



**Ogolla v Machakos University; University Academic Staff Union (Interested Party) (Judicial Review E013 of 2024) [2025] KEELRC 631 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 631 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW E013 OF 2024  
MN NDUMA, J  
FEBRUARY 27, 2025**

**BETWEEN**

**PROF. FREDRICK OGOLLA ..... APPLICANT**

**AND**

**MACHAKOS UNIVERSITY ..... RESPONDENT**

**AND**

**UNIVERSITY ACADEMIC STAFF UNION ..... INTERESTED PARTY**

**JUDGMENT**

1. The application serving before court is dated 22/4/2024 and was brought pursuant to Order 53 Rule 3 of the Civil Procedure (Amendment) Rules, 2010 seeking the following orders:-
  - a. That an order of Mandamus be and is hereby issued compelling the Respondent to comply with the decision of the Public Service Commission (PSC) in Appeal No. 004 of 2023, Prof. Fredrick Ogolla versus Machakos University and reinstate the Applicant as Professor Grade 15 School of Education
2. The application is premised on grounds set out in the Notice of Motion and in the Supporting Affidavit of the Exparte Applicant which may be summarized that on 22/11/2022, the Applicant filed a civil suit Nairobi ELRC Cause No. E870 of 2022 in Prof. Fredrick Ogola versus Machakos University in which he sought, the remedy of reinstatement to the position of a Professor of Machakos University and previous position of Acting Deputy Vice Chancellor (Administration Planning and Finance) without any loss of benefits and career progression. That the Claimant withdrew the said claim and subsequently filed a petition where he had dropped the remedy of reinstatement. That the Applicant filed an appeal before the PSC challenging the decision of the Respondent's Council to terminate the Applicant's employment and seeking reinstatement.



3. That on 6/10/2023, the PSC communicated decision dated 8/9/2023 to reinstate the Applicant as prayed.
4. That the Respondent filed a Review Application No. 001 of 2023 before the PSC which application was dismissed on 7/12/2023. The Respondent filed High Court Judicial Review ELRC No. 047 of 2023 to challenge decision by PSC.
5. The Respondent subsequently withdrew the said Judicial Review Application against the decision in No. E47 of 2023, Republic versus The Public Service Commission Exparte Machakos University.
6. That the Respondent has declined/refused/failed to reinstate the Applicant in accordance with the decision of the PSC.
7. The Applicant filed a further affidavit dated 24/9/2024 restating the case and deposing that the case in Petition E405 of 2023 was distinct from the case before PSC in appeal No. 004 of 2023. That there is no impediment to the prayers sought in this application.
8. The Applicant relies on the decision by Nzioki wa Makau in Judicial Review E09 of 2019, Kenya Medical Practitioners Pharmacists and Dentist Union and 6 others versus The County Government of Laikipia and another and Public Service Commission – Interested Parties, in which the court granted orders of Mandamus compelling the Respondents to implement the decision of PSC. That similar orders are sought in this matter.
9. That no viable defence by the Respondent and Interested Party has been raised against this application. That the Preliminary Objection that the matters raised here are subjudice is without merit, the Applicant having withdrawn Cause No. E870 of 2022 wherein the Applicant had sought orders of reinstatement. That subsequent petition filed left out issue of reinstatement which was left to be handled by PSC as stated herein.

### **Replying Affidavit**

10. The Respondent filed a replying affidavit by Mumbi Serah Muriuki head of Legal Services of the Respondent in which the chronology of events as set out by the Applicant is admitted including that on 14/6/2023, the Applicant filed a notice withdrawing ELRC Cause No. E870 of 2022 which Cause was withdrawn on 22/8/2023.
11. The Respondent states that while the Applicant's appeal was pending before PSC, the Applicant filed Nairobi Petition No. E105 of 2023 against the Respondent on 23/6/2023 challenging his dismissal and seeking a declaration that the dismissal of the Petitioner was in violation of section 41, 45 and 47 of the *Employment Act*, 2007.
12. That PSC delivered its decision in the appeal by the Applicant whilst this petition was and is still pending.
13. That the Respondent therefore failed to recognize the decision for reinstatement by PSC since the court is more superior to PSC and the Respondent awaits the determination of the dispute by the court.
14. That on 23/2/2024, this court delivered its judgment in the petition and held that the termination of the employment of petitioner was unfair and awarded the petition damages as stated by the Respondent in the replying affidavit.
15. The court returns the matter of reinstatement is resjudicata before this court and that the judgment has superseded the decision of the PSC in the appeal that was placed before it by the Applicant.



16. Indeed, this court lacks jurisdiction to revisit this matter in the manner suggested by the Applicant.
17. Accordingly, the court finds that this application is misconceived and is indeed an abuse of the court process. Accordingly, in view of facts proved by the Respondent, this application lack merit and is dismissed with costs.

It is so ordered.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Dr. Okubasu for ex-parte Applicant

Mr. Were for Respondent

Mr. Kemboi – Court Assistant

