

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
PETITION NO. E174 OF 2025

PROF. FRANCIS JACKIM MULAA.....PETITIONER

VERSUS

UNIVERSITY OF NAIROBI COUNCIL.....1ST RESPONDENT

PROF. MARGARET JESANG HUTCHINSON.....2ND RESPONDENT

CABINET SECRETARY FOR EDUCATION.....3RD RESPONDENT

PRINCIPAL SECRETARY, STATE DEPARTEMENT FOR EDUCATION AND RESEARCH.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

AND

UNIVERSITY OF NAIROBI.....1ST INTERESTED PARTY

PUBLIC SERVICE COMMISSION.....2ND INTERESTED PARTY

JUDGMENT

Facts

The facts the basis of this petition are as follows:-

That the Petitioner was a bona fide participant in a lawful, competitive and transparent process for the appointment of a substantive Vice Chancellor and Deputy Vice Chancellor (Academic Affairs) for the University of Nairobi, initiated by the 2nd Interested Party, the Public Service Commission (PSC) in January 2022.

That the Petitioner excelled in this process and by a letter from the PSC dated 26th March 2025, he was ranked first in order of merit for the position of Deputy Vice Chancellor (Academic Affairs) and third for the position of Vice-Chancellor.

The Petitioner states that this lawful process was abruptly and unlawfully halted by the 3rd and 4th Respondents, who arbitrarily barred the then University Council from convening to finalize the appointment without providing any lawful or justifiable reason.

That notwithstanding this executive interference, the then Chairman of the University Council, exercising the Council's lawful mandate, on 5th May 2023, formally appointed the Petitioner to the substantive position of Deputy Vice-Chancellor (Academic Affairs). Furthermore, as the acting tenure of the 2nd Respondent had lawfully lapsed, the Petitioner was duly appointed as the Acting Vice Chancellor.

The Petitioner reiterates that in a shocking and blatant overreach of authority, the 4th Respondent, vide a letter dated 9th May 2025, purported to revoke the Petitioner's lawful appointments. This illegal act was accompanied by the deployment of police officers who forcefully and unlawfully removed the Petitioner from his office.

That this was followed by a sustained campaign of intimidation and victimization culminating in the Petitioner being charged with a solitary and spurious count of "abuse of office" in Milimani Anti-Corruption Court Case No. MCAC/E046 of 2025, relating to an alleged incident from the 2013/2014 financial year – over a decade prior.

That critically, the Learned Magistrate presiding over the criminal case, upon taking the Petitioner's plea did not see it fit to issue any orders for his suspension from office, a clear judicial indicator of the charges perceived weakness and lack of merit.

That most crucially and as foreshadowed in the petition, the Respondents have now executed their threat. That the Petitioner has been suspended from his current position as Acting Deputy Vice Chancellor (Research, Innovation and Enterprise). The suspension was effected without any lawful disciplinary process: no warning was issued, no show cause letter was served and that the Petitioner was denied the fundamental right to be heard, in blatant violation of section 63 of the Universities Act and Article 47 of the Constitution.

That this suspension is a punitive measure, directly guided by the Directorate of Criminal Investigations (DCI), thereby perverting the criminal justice system in a parallel disciplinary mechanism and bypassing established university procedures and the exclusive mandate of the DPP.

Violation

The Petitioner states that his basic human rights under Articles 27; 41(1) and 47(1) read with section 4(3) of Fair Administrative Action Act, 2015 have been violated in that the conduct by the Respondents described in this petition violated his right to equality and protection before the law; right not to be subjected to unfair labour practices and the right to be accorded administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

The Petitioner emphasized the enormity of the aforesaid abuse demonstrated by trumped up charges brought against him to make sure he was denied ability and opportunity to serve in the positions he had been lawfully appointed to.

That the trumped-up charges led to his suspension on half pay without being accorded any hearing in violation of Article 50(1) and was denied the right to be presumed innocent until found guilty guaranteed under Article 50(2)(a) of the Constitution of Kenya 2010. That the alleged offence dated back in the year 20/3/2014 financial year and the inordinate delay in prosecution itself rates a presumption of its weakness and abuse of process.

The trial magistrate upon taking the plea did not deem it necessary to bar the Petitioner from holding public office or to suspend him. The University Council, in furtherance of its malicious intent, suspended the Petitioner from his position which action is not a bona fide administrative decision but was one surreptitiously dictated by the Directorate of Criminal Investigations (DCI). That the suspension was irrational and discriminatory. The Petitioner held the position of Acting DVC (RIE) whereas the criminal charges relate to an alleged historical abuse of office in a different capacity at another university. That there was no logical or rational connection between the charge and the Petitioner's fitness to hold his current office. That the suspension was both arbitrary and capricious.

That the 2nd Respondent has held the position of Acting Vice-Chancellor since August 2024, a period far exceeding the statutory limit. Section 34(3) of the Public Service Commission Act provides that an employee may act in a vacant post for a period of not less than one month and not exceeding six months. That the continued holding of the position by Prof. Margaret Jesang Hutchinson, the 2nd Respondent is unlawful and an order of prohibition to continue holding that office illegally be granted.

The Petitioner cites various cases to buttress his case including the case of **Kenya Ports Authority v. Munya and 4 others [2023] KESC 112 (KLR)** in which the Supreme Court defined unfair labour practice as any

“any conduct, prohibited by law, governing the relations among employers, employees and labour organizations. Among the incidences of unfair labour practice identified by the Supreme Court include: interference with protected employment rights, discrimination at the workplace, refusal to engage in collective bargaining; illegal strikes and featherbedding.”

The Petitioner sets out the issues for determination as follows:

- a. Whether the revocation of the Petitioner’s appointment as Deputy Vice-Chancellor (Academic Affairs) and Acting Vice-Chancellor vide the letter dated 9th May 2026 was unlawful, unreasonable, irrational and in violation of the Petitioner’s legitimate expectation.
- b. Whether the actions of the Respondents, including the recent suspension, constitute a gross violation of the Petitioner’s right to fair administrative action as guaranteed under Article 47 of the Constitution and the Fair Administrative Action Act.

- c. Whether the actual suspension of the Petitioner based on a pending, spurious and unrelated criminal charge violates his right to fair labour practices, the presumption of innocence and amounts to an abuse of process.
- d. Whether the continued holding of the office of Vice Chancellor by the 2nd Respondent in an acting capacity is unlawful, given the statutory time limit and the fact that her underlying substantive position was created through an “unconstitutional” and “null” restructuring process as declared by the PSC.
- e. Whether the Petitioner is entitled to the reliefs sought, including conservatory orders to prevent the Respondents from nullifying the PSC process and final orders of certiorari, prohibition and mandamus

The Petitioner prays that the petition be allowed and he be granted the following reliefs: -

- i. A declaration that the actions and threatened actions of Respondents to suspend the Petitioner from his position as Deputy Vice-Chancellor of the University of Nairobi based on the pending criminal charge in Milimani Anti-Corruption Court Case No. MCAC/E046 of 2025 violate Articles 41 and 47 of the Constitution of Kenya, 2010.
- ii. A declaration that the revocation of the Petitioner’s lawful appointment via the letter dated 9th May 2025 was unlawful, null and void.
- iii. A declaration that the continued holding of the office of the Vice-Chancellor of the University of Nairobi by the 2nd Respondent in an acting capacity, beyond the period permitted in law,

contravenes section 34 of the Public Service Commission Act and is therefore unlawful, unconstitutional, null and void.

- iv. An order of certiorari to bring into this Honourable Court and quash the said decision contained in the letter dated 9th May 2025 revoking the Petitioner's appointment.
- v. An order of prohibition prohibiting the Respondents, their agents or servants from suspending, terminating, or in any way interfering with the Petitioner's tenure, duties and responsibilities based on the aforementioned criminal charge or any allegations related thereto.
- vi. An order of mandamus compelling the Respondents to recognize, uphold and give full effect to the Petitioner's lawful appointment as Deputy Vice-Chancellor (Academic Affairs) of the University of Nairobi.
- vii. An order of prohibition, prohibiting the 2nd Respondent from continuing to hold herself out or perform the functions of the Vice-Chancellor of the University of Nairobi in an acting capacity.
- viii. An order of mandamus compelling the 1st and 2nd Respondents and/or the 2nd Interested Party to immediately regularize the leadership of the University of Nairobi by either recognizing the Petitioner's lawful appointment or initiating a fresh, lawful process for the appointment of a substantive Vice-Chancellor in strict compliance with the law.

Replying Affidavits

The **1st Respondent and 1st Interested party** vide the replying affidavit of Prof. Chacha Nyaigotti-Chacha, the Chairperson of the University Council, deposes that by letter dated 9th September 2025, Ref No. DCI/OSU/SEC, the Vice Chancellor of the University of Nairobi was notified by the DCI that the Petitioner was arraigned before the Milimani Anti-Corruption Court and charged with the abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act.

It is deposed that once a public officer has been charged with corruption or economic crime, a statutory obligation is bestowed upon an employer pursuant to section 62 (1) of the Anti-Corruption and Economic Crimes Act to suspend such an officer from office, and the University had an obligation under Article 18(13) of the University of Nairobi Charter to ensure that the University complies with all the relevant laws, regulations, governance practices, accounting and auditing standards.

The Council resolved to suspend the Petitioner with effect from 5th August 2025 being the date of the charge. That as the suspension has already taken effect, the prayer to stop suspension is already overtaken by the events. That as long as the Petitioner is an employee of the University, he is not immune from the law including disciplinary proceedings conducted by the council which in any event are yet to be taken and the Petitioner is merely speculative that disciplinary action will be taken against him.

That the former Chairperson had issued letters dated 5th May 2025 to the Petitioner purporting to appoint him as the Deputy Vice-Chancellor

(Academic Affairs) and Acting Vice-Chancellor respectively which appointments were declared unlawful and irregular by the Principal Secretary, State Department of Higher Education and Research on grounds, *inter alia*, that there were no consultations undertaken as required under section 35(1) (a) (v) of the Universities Act.

It is deposed that prior to the conclusion of the recruitment process for the substantive vice chancellor of the University of Nairobi, the office of the Vice-Chancellor cannot remain vacant on the grounds that the academic and administrative head of a university is the Vice-Chancellor. That Article 23(1) provides that in the event of the inability of the substantive Vice-Chancellor to discharge the duties of the office of the Vice-Chancellor, the Council is to appoint one of the deputy Vice-Chancellors to carry out the functions of the Vice-Chancellor during the period of incapacity.

That the only substantive Deputy Vice-Chancellor at the University is Prof Margarete Jesang Hutchinson and is the qualified officer to hold the position of the acting Vice-Chancellor prior to the recruitment process of the substantive Vice-Chancellor. The Council appointed Prof Margarete Jesang Hutchinson on 2nd August 2024 for an initial period of 3 months or until the position was substantively filled whichever was earlier. As the position is yet to be filled, the appointment was renewed for 6 months effective 3rd May 2025. That the Petitioner was also appointed the acting Deputy Vice-Chancellor at the time of appointment of prof Margarete Hutchinson but has only chosen to fault the continued holding of office of the Vice-Chancellor by prof Margarete Jesang Hutchinson.

The **2nd Respondent** deposed that she was appointed acting Vice-Chancellor for an initial period of 3 months on 2nd August 2024 and as the position has not been filled substantively, it was renewed for a further 6 months effective 3rd May 2025. The renewal was ratified by the Council by its Special meeting of Council held on 6th August 2025. That upon her appointment as the Acting Vice-Chancellor the Petitioner was appointed Acting Deputy Vice-Chancellor, Research, Innovation and Enterprise with effect from the same date as her appointment but at no time has, he declined his appointment. That the allegations that she is the prime mover regarding the criminal proceedings are without evidence, factually incorrect and devoid of merit.

The **3rd and 4th Respondents** through the affidavit of **Dr. Beatrice Muganda Inyangala**, the Principal Secretary in the State Department for Higher Education, deposes that the Petitioner was appointed by the Chairperson of the Council as the substantive Deputy Vice-Chancellor and Acting Vice-Chancellor without consultation having been carried out with the Cabinet Secretary as required by the Universities Act and the University statutes. That there was no resolution by the University Council to appoint the Petitioner as the Deputy Vice-Chancellor and the allegation that the Cabinet Secretary barred the Council from convening to finalize the appointment is false. That the Cabinet Secretary acted within his course of duty and did not in any way interfere with the activities of the university.

The **2nd Interested party** vide the affidavit of Paul Famba, the CEO of the Public Service Commission states that the Petitioner has not adduced evidence to demonstrate that the Communication appointing him as DVC Academic Affairs was ratified by the Council and that a

contract to that effect had been executed. That pursuant to the provisions of section 62 ACECA the suspension of the Petitioner on account of anti-corruption proceedings is lawful considering the Petitioner is a public officer.

DETERMINATION

The parties filed written submissions which the court has carefully considered together with the depositions and supporting documents filed by all the parties and the issues for determination are: -

- (a) Whether the suspension of the Petitioner from the position of Deputy Vice-Chancellor of the University of Nairobi based on the pending criminal charge in Milimani Anti-Corruption Court Case No. MCAC/E046 of 2025 violate Articles 41 and 47 of the Constitution of Kenya 2010.
- (b) Whether the revocation of the Petitioner's appointment as Deputy Vice Chancellor (Academic Affairs) by a letter dated 9/5/2025 was unlawful, null and void.
- (c) Whether the continued holding of the office of the Vice-Chancellor of the University of Nairobi by the 2nd Respondent in an acting capacity beyond the permitted period under section 34 of the Public Service Commission Act is unlawful, null and void.
- (d) What reliefs is the Petitioner entitled to if any.

In answer to issue (a) above, section 62 of the Anti-Corruption and Economic Crimes Act provides that:

“Suspension, if charged with corruption or economic crime

- (1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay with effect from the date of the charge until the conclusion of the case. Provided that the case shall be determined within twenty-four months**
- (2) A suspended public officer who is on half pay shall continue to receive the full amount of any allowances.**
- (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.**
- (4) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.”**

Furthermore section 35(1)(a)(v) and (vi) of the University Act provides that:

“A Council shall: -

(v) In the case of Public Universities, appoint Vice Chancellor Deputy Vice Chancellors and Principal and Deputy Principals of Constituent Colleges in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission; and

(vi) Undertake other functions set out under this Act and the Charter.”

This section read with section 51(1) of the Interpretation and General Provision Act which provides that: -

“Whereby under a written law, power or duty is conferred or imposed upon a person to make an appointment or to

constitute or establish a Board, Commission, Committee or similar body then unless a contrary intention appears, the person having that power or duty shall have the power to remove, suspend, dismiss or revoke the appointment of and reappoint or reinstate a person appointed in the exercise of the power or duty.”

Accordingly, the Petitioner having been charged before the Anti-Corruption court at Milimani Law Courts on 5/8/2025 under case reference MCA/E046/2025, the 1st Respondent, University Council was well within its powers to suspend the Petitioner from his position as Acting Deputy Vice Chancellor (Research Innovation and Enterprise) in accordance with section 62(1) of the Anti-corruption and Economic Crimes Act, 2003 with effect from 5/8/2025. The letter of suspension is dated 12/9/2025. The action by the Council was prompted by a notification of the criminal charges facing the Petitioner by the DCI.

It is not for this court to second guess the validity or otherwise of the criminal charges facing the Petitioner save to say that any person lawfully suspected of having committed a crime including an economic crime is presumed to be innocent until proved guilty. That presumption however does not derogate from the right of an employer well advised, to exercise its powers in terms of section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003 and in this case as read with section 35(1)(a)(v) and (vi) of the University Act. Accordingly, the action by the Council was valid and the challenge by the Petitioner lacks merit.

The second issue is whether the revocation of the Petitioner's appointments as Deputy Vice-Chancellor (Academic Affairs) by a letter dated 9/5/2025 was lawful, it is not in dispute that the 2nd Interested Party, PSC undertook a competitive recruitment process for the position of Deputy Vice-Chancellor Academic Affairs, at the University of Nairobi following declaration of vacancy for the position. The position was advertised on 21/1/2025 and 18 candidates applied. 10 candidates were shortlisted and interviews were subsequently conducted on 21/3/2025 in respect of nine (9) candidates one (1) candidate having declined to attend the interview.

The PSC by a letter dated 26/3/2025 forwarded 3 names to the University Council in order of merit to facilitate the appointment of DVC Academic Affairs in consultation with the Cabinet Secretary for Education in accordance with the provisions of the Universities Act. It is not in dispute that by a letter dated 5/5/2025, the Chairperson University of Nairobi Council appointed the Petitioner to the post of DVC – Academic Affairs with effect from 2nd May 2025.

That by a letter dated 9/5/2025, the Principal Secretary of the State Department for higher Education and Research revoked the appointment of the Petitioner as DVC Academic Affairs citing lack of consultation between the University Council and Cabinet Secretary as per section 35(1)(a)(v) of the Universities Act, 2012.

This revocation of appointment was before the notification by the DCI by a letter dated 9/9/2025 to the Vice-Chancellor of the University of Nairobi, that the Petitioner was arraigned before the Milimani Anti-

Corruption Court under case number 46 of 2025 where the Petitioner was charged with abuse of office.

It is opportune to note that the unrebutted evidence adduced by the Petitioner is that the circumstances leading to the charges related to matters in a different institution in the financial year 2013/14 impugns the timing, the sequence of events and the genuineness of the charges suddenly revived against him in circumstances summoned by contestation of appointment of senior management position at Nairobi University where the Petitioner and the 2nd Respondent, Prof. Margret Jesang Hutchinson were protagonists.

The Petitioner invited the court to read malice, vindictiveness, discrimination; unfair labour practice and unfair administrative action on the part of the Respondents, with a clear motive of excluding the Petitioner from holding any higher office at the University of Nairobi in favour of Prof. Jesang Hutchinson despite Prof. Jesang having not participated in the competitive recruitment process in which the Petitioner had emerged the top candidate on merit as judged by PSC in the concluded interview.

In terms of section 35(1)(a)(v) and (vi) of the Universities Act read with section 51(1) of the Interpretation and General Provisions Act, it is the University Council that has the mandate to appoint and hence revoke the appointment of Deputy Vice-Chancellors.

The action by the Principal Secretary of the State Department for Higher Education and Research to revoke the appointment of the Petitioner as

DVC Academic Affairs was *ultra vires* the Universities Act, 2012 and was unlawful, *null and void ab initio*.

The revocation was without any notice, notice to show cause and or any hearing in violation of section 36, 41 and 45 of the Employment Act, 2007. The Action was arbitrary, irrational and discriminatory in violation of section 43 of the Employment Act, 2007 and was a blatant violation of the Petitioner's rights protected under Articles 27(1) and (2); 41(1) and 47(1) of the Constitution of Kenya 2010 as read with section 4 of Fair Administrative Action Act, 2015.

In **Civil Service Unions vs Minister for the Civil Service (1985) AC 374** the House of Lords held that;

“If the decision maker unreasonably departs from the publicly stated policy or customary practice or reneges on an earlier decision or undertaking thus confounding the applicant's legitimate expectations from the decision marker, then it can also be argued that there has been breach of the duty to act fairly. A person or a group may have legitimate expectation that they will be consulted by the decision maker or if the decision maker or if the decision maker has made promises or given undertakings which the decision in question will alter see.

However, this procedural approach does not prevent the public body changing its policy, so long as it does so in a proper manner taking account of legitimate expectation for consultation, an oral hearing or whatever else is necessary to comply with the duty to act fairly”

With regard to the 3rd issue, regarding whether the 2nd Respondent is unlawfully holding the position of Acting Vice-Chancellor, the 2nd Respondent has confirmed in her replying affidavit that she still holds the position of Acting Vice-Chancellor with effect from 2nd August 2024. The 2nd Respondent further deposes that the Acting position was extended for a further six (6) months from 3rd May 2025 and the appointment was ratified by Council at a meeting held on 6th August 2025.

To-date, the 2nd Respondent remains the Acting Vice-Chancellor of the University of Nairobi in acting capacity more than one year and six months down the line.

In line with section 34 of the Public Service Commission Act on acting appointment which provides: -

“(1) Acting appointments shall be –

(a) made by the lawful appointing authority; and

(b) subject to the prescribed regulation and procedures which apply to appointments

(2) A person shall not be appointed to hold public office in an acting capacity unless the person satisfies all the prescribed qualification for holding the public office.

(3) An officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months. (Emphasis added)

This Acting position held by the 1st Respondent is no longer tenable if being held in violation of express provisions of section 34(3) of the Public Service Commission Act. The court declares the appointment unlawful,

null and void but defer the effect of this order to be effective six (6) months from the date of this judgment to allow substantive filing of the position.

In the final analysis, the court makes judgment in favour of the Petitioner against the Respondents as follows: -

- (a) A declaration is issued that the revocation of the Petitioner's lawful appointment via the letter dated 9th May 2025 was unlawful, null and void.**
- (b) A declaration is issued that the continued holding of the office of the Vice-Chancellor of the University of Nairobi by the 2nd Respondent in an acting capacity beyond the period permitted by the law, contravenes section 34 of the Public Service Commission Act and is therefore unlawful, null and void. The effect of this order is suspended and is to take effect six (6) months from the date of this order to allow the substantive filling of the position.**
- (c) An order of certiorari to bring to this court and quash the decision by the 1st Respondent contained in the letter dated 9th May 2025 revoking the Petitioner's appointment is issued.**
- (d) An order of mandamus is issued compelling the Respondents to recognize, uphold and give full effect to the Petitioner's lawful appointment as Deputy Vice-Chancellor (Academic Affairs) of the University of Nairobi.**
- (e) An order of mandamus is issued compelling the Respondents and the Interested Parties to immediately regularize the position of Vice-Chancellor, University of Nairobi, by**

competitively and substantively filing up the position within six months from the date of this judgment.

(f) Costs to abide the outcome

Dated at Nairobi this 30th day of March 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 9th day of April 2026

Dr. Jacob Gakeri

JUDGE

In presence of:

Mr. Omuyoma for Petitioner

Mr. Omondi for 1st and 2nd Respondents and 1st Interested Party.

M/s. Mbiro for 3rd, 4th and 5th Respondents

Mr. Odukenya for 2nd Interested Party.

Mr. Kemboi – Court Assistant