspondences between the parties, the appellant’s position being that the position of Executive Dean came with the position of Professor. He was invited to attend the respondent’s Council on 17<sup>th</sup> July 2017 at 2.30pm to shed light on the issues surrounding his appointment at the University.
5. The dispute eventually ended up in the Employment and Labour Relations Court (ELRC) at Kisumu. The appellant’s grievance was that the respondent had unlawfully stripped him of his title of “Professor”, an act that was deemed to be irregular and ultra vires; that he had appealed to the Vice Chancellor for corrective action but had instead been referred to the Council’s Human Resource Committee over

the matter. In the claim, he sought the following orders:-

**“a) A declaration that the respondent’s actions are unlawful, illegal, wrongful, a violation of his contract and terms of employment and an imminent act of and or tantamount to constructive dismissal and discriminatory in nature.**

**b)An order of permanent injunction against the respondent, its council committee on Human Resource, Vice Chancellor, Deputy Vice Chancellors or any such other deputized officer or representative restraining them from holding any meeting and or session as notified or scheduled or at any other time over the claimant albeit to allegedly shed more light on circumstances of his employment and or continued violation of his employment terms in addressing, referencing, recognizing and or titling him by any other irregular title, address, reference and or status other than “Professor”.**

**c)An order of instatement, specific performance and mandatory injunction as per the terms of the advertisement and letter of offer of employment in respect hereof.**

**e) General damages for employment discrimination and breach of contract of employment.**

**e) costs of the claim and interest on (c) and (d) above.”**

6. The respondent opposed the claim. According to it, the appellant’s contract had not been altered and he had not been demoted. It maintained that the reference to him as “Professor” instead of “Doctor” in the letter of appointment was an error; that the appellant had not been interviewed for the position of “Professor” and neither did he have the qualifications for “Professor”; and, lastly, he had been

advised to submit his

candidature for consideration for the position of “Professor” but had not.

7. The respondent’s further case was that the appellant never qualified to be appointed as a professor under sections 3:5 and 3:6 of the Commission for University Education’s Harmonised Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya, 27<sup>th</sup> October 2014; that the Ad Hoc Committee set up to review the appellant’s qualifications found that he was not eligible for the position of professor or associate professor.
8. In the judgment delivered on 10<sup>th</sup> March 2021, the ELC (S. Radido, J.) dismissed the appellant’s claim, finding that there was no unfair, unlawful, arbitrary or unilateral alteration to the contract. The learned Judge observed that the advertisement had explicitly stated that the successful candidate for the position of Executive Dean would be appointed as professor at the same time if the candidate qualified for such an appointment. It was noted that the appellant had not made any attempt to show that he had the qualifications that would entitle him to be appointed as professor at the time he was being interviewed and appointed as Executive Dean. The Court rejected his contention that the reference to him as “Professor” in the letter of appointment granted him the position. This is what the learned Judge stated:

***“27. As already stated, the University advertised for the position of Executive Dean, School of Medicine. The***

***advertisement expressly***

**provided that the successful candidate for the position of Executive Dean would be appointed a professor at the same if the candidate qualified to be appointed as such professor.**

- 28. The question then emerges whether the Claimant satisfied the University at the material time at the first instance that he qualified for appointment as a professor and whether he has proved in this Court to the required standard that he had the qualifications for the position of a professor.**
- 29. Regrettably, the Claimant did not attempt to lay any evidential foundation before the Court as to the qualifications one required to be appointed as a professor in 2015.**
- 30. Nevertheless, the Court has looked at the minutes of the Ad Hoc Committee's proceedings, which was to review the Claimant's position. The minutes give an inkling of some of the qualifications for a professorship.**
- 31. Some of the qualifications that one aspiring for a professorship need to demonstrate were that one has been involved in research and innovations, has attracted research funds and has supervised at least 4 postgraduate students to completion with at least 1 doctoral student.**
- 32. The criteria used by the University to evaluate the Claimant's qualifications for a professorship were a mirror reflection of the Commission for University Education's Harmonised Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya, 27 October 2014.**
- 33. It was incumbent upon the Claimant to satisfy the University during his**

***interview in 2015 that he possessed the qualifications to be appointed as professor. It appears he did***

**not. When he later raised the issue, an Ad Hoc Committee was formed, and it established that he did not qualify.**

**34. Since the Claimant did not have the qualifications for the position of professor in 2015, the Court is unable to buy his argument that the reference to him being a professor in the offer letter was sufficient to bestow the position upon him.**

**35. The position of a professor being an appointive and academic office with minimum standards, the Court agrees with the University that the use of the term professor in the offer letter was in error, and it was rightly corrected.**

**36. The Court finds that there was no unfair, unlawful, arbitrary and or unilateral alteration to the Claimant's contract.**  
**Conclusion and Orders**

**37. From the foregoing, the Court finds no merit in the Cause. It is dismissed with costs to the Respondent."**

9. This is the decision that aggrieved the appellant whose memorandum of appeal dated 3<sup>rd</sup> May 2021 raised the following grounds:-

**"1) The learned judge erred in law and fact by dismissing the appellant's claim.**

**2) The learned judge erred in law and fact by rewriting the contract between the appellant and the respondent herein.**

**3) The learned judge was biased against the appellant as he completely failed to consider the evidence and submissions of the appellant.**

**4) The judge erred in law and fact by failing to consider the terms of employment between the appellant and the respondent and instead relied on the**

***minutes of an ad hoc***

***committee which was not the appellant's employer."***

10. During the hearing of his appeal, learned counsel Mrs. Chunge held brief for learned counsel Mr. Otsyula for the appellant, while learned counsel Mr. Okeche represented the respondent. Each side had filed written submissions which they elected not to highlight.
11. In the submissions on behalf of the appellant, it was urged that the appellant had been in the letter of appointment "formerly and effectively" conferred the title of professor, on top of being appointed as Executive Dean, and that the letter of 10<sup>th</sup> March 2017 had unilaterally stripped him of the position of professor and unlawfully altered his terms of employment therefor. It was submitted that, in making a finding that the appellant did not have the qualifications of a professor, the court was rewriting the contract between him and the respondent which it was not entitled to do. Further that, the court dealt with an extraneous matter when it sought to establish whether he was employed as a professor or not.
12. The appellant blamed the trial court for being biased when it failed to consider his terms of employment. It was contended that the respondent's change of position was malicious and discriminatory and was tantamount to terminating the existing contract and therefore amounted to unfair and unjustified termination. For the discrimination and breach of contract, it was urged, the appellant was entitled to

compensation. The

decisions in **South Africa Airways (PYT) Ltd -vs- G.J.J.V.V. & Another [2014] 35 I.L.J. 2774 (L.A.C)** and **Koki Muia -vs- Samsung Electronics East Africa Limited [2015] eKLR** were referred to.

13. On behalf of the respondent, it was submitted that the learned Judge appreciated the facts of the case, analysed them and correctly found against the appellant. It was submitted that the appellant was neither interviewed for, nor appointed as, a professor; that the letter of appointment was a salutation error, which, when discovered, he was written in rectification. It was further submitted that the appellant did not, in any case, have the qualifications to be appointed as professor, and yet the advertisement to which he had responded stated that:-

***“The Executive Dean shall thus be simultaneously appointed to the position of professor in the teaching department of their respective field of specialization within the University and should then I (sic!) addition be qualified as such.”***

14. Learned counsel relied on the decision by this Court in **Coca Cola East and Central African Limited -vs- Maria Kagai Ligaga [2015] eKLR** to argue that, the factual circumstances of this case did not show that the conduct of the respondent did constitute a repudiatory breach of the contract of employment between it and the appellant.
15. We have considered the judgment, the appeal and rival submissions. We are called upon to determine whether the

learned Judge erred in law and fact in dismissing the claim  
by

the appellant, and, more specifically, whether the letter of 10<sup>th</sup> March 2017 amounted to the respondent rewriting the contract of employment signed between it and the appellant.

16. Before we undertake the exercise, we remind ourselves that, as a first appellate Court, our duty is to reconsider the evidence tendered before the trial court, evaluate it ourselves, and draw our own conclusions, while bearing in mind that we neither saw nor heard the witnesses (see **Kenya Ports Authority -vs- Kuston Kenya Limited [2009] 2EA 212**). We further consider that; we should only interfere with the findings of fact by the trial court where the decision is based on no evidence or on misapprehension of the evidence or where the trial court has demonstratively shown to have acted on wrong principles when reaching the finding (see **Mwanasokoni -vs- Kenya Bus Limited [1985] KLR 931**).
17. We have looked at the letter of offer of appointment dated 27<sup>th</sup> July 2015. Other than the salutation of –  
***“Dear Prof Chungu”***  
the offer was for  
***“Appointment as Executive Dean School of Medicine.”*** There was no reference in the body of the letter of appellant being appointed as professor.
18. The advertisement to which the appellant had responded to had indicated that the position in question was that of Executive Dean of the School of Medicine. The appellant was

going to be

simultaneously appointed as professor in the School of Medicine if he had the qualifications that made him eligible for the position of professor. We consider that the appointment of professor of a university is such an important appointment that cannot be by implication, or based on a salutation. Looking at Criteria and Guidelines that were in place, appointing a professor with the necessary qualifications was crucial for maintaining academic standards, ensuring quality education and advancing research. Some of the qualifications, as was noted by the learned Judge, were demonstrated involvement in research and innovations, having attracted research funds and supervising at least 4 postgraduate students to completion with at least one (1) doctoral student.

19. At the time when the appellant was being interviewed for Executive Dean, he knew, or ought to have known, what qualifications were required if he wanted to be appointed as a professor at the same time. He did not tell the trial court that he had the qualifications at the time of the interview for Executive Dean. When this issue came up, he was asked by the respondent to submit his qualifications and he would be appointed as professor. An Ad Hoc Committee was set up for him. He was found not to have the qualifications. Instead, he began questioning whether the Ad Hoc Committee was properly constituted. A court of law cannot be the entity that would be used to confer the position of professor to an academic who would otherwise not be qualified according to the Criteria and Guidelines that have been set.

20. We agree with the learned Judge that the reference to the appointment in the letter of appointment as “Professor” was an error that did not confer on him the position. So that, when the letter dated 10<sup>th</sup> March 2017 corrected the error there was no stripping of the position, or the variation of the terms of employment between the parties.

21. Consequently, we find no reason to depart from the findings by the trial court. The appeal lacks merits, and is dismissed with costs.

**Dated and delivered at Kisumu this 24<sup>th</sup> day of October 2025**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

REPUBLIC OF KENYA  
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**JUDGE OF APPEAL**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

**I certify that this is  
a true copy of the original.**

**SIGNED**

**DEPUTY**

**REGISTRAR**