Egerton University Council v Republic; Mwonya (Exparte Applicant) (Civil Appeal 221 of 2019) [2024] KECA 1699 (KLR) (22 November 2024) (Judgment)

Neutral citation: [2024] KECA 1699 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPEAL 221 OF 2019

MA WARSAME, SG KAIRU & FA OCHIENG, JJA

NOVEMBER 22, 2024

BETWEEN

EGERTON UNIVERSITY COUNCIL .... APPELLANT

AND

REPUBLIC .... RESPONDENT

AND

PROF. ROSE MWONYA .... EXPARTE APPLICANT

(An appeal from the judgment of the Employment and Labour Relations Court at Nakuru (Hon. Lady Justice Monica Mbaru J.) dated and delivered on 15th May, 2019 in the Judicial Review Application No. 2 of 2019 in Nakuru ELRC JR Misc. Application No. 2 of 2018 (Formerly Nairobi JR Miscellaneous Application No.24 of 2018)

JUDGMENT

1. Prof. Rose Monya, the ex parte applicant in ELRC JR Misc. Application No. 2 of 2018 was, by a letter dated 7th September, 2018 sent on compulsory leave and suspended for 90 days from her position as the Vice Chancellor by the Egerton University Council, the appellant. This action was founded on alleged disciplinary concerns. The Council's allegations against the Vice Chancellor included interruption of the Council's calendar, where the ex parte applicant served as an ex officio member, delays in implementing resolutions of the Council and impropriety in several matters including procurement and staff discipline.

2. By a Notice of Motion dated 20th September, 2018, the ex parte applicant sought judicial review orders by way of certiorari, mandamus and prohibition. She sought to quash the suspension letter for being unlawful, illegal and procedurally irregular. She also sought to compel the appellant to reinstate her to the position of Vice Chancellor and to restrain the appellant from suspending or terminating her employment as the Vice Chancellor.

3. She argued that the Council acted beyond its powers, assuming disciplinary authority over a Vice Chancellor, a function reserved for the Cabinet Secretary of the Ministry of Education under section 39 of the *Universities Act*. She added that the Council meeting was improperly constituted without a substantive chair and that the letter of suspension did not give her the right to representation in breach of natural justice. She added that the Council failed to give her prior notice that her conduct will form part of the agenda of the meeting resolving into her suspension, that there was no hearing before the resolution was taken and that the meeting was held arbitrarily, selectively, unlawfully and after working hours at 5.30pm.

4. Moreover, that the irrationality in the decision manifested when the Council levelled allegations against the ex parte applicant on interruption of the Council calendar, delays in the implementation of resolutions, irregular procurement and insubordination was without evidence. Her case was that before she was served with her letter of suspension, the matter was first publicized in the media both print and online which gravely prejudiced her.

5. In response, the appellant maintained that the decision of the Council was live and the ex parte applicant was sent on leave to allow for investigations with no substantive decision having been made. Through a replying affidavit sworn by Dr. (Amb.) Wario Luka Huqa, the Chairperson of the Council, the Council averred that section 20(1) of the *Universities Act* provides that a university provided with a charter operates like a body corporate and the relevant charter had been granted on 1st March, 2013. He deponed that the university acted within its powers under section 8 of the Egerton University Charter, 2013 made the Egerton University Statutes, 2013. Thus, the university council is mandated under section 28(1)(f) of the Charter to ensure control and administration of the university.

6. That in respect of section 39 of the *Universities Act*, 2012, the Vice Chancellor is appointed upon a competitive recruitment by the Council and becomes the Chief Executive Officer of the University. He stated that the Council through its supervisory functions and from the Auditor General's report for the financial year ending 30th June, 2016 learnt of serious violations resulting in the resolution to send the Vice Chancellor on compulsory leave for investigations to be conducted. The Council urged the court not to enter into the arena of internal management of the employer – employee relationship.

7. In its judgment delivered on 15th May 2019, the court distilled a single issue for determination to wit – whether the ex parte applicant has established any grounds to warrant the court to grant the judicial review orders sought.

8. The court pointed out that it had been deprived of crucial material in the form of missing pages in the terms and conditions of service comprised in the ex parte applicant's letter of appointment dated 12th January, 2016. It concluded that such denial could not be cured by the court as it went to the function and role of the appointing authority under section 39 of the *Universities Act* as against the mandate of the University Council under section 60 of the *Universities Act*, which in the court's view did not extend to sending the Vice Chancellor on compulsory leave while investigations were ongoing especially without reference to the Cabinet Secretary. The court faulted the Council for not having due regard to section 63 of the *Universities Act* on fair administrative action particularly when dealing with an ex officio member of the Council.

9. Consequently, the court quashed the letter dated 7th September, 2018 sending the ex parte applicant on compulsory leave, the same having been found to be unlawful and irregular.

10. This judgment is now subject of the appeal and cross appeal before us.

11. The appellant has set out in its memorandum of appeal a total of 28 grounds of appeal which we must at this juncture point out are devoid of brevity as expected under rule 64 (2) of the Court of Appeal Rules 2010, applicable at the time, which provides:

> "
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> "(2) The memorandum of appeal lodged under sub-rule (1) shall concisely set forth and under consecutively numbered distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact and, in the case of any other appeal, the points of law, which are alleged to have been wrongly decided".

And rule 86(1) which provides:

> " 86.
>
> (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make".

How one issue for determination by the Employment and Labour Relations court possibly gave rise to 28 grounds of appeal as posited by the appellant is quite indiscernible.

12. The above notwithstanding, we can glean that the appellant's grievance is that the trial court failed to answer the jurisdictional question of the legal personality of the appellant and thereby the court's jurisdiction; the place of the employer employee relationship between the Council and the Vice Chancellor thereby elevating employment contract into public administrative action; the application of section 63 of the *Universities Act* and decision and the role of the cabinet secretary in charge of education as against that of the Council in so far as who the Vice Chancellor was answerable to; and generally failure to appreciate evidence adduced before the court.

13. In so far as the appellant raises issue with the orders made by the trial court on 18th October, 2018 during a mention directing the ex parte applicant to return to work on 19th October, 2018 and lifting the compulsory leave, we are of the position that the orders were not appealed against and as such we shall not make any determination on the same.

14. The appellant asks the court to allow the appeal, reverse and/or set aside the decision of the Employment and Labour Relations Court and dismiss the application with costs.

15. On her part, the ex parte applicant has filed a Notice of Cross Appeal under Rule 94(4) of the Court of Appeal Rules 2010 setting out additional grounds to affirm the decision of the Employment and Labour Relations Court. Evidently, the text of the cross appeal though indicates as raising grounds other than or additional to those relied upon by the court in rendering its judgment, it merely affirms the decision of the trial court on grounds of jurisdiction and meeting the threshold for the grant of the judicial review orders sought.

16. The ex parte applicant contends that the decision of the trial court ought to be partially varied and reversed to the limited extent that the costs in the superior court should be awarded to her as the successful party. The ex parte applicant prays for the dismissal of the appeal, upholding of the decision

of the Superior Court, costs of the appeal and costs in the superior court with interest to be computed from the date of the issuance of the superior court judgment.

17. At the hearing the appellant was represented by Mr. Wekesa and Mr. Wesonga advocates. The respondent was represented by the Hon. Attorney General there being no appearance from that office and the ex parte applicant (Prof. Mwonya) was represented by Ms. Maina and Mr. Wakwaya Advocates.

18. During the highlighting of submissions, Mr. Wakwaya submitted that the matter had been overtaken by events rendering the appeal an academic exercise as the facts were on a specific case and the 2nd respondent had since left the university.

19. His case was that the CabinetSecretary retained the final say on the suspension, the President being the appointing authority. He referred to section 51 of the *Interpretation and General Provisions Act* Cap.2 of the Laws of Kenya on the power to appoint which provides that such power includes the power to suspend, dismiss, etc., and to reappoint, etc. He implored the court to dismiss the appeal allow the cross appeal and affirm the decision of the trial court.

20. Mr. Wekesa referred to section 35(1) (g) of the *Universities Act* to aver that the Vice Chancellor is a staff of the University. He added that under section 15 (g) the Council is equivalent to a board and the Cabinet Secretary's role is ministerial akin to that of the Judicial Service Commission. He reiterated that the trial Judge made an error on the suspension and her decision is a dangerous precedence on governance.

21. From our perusal of the record, we are satisfied that both the appeal and cross appeal can be determined on the basis of our finding on whether the trial court correctly issued the orders of judicial review thereby quashing the respondent's letter dated 7th September 2018 sending the ex parte applicant on compulsory leave.

22. This being a first appeal we are obliged to re-evaluate the evidence and make our own findings on those made by the trial court as mandated under Rule 31 of the Court of Appeal Rules 2022. In doing so we are not inclined to interfere with the trial Judge's findings unless we are satisfied the same were either unsupported by evidence or were outrightly erroneous. That mandate has been the subject of various judicial pronouncements in cases such as *Nairobi Bottlers Limited vs. Imbuga (Civil Appeal E661 of 2022*) [2024] KECA 434 (KLR) (26 April 2024) (Judgment)

23. Before proceeding, it was not lost to us that counsel for the ex parte applicant raised the issue of the matter being overtaken by events. While we appreciate that this argument is merited, we are also persuaded that the nature of the dispute calls upon the intervention by the Court in the sense that the dispute calls upon the interrogation of the competing mandate of the University Council as against that of the Cabinet Secretary in addressing disciplinary concerns arising out of the position of a Vice Chancellor of the university. The ex parte applicant may have vacated the position of Vice Chancellor but for the sake of good governance, the position still exists and it is prudent that the courts give direction on the same for purposes of settling the issue.

24. In addressing the appeal, our focus is limited to the application of the statutory provisions and we shall not delve into the specific allegations or the justification thereon as between the Council and the ex parte applicant.

25. It is also important to address the issue of jurisdiction of this Court at this stage of the appeal. We understood the appellant's argument as faulting the court's jurisdiction on two angles. The first one is on the legal capacity of the University Council as a legal person which in turn affected the trial court's jurisdiction.

26. We note that the appellant had filed a preliminary objection and Grounds of Opposition all dated 9th November, 2018 contending that Egerton University Council as sued is not a legal person capable of being sued as sought in the application for Judicial Review orders. The trial court had initially sought to dispense with the objection but owing to the time lapse and the need for timeous disposal of the application, the substantive application was allowed to proceed.

27. From the trial court's judgment, the issue of the legal personality remained undetermined as the court went straight into the dispute by considering the mandate of the council. Where does this leave the dispute?

28. For all intents, the parties are governed under the *Universities Act* 2012 which under section 71 (1) (f) repealed the Egerton University Act. Cap.214 of the Laws of Kenya. It is common ground that Egerton University is chartered as a university under the *Universities Act*. The effect of a university granted a charter is that it is a body corporate and continues its activities, including employment of staff as stipulated under section 20(1)(a) of the *Universities Act*.

29. Under section 35 of the *Universities Act*, in addition to the provisions of its charter, a university shall establish the following organs of governance or their equivalent. These are: a Council, the Senate and the Management Board, each of which is bestowed with a specific function. In particular the Council shall:

    i. employ staff;

    (ii) approve the statutes of the University and cause them to be published in the Kenya Gazette;

    (iii) approve the policies of the University;

    (iv) approve the budget;

    (v) in the case of public universities, appoint Vice-Chancellor, Deputy Vice- Chancellors and Principals 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. (Emphasis added).

30. It is in the above context that the application for judicial review orders were brought against the Egerton University Council. It is in our view foolhardy to fault the application for judicial review on the sole ground that the Council was non suited. On our part, we do not advocate for the court downing its tools purely on account of the Council, a statutorily established organ of a university having no legal personality. It would of course have been neater if the university was sued as such but inevitably, it was the decision of the University Council that was under challenge and had to be dealt with as such. As such we do not find it fatal that the trial court proceeded to assume jurisdiction over the matter, albeit impliedly without making an express finding on jurisdiction.

31. Having dispensed with the preliminaries, we now proceed to the substratum of the matter. In our understanding, it comes down to establishing the chain of events that triggered the issuance of the letter of suspension to the ex parte applicant (Prof. Mwonya) before considering whether and to what extent the same was subject to the judicial review orders sought.

32. The appellant argued that their relationship was that of an employer – employee relationship that should not have been elevated into that of a public administrative action to be disputed. On this, we respectfully disagree. This is because, the employment relationship alluded to is founded on statutory provisions. A Vice Chancellor holds a statutory position and his/her appointment follows a laid down procedure also set out in statute.

33. Indeed, from the replying affidavit filed on behalf of the appellant, it is common that the ex parte applicant was appointed following a competitive process by the appellant. This resulted in the forwarding of three names to the Cabinet Secretary out of which she was appointed as communicated by the Cabinet Secretary at the time, Prof. Jacob T. Kaimenyi vide letter dated 26th October, 2015 invoking the provisions of section 39(1) of the *Universities Act*.

34. Section 39(1) of the *Universities Act* relates to the Vice Chancellor and provides that:

> "The Vice-Chancellor of a university shall be appointed— (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council; and"

There is nothing to suggest that the Cabinet Secretary had appointed the ex parte applicant to the exclusion of the University Council or retained any residual supervisory or responsibilities over the execution of the duties of a Vice- Chancellor. It is our view that the Cabinet Secretary does not, in fact have the power to hire and fire the Vice Chancellor.

35. The ministerial action of gazettement of the successful candidate for the position of Vice Chancellor cannot by any standard or interpretation of the law, be considered as an appointment. That would be absurd and inimical to the correct reading and interpretation of the relevant statutes governing the management, control and running of the University, our reading of the *Universities Act*, 2012 and in particular sections 35 (1)(a) and 39 (1)(a) which clearly show that the body charged with recruitment, determination of the terms and conditions of service and resultant appointment, is the University Council. .

36. Clearly the letter of 26th October, 2015 and 12th January, 2016, expressly and without any doubt state that the Vice Chancellor is responsible to the Council on all areas concerning her office. If the ex parte applicant had any reservation, she would have indicated in her letter of acceptance. Having failed to do so, the ex parte applicant cannot be heard to say that the Council had no power to send her on compulsory leave and exercise disciplinary powers over her transgressions. It is an exclusive role/mandate that is not construed with the Cabinet Secretary and with no reference/concurrence is required from the Cabinet Secretary. That is a plain and clear interpretation of the relevant statutes and good governance.

37. If anything, the letter of appointment was categorical that the Vice-Chancellor would be governed under the terms and conditions of service provided for in the contract document provided by the Council of Egerton University and that she shall report to the Council. To this end, the letter in part provided that:

> "…
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> Your terms and conditions of service shall be as provided for in the Contract document provided by the Council of Egerton University. You shall report and be answerable to the Council on all matters relating to the office of Vice-Chancellor of Egerton University.
> …" (Emphasis ours)

38. Accordingly, the Council issued a letter dated 12th January, 2016. In clause 2 of the letter it was categorical that the ex parte applicant "will be responsible to the Council of Egerton University." In addition, clause 3 of the letter of appointment on duties and responsibilities is reproduced as follows:

> " As the Vice-Chancellor of the University you will be responsible for implementation of the Council decisions in a result oriented environment, in a timely manner to achieve University's goals, objectives and agreed target performance. This will entail ..." (emphasis ours)

39. Despite the missing pages as decried by the trial court, the evidence before it, in our view was replete with undertones as to the place of the University Council in the employment of and carrying out of duties and responsibilities of the ex parte applicant as the Vice-Chancellor. It was therefore unfathomable for the trial court to arrive at its conclusion. The trial court having identified the role of the University Council which it termed as supervisory powers of the ex parte applicant, it was irrelevant and unnecessary for the trial court to insist on identifying who issued the contract spelling out the terms and conditions of service between the chairperson, Council or session chair for the full Council.

40. What remained material is that the ex parte applicant was to report and be answerable to the Council including implementing the Council's decisions. At any rate, the impugned letter suspending the ex parte applicant referred to the resolution by the Council which none of the parties before the trial court made reference to. In our view, that was a grave mistake.

41. Having established that the Vice-Chancellor is responsible to and reported to the Council, we find that the trial judge misdirected herself in holding that none of the general powers of the Council relate to the sending of the Vice-Chancellor on leave while investigations are on-going. As already noted, part of the allegations levelled against the ex parte applicant was failure to implement council decisions, an express employment term under the contract of service. As an employee, it is not unusual for internal investigation to be undertaken to conclusion, including getting the representation from the appellant before determining the next course. That is not rocket science trajectory.

42. Having been suspended from work, it was necessary for the employer to conduct independent investigations upon which it would be put to the employee for reaction when the appellant resumed (see David Kimutai Ng'etich vs. Muki Sacco Society Limited (Civil Appeal No. 6 of 2020 [2024] KECA 964 (KLR) (26 July 2024) (Judgment)). In Khainga vs. Kenya Utalii College (Cause 2240 of 2016) [2022] KEELRC 4092 (KLR) (4 April 2022) (Judgment), the Employment and Labour Court stated as follows:

> " 24. A suspension is just but an intervening measure to remove the employee from the shop floor to allow for investigation and if the employee is not found culpable to be recalled back to work and if there is an issue(s) to be addressed, the employee must be issued with a notice to show cause and be allowed a hearing in terms of section 41 of the *Employment Act*, 2007 (the act)."

43. Suspension from employment under the present circumstances is not one which had to be expressly set out in the terms of employment. Once it is clear that the ex parte applicant reported to the University Council, the Council was reposited with the powers appurtenant to that of an employer and the ex parte applicant an employee. Since the ex parte applicant has since left the employment, we see no basis to delve into the allegations leveled against her as it serves no purpose.

44. As for the prayer on costs, the trial court having exercised discretion in directing each party to bear its costs, we do not see any reason to interfere with the same as pursued by the cross appeal. The same fate befalls the appeal before us.

45. Consequently, we find that the appeal is merited and the cross appeal unmerited and make the following orders:

    a. The appeal is allowed.

    b. The judgment entered in Nakuru Employment and Labour Relations Court Judicial Review Misc. Application No.2 of 2018 (formerly Nairobi JR Misc. Application No.24 of 2018) on 15th May, 2019 be and is hereby set aside.

    c. Each party to bear its own costs in the appeal and before the Employment and Labour Relations Court.

Judgment Of Gatembu, JA.

1. I have had the advantage of reading the judgment of my brother Warsame JA in draft and agree with the proposed outcome.

2. The genesis of the dispute leading to this appeal is a letter dated 7th September 2018 titled "Compulsory Leave for 90 days with effect from 10th September 2018" addressed to Professor Rose A. Mwonya, the Vice-Chancellor of Egerton University by the appellant, Egerton University Council (the Council) under the hand of one Joshua N. Otieno, Session Chair for Full Council Meeting of 7th September 2018. In that letter, the Council suspended or sent Professor Mwonya on compulsory leave on account of her alleged insubordination of the Council for purportedly rescinding its decisions to send the Registrar Academic Affairs and Senior Administration Assistant on leave and for interrupting the Council calendar.

3. That letter triggered Professor Mwonya's application for Judicial Review dated 12th September 2018 before the Employment and Labour Relations Court (ELRC) in which she sought, among other reliefs, leave to apply for an order of Certiorari to quash that letter of suspension. In the interim, by an order given on 18th October 2018, the ELRC ordered Professor Mwonya to return to work. Ultimately, in the impugned judgment of the ELRC delivered on 15th May 2019, the decision of the Council contained in the suspension letter was quashed.

4. We were informed from the bar that Professor Mwonya's term as Vice-Chancellor has since lapsed and to that extent this appeal is in my view moot and overtaken by events but I nonetheless, briefly express myself on the matter.

5. The background, in brief, is that by a letter dated 26th October 2015 and titled "Appointment as Vice-Chancellor of Egerton University" the then Cabinet Secretary in the Ministry of Education, Science and Technology Professor Jacob T. Kaimenyi, in exercise of powers conferred by Section 39(1)(a) of the *Universities Act* 2012, appointed Professor Mwonya as the Vice-Chancellor of Egerton University with effect from 13th January 2016 for a period of five (5) years. The Cabinet Secretary stipulated in that letter that the "terms and conditions of service shall be as provided for in the contract document provided by the Council of Egerton University."

6. Subsequently, by a letter dated 12th January 2016, and titled "Letter of Appointment: Vice-Chancellor, Egerton University" the Egerton University Council offered Professor Mwonya the position of Vice-Chancellor with effect from 13th January 2016 on the terms therein set out. Clause 25 of that letter

stipulated that Professor Mwonya would be "subject to provisions of the *Employment Act*, Egerton University Act, the *Universities Act*, University Statutes and University Staff Rules and Regulations as issued and/or amended from time to time". Indeed, in her verifying affidavit, Professor Mwonya deponed that she was appointed by the Cabinet Secretary of Education and that her "terms of service are grounded on statute and her powers underpinned thereby, and are further expounded in the University Statutes."

7. Clause 26 of the letter dated 12th January 2016 provided for termination by either party give a three months' prior notice or payment of an equivalent of three months basic salary and house allowance in lieu of such notice. As correctly observed by the learned trial judge, some pages of that letter were missing from the record.

8. Professor Mwonya contended, among other complaints, that the University Council acted unlawfully in assuming disciplinary authority over her as Vice-Chancellor, a function reserved to the Cabinet Secretary under Section 39 of the *Universities Act*; that procedurally the decision to suspend her was infirm as she was not given a hearing and the meeting to suspend her was arbitrary, secretive and held long after working hours; and that the decision was also irrational.

9. Apart from the contention that the appellant lacked legal personality to be sued, the Council contended that the Vice Chancellor was responsible to the Council; that there were serious allegations of irregular procuring of services; irregular awards of scholarships and insubordination against Professor Mwonya which resulted in the resolution by the Council to send her on compulsory leave and in doing so adhered to the *Universities Act*, the *Employment Act*, the Egerton University Charter and Egerton University Statutes, 2013; that the Council had not initiated any disciplinary action and was only undertaking investigations to verify the allegations against her.

10. In the end, upon considering the application, the affidavits and submissions, the learned Judge of the ELRC in the impugned judgment held that the Cabinet Secretary is the appointing authority and that in any matter "requiring the investigations and sending on compulsory leave of such office holder as the VC, reference to appointing authority is imperative" and that "without the requisite mandate to send the ex parte applicant on compulsory leave and without reference to the appointing authority, the respondent acted outside its legal mandate."

11. Based on the memorandum of appeal and the submissions by counsel, the main issue, in my view, is whether the Judge erred in concluding that the Council did not have the mandate to suspend the VC pending investigations.

12. Section 35(1) of the *Universities Act* provides that in addition to the provisions of its Charter, a university shall establish a Council, the Senate and the Management Board or their equivalent as organs of governance. Under Section 35(1)(a), in the case of public universities, such as Egerton University, the Council is mandated, in consultation with the Cabinet Secretary, after a competitive process, to appoint Vice Chancellor. The requirement to consult the Cabinet Secretary does not, in itself, render the Cabinet Secretary the appointing authority. As stated by the Court in Okere & another vs. Public Service Commission and 7 others, (Civil Appeal No. E059 of 2022)[2023] KECA 566(KLR) "consultation" means interaction between the consultor on the one hand and the consultee on the other, but the decision the subject of consultation must in all cases remain with the consultor, which for present purposes is the Council.

13. However, in the present case, and as already indicated, the employment of Professor Mwonya was expressed to be "subject to provisions of the *Employment Act*, Egerton University Act, the *Universities Act*, University Statutes and University Staff Rules and Regulations as issued and/or amended from time to time". In that regard Statute 7(1) of Egerton University Statute 2013 provided that, subject to

the provisions of the Charter, the Vice Chancellor shall be appointed by the Cabinet Secretary after competitive search and on advice of the Council.

14. Statute 7(2) provided that the VC shall hold office for a period of five years and would be eligible for reappointment for another five- year term with proviso that the VC may resign office "or the Cabinet Secretary may on recommendation of the Council terminate the appointment by giving six months' notice in writing or six months' pay in lieu of notice. In effect, under the terms of employment of Professor Mwonya, the power to terminate her employment vested with the Cabinet Secretary upon recommendation of the Council.

15. In this case, the Council did not terminate or purport to terminate the appointment of Professor Mwonya the VC. What it did was to suspend or send her on compulsory leave for 90 days so that investigations could be undertaken regarding the allegations levelled. Neither did the Council recommend her termination. It would in any event have been premature to do so before the investigations had been undertaken and completed. The outcome of such investigations would have formed the basis of the Council's decision on its next steps which may or may not have included recommending to the Cabinet Secretary to terminate her employment. Otherwise, without investigations a decision of the Council to recommend termination, had it done so, would have been irrational as the Council would have had no have a basis for its decision.

16. Against that backdrop, in quashing the decision of the Council to send Professor Mwonya on leave to pave way for investigations, the learned Judge proceeded on the faulty premise that by so doing and suspending the VC, the Council was in effect usurping the powers of the Cabinet Secretary to terminate the VC's employment, which was not the case. For that reason alone, I would allow the appeal and set aside the judgment of the ELRC.

DATED AND DELIVERED AT NAKURU THIS 22ND DAY OF NOVEMBER, 2024.

M. WARSAME

JUDGE OF APPEAL

F. OCHIENG

JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

In The Court Of Appeal At Nakuru