



**Chege v Kenyatta University & another; Public Service Commission (Interested Party)
(Miscellaneous Cause E175 of 2023) [2025] KEELRC 410 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 410 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E175 OF 2023**

JW KELI, J

FEBRUARY 12, 2025

**IN THE MATTER OF SECTION 74 & 89 OF THE PUBLIC SERVICE COMMISSION
ACT NO.10 OF 2017, AND REGULATION 9(1)(3) OF THE PUBLIC SERVICE
REGULATIONS 2020**

AND

**IN THE MATTER OF PUBLIC SERVICE COMMISSION STATE CORPORATION APPEAL
NO.001 OF 2023 AGAINST DE-ESTABLISHMENT OF THE OFFICE OF THE DEPUTY
VICE-CHANCELLOR ADMINISTRATION LEADING UNLAWFUL TERMINATION OF
THE APPELLANT'S APPOINTMENT ON A FIXED TERM APPOINTMENT AS SUCH**

AND

**IN THE MATTER OF THE ENFORCEMENT OF THE DECISION OF THE
PUBLIC SERVICE COMMISSION ON APPEAL DELIVERED ON 28TH JULY 2023**

BETWEEN

PROFESSOR FATUMA CHEGE APPLICANT

AND

KENYATTA UNIVERSITY 1ST RESPONDENT

COUNCIL OF KENYATTA UNIVERSITY 2ND RESPONDENT

AND

THE PUBLIC SERVICE COMMISSION INTERESTED PARTY

RULING

1. The Applicant following a decision in her favour by the interested party of 28th July 2023 filed an application by way of a Notice of Motion dated 29th August 2023 and brought under Sections 74



and 89 of the *Public Service Commission Act*, Regulation 9(7)&(3) of the Public Service Regulations 2020, Sections 3, 4 and 20 of the *Employment and Labour Relations Court Act*, 2011 and the inherent jurisdiction of the Court and all other enabling provisions of the law; seeking the following orders:-

1. The Application herein be certified as urgent and be heard ex-parte in the first instance.
2. This Honourable Court be pleased to recognize and adopt the Decision of the Public Service Commission, the interested party herein, dated and delivered on 28th July 2023 as a Judgement of this Honourable Court and a Decree in respect thereof do issue for appropriate enforcement.
3. This Honourable Court be pleased to order the Respondents to commence the implementation of the Decision of the Public Service Commission dated and delivered on 28th July 2023 in its entirety.
4. Pending the hearing and determination of this Application, the Respondents be restrained by an order of injunction from engaging the Applicant in any other manner besides compliance with the decision of the PSC.
5. The costs of this Application be borne and paid by the Respondents.
6. This Honourable Court be at liberty to grant any further orders and/or relief that may be just and expedient.

Grounds of the application

2. The applicant relied on her supporting affidavit sworn on the 29th of August 2023 where she produced as PFC13 a copy of the Public Service Commission's decision dated 28th July 2023 sought to be enforced. On the face of the application, the following grounds in support of the application were stated: -
 1. The Applicant is a permanent and pensionable Professor of Education at Kenyatta University School of Education.
 2. In January 2019 the Cabinet Secretary for Education appointed the Applicant the Deputy Vice Chancellor in charge of Administration for a term of five years, and subsequently in May 2021 she was appointed Principal Secretary State Department for implementation of Curriculum Reforms in the Ministry of Education by the President of the Republic.
 3. Consequently, the Applicant through the Vice Chancellor sought and was granted leave of absence for a period of two years by the Kenyatta University Council in order to enable her take her new posting.
 4. The Applicant served as Principal Secretary and upon the end of her tenure, wrote to the Vice Chancellor of Kenyatta University on 2nd December 2022 notifying him of her intention to immediately resume her duties at the University, including her duties as Deputy Vice Chancellor Administration.
 5. Even after formal submission of the letter requesting resumption of duty and her duly signed staff movement form on 6th and 7th December 2022 respectively, the Applicant received no response and resorted to follow up with the vice Chancellor via text messages and even ended up holding a meeting with the Vice Chancellor at the Safari Park Hotel in Nairobi where she was assured of her reinstatement.



6. The Applicant later learnt that she was being taken round in circles a thing which culminated in receipt of a letter on 31st January 2023 from the Vice Chancellor dated 17th January 2023 informing her that the position of Deputy Vice Chancellor Administration was no longer available as, unbeknown to her, it had been merged with the position of Deputy Vice Chancellor Finance.
7. The Applicant on the same day responded to the Vice Chancellor's Letter expressing her concerns about the manner in which she was being prevented from resuming her duties to which the Vice Chancellor Responded on 13th February 2023 effectively and unlawfully terminating the Applicant's contract as Deputy Vice Chancellor Administration. The Applicant's Appeal to the Chairperson of the Kenyatta University Council on 15th February 2023 was also unsuccessful with the said Chairperson merely reiterating the Decision of the Vice Chancellor.
8. The Applicant then lodged its Appeal with the Public Service Commission on 28th March 2023, being State Corporation Appeal No. 001 of 2023 and the Respondents submitting to the jurisdiction of the Commission filed its response on 26th April 2023.
9. The Applicant was successful in its Appeal with the Commission ordering on 28th July 2023 that the decision of the Kenyatta University Council be set aside. And directing orders inter-alia that. 1) The Office of the Applicant having been unlawfully abolished the Applicant be reinstated to the position of Deputy Vice Chancellor Administration, ii) That the Appellant be paid her withheld salaries from 2nd December 2022 when she requested to be reinstated.
10. Despite being aware of the decision aforesaid, the Respondents has failed refused and/or neglected to implement the same, and, persists in the said failure, refusal and/or neglect to the detriment of the Applicant by occasioning upon her great and continued pecuniary harm, mental anguish and distress.
11. It is in the in the interest of justice and sound public policy that the decision of the Public Service commission be implemented as a matter of urgency and that in order to facilitate the said implementation this Honourable Court as a matter of urgency does adopt and/or recognize the said decision as a Judgement of this Honourable Court and does proceed to issue a Decree in respect thereof.
12. It is imperative that this honourable court intervenes at the earliest instance to relieve the Applicant/Petitioner of the enormous hardship occasioned by the unlawful conduct of the Respondents.
13. No Appeal or Review has so far been preferred against the Decision of the Commission.
14. It is in the interest of justice that the Orders sought herein be granted.

Response

3. The Respondents entered appearance through the lawfirm of Mohammed Muigai LLP and filed grounds of opposition dated 26th September of 2023. The germane of the grounds were that the application was brought under section 89 of the *public Service Commission Act* which did not apply to the applicant. That section 89 of the Act only applied to members of the County Government public service.
4. The other ground raised in opposition to the application was that the application sought substantive orders. That Rule 4 and 7 of the Employment and Labour Relations Court (Procedure) Rules 2016 y



requires that a suit for substantive orders be initiated by way of a statement of claim, petition or judicial review application.

5. The Respondents for the above reasons stated that the application was fatally defective.
6. The Respondent further filed Replying affidavit of Prof. Paul Wainaina, its vice chancellor sworn on the 13th October 2023 and annexed various documents related to the matter. A further affidavit of Dr. Paul Gachanja, the acting deputy –vice chancellor(Administration and Finance).
7. The Interested party entered appearance through its Principal Legal Counsel Wangeci Gichangi and filed a replying affidavit dated 14th November 2023 of Mr. Remy N. Mulati , its Deputy Commission Secretary Corporate Services in support of the application.

Decision

8. The court discerned that the grounds of opposition could dispose of the application in limine if upheld and thus first considered whether the application was fatally defective.
9. The application was canvassed by way of written submissions. All the parties filed.
10. The application seeking to enforce a decision of the interested party was brought under sections 74 and 89 and of the *Public Service Commission Act*. The respondents' position was that section 89 does not apply to the applicant who was an employee of a public university, the Respondent, and was governed under the *Universities Act*,2012.
11. Section 89 of the *Public Service Commission Act* states:- “ Enforcement of appeal decision
 - (1) Any person who is affected by the decision of the Commission made under this Part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2)(a) of *the Constitution*.
 - (2) Any person who refuses, fails or neglects to implement the Commission's decisions is liable to disciplinary action in accordance with the applicable laws including removal from office.”(emphasis given)
12. The concerned part under which section 89 of the *Public Service Commission Act* applies is PART XV titled – “HEARING AND DETERMINATION OF APPEALS IN RESPECT OF COUNTY GOVERNMENT PUBLIC SERVICE.” The applicant challenged decision of the Respondent, Kenyatta University, a public university. The applicant submitted that section 89 of the Public Service Act was intended by Parliament to enforce all decisions of Public Service Commission. The respondents submitted that section 89 does not apply to it as a public university as it operates under the *Universities Act*.
13. The court held that the legislature was very much aware of the mandate of the Public Service Commission under Article 234 of *the Constitution* of 2010 but restricted section 89 of its Act of 2020 to apply to appeals in respect of county governments' public service only. If the legislature's intention was for section 89 of its Act to apply to all Public Service Commission's decisions nothing would have been easier than to state so. The court holds that it cannot exercise its judicial power under section 89 Public Service Commission outside appeals in respect of county government public service. All decisions relied on by the applicant related to the county government's public service. The court does not enact laws nor purport to do so and cannot possibly by judicial craft apply provisions of the law outside the mandate given to the court by the legislature as is sought in the instant application.



14. The court recognizes the right of a party to access court. However, the party has to comply with procedural rules in seeking substantive orders. Unless the law provides otherwise, the default avenue for the challenge of an administrative decision/ act/omission is vide judicial review orders which can be sought under judicial review proceedings or constitutional petitions and as provided under rule 10 of the Employment and Labour Relations Act 2024 (Procedure) Rules thus:-

10.

- (1) Any person who wishes to institute a petition shall do so in accordance with *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of *the Constitution*) Practice and Procedure Rules. Institution of petitions and judicial review proceedings.
- (2) Any person who wishes to institute judicial review proceedings shall do so in accordance with sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules.
- (3) Notwithstanding anything contained in this rule, a person may seek the enforcement of any constitutional right and freedom or any constitutional provision in a statement of claim or other suit filed before the Court.”

15. In the upshot the court held it had no jurisdiction to grant the orders sought under section 89 of the *Public Service Commission Act*. The provision is specific to decisions concerning appeals in respect of county government public service. The Respondent is a public university. The applicant is free to approach the court under Rule 10 of the Employment and *Labour Relations Act* 2024 (Procedure) Rules (supra) if she so wishes for the court to consider her case on merit. In the meantime, this application is bad in law and is struck out. The court makes no orders as to costs taking into account the basis of the application.

16. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Applicant:- Macheru

Respondent: Angwenyi

Interested party:- Wangeci

