



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, JA. (IN CHAMBERS))

CIVIL APPEAL NO. 73 OF 2018

BETWEEN

DR. BENJAMIN J. GIKENYI MAGARE .....APPELLANT

AND

VICE CHANCELLOR, MOI UNIVERSITY.....1<sup>ST</sup> RESPONDENT

MOI UNIVERSITY.....2<sup>ND</sup> RESPONDENT

DEAN, SCHOOL OF MEDICINE MOI UNIVERSITY.....3<sup>RD</sup> RESPONDENT

(Being an Appeal from the ruling and order of the High Court of Kenya at Eldoret, (H. A. Omondi, J.) dated 5<sup>th</sup> day of June, 2018 in Judicial Review Application No. 3 of 2018)

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RULING

[1] On 17<sup>th</sup> July, 2018, I declined to certify the Notice of Motion dated 21<sup>st</sup> June, 2018 as urgent. On 31<sup>st</sup> August, 2018, the applicant's advocate made an application that the certificate of urgency be heard inter partes.

[2] On 15<sup>th</sup> October, 2018, the Deputy Registrar placed the application before me after the applicant had written a long letter dated 11<sup>th</sup> October, 2018 addressed to the President of the Court of Appeal. Upon reading the letter, I directed that the certificate of urgency be heard inter partes today in Kisumu.

[3] The application for hearing of the certificate of urgency inter partes is supported by a lengthy affidavit of the applicant sworn on 30<sup>th</sup> August, 2018. The respondent has filed a replying affidavit sworn on 19<sup>th</sup> October, 2018 by **Petrolina Chepkwony**, the Senior Legal Officer of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent in essence states that the application is not urgent since the applicant was reinstated to the Master's Decree programme by a letter dated 4<sup>th</sup> October, 2018.

The applicant's counsel admits that such a letter was received but states that the applicant's name is still omitted from the list of candidates required to present oral thesis at the end of this month.

[4] I have considered the respective affidavits and the submissions of counsel. The applicant is appealing against an order of the High Court setting aside a stay order granted at leave stage. The substantive judicial review application is still pending for hearing in the High Court.

[5] In the premises, I am still not satisfied that the notice of motion dated 21<sup>st</sup> June, 2018 is urgent. However, since there are few pending applications in this Court Station at Eldoret, and since the applicant's counsel agrees that the pending application can be heard during the next session of the Court at Eldoret, I would in the interest of justice direct that the application be heard during that session.

[6] In the premises, I direct the Deputy Registrar of the Court to list the Notice of Motion dated 21<sup>st</sup> June, 2018 for hearing by the full Court at Eldoret during the next session. The costs of this hearing shall be costs in the pending application.

**DATED and Delivered at Kisumu this 22<sup>nd</sup> day of October, 2018.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**