



REPUBLIC OF KENYA



**Luka v Nampushi & 5 others (Petition E017 of 2024)
[2025] KEELRC 1196 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1196 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E017 OF 2024**

J RIKA, J

APRIL 30, 2025

BETWEEN

JIMMY PARNYUMBE LUKA PETITIONER

AND

JAMES SIMIREN OLE NAMPUSHI 1ST RESPONDENT

MAASAI MARA UNIVERSITY 2ND RESPONDENT

COUNCIL OF MAASAI MARA UNIVERSITY 3RD RESPONDENT

CABINET SECRETARY, MINISTRY OF EDUCATION 4TH RESPONDENT

PUBLIC SERVICE COMMISSION 5TH RESPONDENT

ETHICS & ANTI-CORRUPTION COMMISSION 6TH RESPONDENT

JUDGMENT

1. The Petition herein is dated 23rd September 2024.
2. It is founded on the affidavit of the Petitioner, sworn before Commissioner for Oaths, Kinoti Kimathi.
3. The date of swearing is blurred by the stamp and signature of the Commissioner for Oaths.
4. The Petitioner describes himself as a Kenyan citizen and chairperson of Persons Living With Disabilities, Narok County.
5. The 1st Respondent is the Deputy Vice-Chancellor, Administration, Finance & Strategy, of the 2nd Respondent University.
6. The 3rd Respondent is the 2nd Respondent's governing body; the 4th Respondent is the relevant Cabinet Secretary; the 5th Respondent is a Constitutional Commission established under Article 233 of *the Constitution*, mandated to establish and abolish offices in the public service; while the 6th Respondent



- is likewise a Commission established under Article 79 of *the Constitution*, mandated to combat and prevent corruption and economic crimes.
7. The Petitioner states that the 1st Respondent was the acting Deputy Vice-Chancellor, Administration, Finance & Strategy, since 2019.
 8. The 1st Respondent applied for the substantive position of Deputy Vice-Chancellor, Administration, Finance & Strategy, which had been advertised by the 5th Respondent.
 9. He was shortlisted and interviewed on 11th June 2024.
 10. The Petitioner describes the 1st Respondent as a controversial Associate Professor. He was previously promoted under mysterious circumstances. He did not hold the minimum qualifications. He mismanaged the 2nd Respondent, during his acting capacity.
 11. He does not meet the threshold under Chapter 6 of *the Constitution* on integrity. He has questionable qualifications, character, bad reputation of mismanagement, corruption, inability to make decisions and a reputation for abuse of office.
 12. He is under investigation by the 6th Respondent. He holds a forged birth certificate. He retains a forged national identity card.
 13. He promoted tribalism, nepotism and impunity while in an acting capacity [2019-2024]. Report of the Auditor General for the year ended 30th June 2020, showed that he earned the full salary of a substantive office-holder.
 14. The report reveals financial queries. There was an unexplained suspense account of Kshs. 218 million; unsupported expenditure of Kshs. 48 million; double contracted services of Kshs. 12.5 million; unsupported expenditure of purchase of plant and equipment at Kshs. 12.2 million; and unsupported cash and cash-equivalent, of Kshs. 145 million.
 15. He oversaw employment of over 40% staff from the dominant ethnic community in Narok County, in violation of Section 7[1] and [2] of the *National Cohesion and Integration Act*, 2008.
 16. The Auditor-General raised further queries for the year ended 30th June 2022 which include inaccurate employee costs; unsupported foreign travel expenditure; inaccurate depreciation and amortization; unsupported contractual services; unsupported M-pesa balances; and unreconciled research grants.
 17. Despite these incidences of lack of integrity on the part of the 1st Respondent, the 3rd, 4th and 5th Respondents appointed the 1st Respondent, as the substantive Deputy Vice-Chancellor, Administration, Finance & Strategy. The Respondents acted arbitrarily, unlawfully and in violation of *the Constitution*.
 18. The appointment of the 1st Respondent in acting capacity was itself tainted with irregularities. The 1st Respondent did not qualify for appointment in an acting capacity.
 19. How have the Petitioner's constitutional rights been violated, infringed or threatened?
 20. The Petitioner Jimmy Parnyumbé Luka, submits that he has demonstrated anomalies in the appointment of the 1st Respondent. Students', staffs', and the general public's consumer rights under Article 46 have been violated. Section 36[1] of the Public Service Act, 2017 provides for personal integrity and merit in appointment. This is underscored under Section 22 of the *Public Officer Ethics Act*, 2003.



21. The Petitioner legitimately expects the Respondents to ensure prudent use of public resources. The 1st Respondent has not justified his illegal appointment.
22. The Petitioner prays for: -
 - a. Declaration that the 1st Respondent's appointment to the position of Deputy Vice-Chancellor, Administration, Finance & Strategy, is unconstitutional, unlawful, irregular, null and void for being in contravention of *the Constitution*, and the same stands revoked.
 - b. Declaration that the 1st Respondent is not qualified to be appointed to the position, as his appointment is unconstitutional, unlawful, irregular, and void for being in contravention of Articles 10, 232 of *the Constitution*, and Section 36 of the Public Service Act.
 - c. Declaration that the consumer rights of the students, staff of the 2nd Respondent and those of the local community and stakeholders, have been violated by the Respondents through the appointment of an unqualified person to the said position.
 - d. Declaration that the 1st Respondent is not fit and qualified to hold the said position at the 2nd Respondent, or at any other University.
 - e. Compensation for violation of the Petitioner's rights as guaranteed under *the Constitution*.
 - f. Costs to be paid by the 1st, 3rd, 4th and 5th Respondents.
 - g. Any other suitable relief.
23. The 1st Respondent filed a Reply to the Petition dated 28th October 2024, and a replying affidavit, sworn on the same date.
24. He accepts that he was appointed in an acting capacity to the position subject matter of the Petition, between 2019 and 2024, and that he was competitively appointed to the substantive position in 2024.
25. He denies that he lacks integrity and therefore unsuitable for appointment. His integrity has never been in question. The Articles of *the Constitution* and provision of Statutes cited by the Petitioner, have no relevance to the Petition. He was rightfully appointed both in an acting and substantive capacity, by Council of the 2nd Respondent.
26. He exhibits a letter from the Commission for University Education dated 14th June 2024, confirming that he was the holder of a Master's degree and a Doctorate degree, from Clemeson University, United States of America. This University is a recognized institution in the USA, and its academic certificates, recognized in the USA, as well as in Kenya.
27. Salaries and allowances paid to him, were legally sanctioned. No recommendations against the 1st Respondent have ensued from the Auditor- General reports. In his acting capacity, the 1st Respondent was not the accounting officer. He has no relatives at the 2nd Respondent.
28. The 2nd and 3rd Respondents filed a Reply to the Petition dated 25th October 2024. They also filed an affidavit sworn on the same date by David M. Tiampati, 2nd Respondent's Deputy Registrar [Human Resources]. They support the position of the 1st Respondent. The Petitioner has failed to show, the applicability of the various Constitutional Articles and Legal provisions, cited in his Petition. He has no reasonable cause of action, against the Respondents.



29. The promotion and appointment of the 1st Respondent was done in conformity with the law, and the governing policies in the public service. The 2nd and 3rd Respondents are not aware of integrity issues against the 1st Respondent, raised by the Petitioner.
30. At no time did the 1st Respondent earn the full salary of a substantive office-holder, while acting in office. The reports of the Auditor-General did not state that he did so. Those reports have been processed through Parliament, in accordance with the law, with no adverse recommendations made against the 1st Respondent.
31. The 2nd and 3rd Respondent confirm that the 1st Respondent was not the accounting officer, at the time he held an acting role. The Accounting Officer always responded to audit queries satisfactorily.
32. The Petition is based on ignorance and falsehoods. It is crafted to malign the 1st Respondent and damage his academic reputation, which he has painstakingly built, over the years. Beyond mentioning Articles of *the Constitution*, the Petitioner has not established violation under those Articles. There is no support for the remedies sought. To grant the orders sought would result in termination of the 1st Respondent's contract of employment, without giving him a chance to be heard on accusations contained in the Petition
33. There was nothing unlawful about the appointment of the 1st Respondent. Appointment was merit-based. The 2nd and 3rd Respondent urge the Court to dismiss the Petition with costs.
34. The 5th Respondent filed an affidavit, sworn by its Secretary / CEO Paul Famba, on 15th November 2024.
35. Famba highlights Section 35 of the *Universities Act*, Cap 210 the Laws of Kenya, which establishes University Council. The Council employs staff, and appoints the Vice-Chancellor, his Deputy, Principals and Deputy Principals of Constituent Colleges, in collaboration with the Cabinet Secretary. The provision requires that recruitment is competitive, and overseen by the Public Service Commission.
36. The Public Service Commission advertised for the contested position on 26th October 2023. The Commission processed the recruitment. It forwarded the final report to the 2nd Respondent's Council, on 10th July 2024.
37. The Council would then exercise its mandate under Section 35 of the *Universities Act*.
38. The Public Service Commission expressed its reservation about the 1st Respondent, under paragraph [e] of the letter dated 10th July 2024, forwarding its report.
39. The letter and report show that 7 candidates were scheduled to be interviewed. 1 declined. Of the 6 candidates, the 1st Respondent emerged top with a score of 79.3.
40. His name and those of the 2nd and 3rd highest performers, Professor James Muriithi Njiru and Professor Hellen Kiende Mberia [scores of 77.3 % and 75.3% respectively], were submitted to the 2nd Respondent's Council, which settled on the 1st Respondent.
41. Paragraph [e] of the letter dated 10th July 2024, states: -
"Further observations, the Commission draws the attention of the Council to the following issues, relating [to] identification documents and certification in respect of Professor James Simiren Ole Nampushi:



- i. Falsification of identification documents by changing the date of birth from 20th December 1965, to 20th December 1975. The response given by the candidate during the interviews was not satisfactory;
 - ii. The discrepancy in his age, vis-a vis his CPE and KCE certificates raises [question] of authenticity of the candidate's academic certificate; and,
 - iii. The candidate did not submit a letter from the Commission for University Education at the interviews, regarding recognition and equation of his Master's degree and PhD certificate acquired from foreign University [ies].”
42. The 5th Respondent, the Public Service Commission does not therefore expressly support or oppose the Petition. Its position is that it discharged its mandate on recruitment of the candidate, communicated its reservations about the 1st Respondent, and left the 2nd Respondent's Council to appoint, under Section 35 of the Universities Act.
43. The 4th and 6th Respondents do not appear to have participated in the proceedings. Parties agreed to have the Petition considered and determined on the strength of their affidavits, documents, and submissions on record.
44. The 1st, 2nd and 3rd Respondents confirmed filing and exchange of their submissions at the last mention before the Court, on 11th March 2025. The 5th Respondent informed the Court it would rely entirely on its affidavit on record. The Petitioner, the 4th and 6th Respondents were not present at the last mention.
45. The issues are, whether the Petitioner has supplied the Court with sufficient evidential material, to support his claim that the appointment of the 1st Respondent was in violation of the Constitution and the Law; whether the 1st Respondent is qualified to continue in office; and whether the remedies sought are merited.

The Court Finds: -

46. The Court at first impression, leaned heavily against granting the Petition, after reading the responses by the 1st, 2nd and 3rd Respondents.
47. Most Courts do not like to interfere with concluded contracts of employment, and upsetting the status quo. They lean towards preservation of contractual obligations.
48. The 1st Respondent after all, had served in the same position he was appointed to, subject matter of the Petition, from 2019 to 2024. He was familiar with the docket. He was shortlisted, and interviewed. He was rated the best of the interviewees. He is the holder of Master's and Doctorate degrees, in the rarefied areas of parks, recreation and tourism management.
49. At first sight therefore, the 1st Respondent appeared to have been appointed on merit, and it was tempting to dismiss the Petition off-handedly, as an action brought by an activist, and a rabble rouser.
50. The University and its Council, advanced what at first sight, appeared a strong justification, in their appointment of the 1st Respondent, and filed strong affidavits seemingly persuasive enough, to warrant dismissal of the Petition.
51. This was the view of the Court, until the Court was confronted with the affidavit of the 5th Respondent's Secretary/CEO Paul Famba, and the letter dated 10th July 2024.



52. Courts have the obligation to look beyond first impressions.
53. The Public Service Commission is established under Article 233 of *the Constitution*. It is the custodian of the values and principles of public service, identified at Article 232 of *the Constitution*.
54. The 5th Respondent provided the Court with impartial evidence, which in the view of the Court, is not tainted by any degree of bias, with respect to the contested issues.
55. It is important to underscore the constitutional values and principles under Article 232, which the 5th Respondent is a custodian of, and which the Court views to be central to this Petition.
56. The values and principles include among others: -
 - a. High standards of professional ethics.
 - b. pass
 - c. pass
 - d. pass
 - e. Accountability.
 - f. Transparency.
 - g. Fair competition and merit, as the basis of appointments and promotions, in public service.
57. The 5th Respondent, in its reservation to the 2nd Respondent's Council, clearly stated that the 1st Respondent had falsified identification documents.
58. He changed his date of birth, from 20th December 1965 to 20th December 1975. He lied about his actual age, which would perhaps, have the effect of extending his mandatory retirement age.
59. There was discrepancy in his CPE and KCE certificates.
60. The 5th Respondent states in the reservation, that the 1st Respondent, was not able to explain falsification of his identification documents at the interview.
61. It is noted that the 5th Respondent also communicated its reservation, about the 1st Respondent's University certificates.
62. The 1st Respondent approached the Council for University Education, which authenticated the University certificates.
63. The documents from the Commission for University Education, were only filed by the 1st Respondent through a list of documents dated 3rd February 2025. Directions on filing of closing submissions issued on 23rd January 2025.
64. Nonetheless, there was no objection raised by any of the Parties when the Petition was mentioned on 4th March 2025 and 11th March 2025 on delayed filing of documents, and the Court has no reason to decline the documents.
65. The reservation on the 1st Respondent's University certificates would therefore seem, to have been reasonably answered.
66. But there is nothing placed before the Court by the 1st Respondent, to discount the serious finding by the 5th Respondent, that the 1st Respondent had falsified identification documents.



67. This finding supports the submission by the Petitioner, that the 1st Respondent's integrity was tainted. Falsification of identification documents, which was aimed at securing high public service office, was clearly against the values and principles of high standards of professional ethics; accountability; transparency; and in the end, resulted in complete violation of fair competition and merit, as the basis of appointment and promotion, under Article 232 of *the Constitution*.
68. 2 of the 3 candidates, Professor James Muriithi Njiru and Professor Hellen Kiende Mberia, whose names were forwarded to the 2nd Respondent's Council, did not have any reservations against their names. Where was fair competition and merit in their rejection, in favour of the 1st Respondent?
69. It may well be that, other complaints concerning the Auditor-General Reports, had been processed through Parliament, without adverse recommendation. But clearly, the reservation concerning the 1st Respondent's identification documents, was not the subject of the said Parliamentary process. It was a matter considered by the relevant Constitutional Commission, the 5th Respondent herein, and a conclusion that there was falsification of identification documents made. That conclusion has not been discounted in any of the affidavits or documents filed by the 1st, 2nd and 3rd Respondents.
70. The Court does not think that the 1st Respondent is correct, in his submission that by granting the Petition, the Court would be terminating his contract, without according him an opportunity to defend himself.
71. He was given adequate opportunity by the relevant Constitutional Commission, the 5th Respondent herein, to explain falsification of identification of documents. He did not explain himself. Even in this Petition, he does not have an answer to the specific finding of falsification of identification documents.
72. If the 5th Respondent ever cleared him on the finding of falsification of documents, this would have been evident in the affidavit of Paul Famba, which was filed before this Court only about 5 months ago.
73. The 2nd and 3rd Respondents said nothing specific about falsification of identification documents by the 1st Respondent. They made a general submission, that they are not aware about the 1st Respondent's integrity issues. Did they not read the affidavit of the 5th Respondent's CEO, Paul Famba, and the annexures thereto?
74. In E&LRC Petition 173 of 2019, between Union of Kenya Civil Servants v. Cabinet Secretary, Ministry of East African Community & Regional Development; Tana & Athi River Development Authority [Interested Party] [2020] e-KLR, the Union petitioned the Court, against the appointment of Stephen Githaiga Ruimuku, as the Interested Party's Managing Director.
75. The Petition was based on the allegation that Ruimuku had falsified his identification documents, lowering his age, with the intention of extending his retirement age.
76. The Court agreed that indeed, Managing Director Ruimuku had falsified his documents.
77. It was held that Ruimuku was a public officer, subject to the values and principles of public service, under Article 232 of *the Constitution*. He had violated those values and principles, and stood to benefit by falsification of his age.
78. The Court further held that Ruimuku was in violation of the values and principles under Article 10 of *the Constitution*.
79. In it was held that recommendation to appoint Ruimuku and/or renew his contract, as the Managing Director, was based on obvious breach of the guiding norms, and could not be allowed to stand. A



declaration issued that the appointment of Ruimuku was null and void. It was declared further that Ruimuku failed the integrity test to hold public office.

80. Some mainstream media highlighted the decision against the water services company Managing Director, with the catchy title, “Stephen Githaiga: The Water boss drowned by age manipulation” [see Business Daily, 8th October 2020].
81. The Court does not see any distinguishing features, between the Petition against Ruimuku, and the current Petition against the 1st Respondent, James Simiren Ole Nampushi. The 1st Respondent acted against *the Constitution* of Kenya, the *Public Service Commission Act*, the *Leadership and Integrity Act*, the *Public Officer Ethics Act*, and the Public Officer Code of Ethics and Conduct.
82. If a Deputy Vice-Chancellor, a public officer at the leadership of a public institution, was found to have falsified his identification documents, what would prevent officers, junior to him, from copying his bad example?
83. There was failure by Institutions charged with the responsibility of upholding Constitutional values and principles, and protecting public interest against the ravages of unethical conduct. The 2nd and 3rd Respondents ought to have examined carefully, the reservation communicated against the 1st Respondent, by the 5th Respondent. They ought to have read the letter of the 5th Respondent between the lines.
84. The 5th Respondent itself, did not have reasonable ground, to recommend the 1st Respondent’s name to the 2nd Respondent’s Council, having established that he had failed the integrity test. Why did the 5th Respondent rate him at the top of the interviewees, while making a various serious reservation on his appointment?
85. The 4th and 6th Respondent appear to have given the finding by the 5th Respondent, concerning the 1st Respondent’s integrity and suitability, a cold shoulder. There were at least 2 other strong candidates, without any integrity reservations, who the 5th Respondent, could have recommended to the 2nd Respondent’s Council.
86. It is noted that as early as 6th March 2024, the Petitioner and others in Narok County, had written to the Public Service Commission, imploring the Public Service Commission not to recommend the 1st Respondent for appointment, based on a raft of integrity issues. The 5th Respondent was forewarned, but strangely still submitted the 1st Respondent’s name to the 2nd Respondent’s Council, as the best candidate, paving way for his substantive appointment.
87. In light of these institutional failures, the Petitioner acted for the good of the public, and in particular the University community and the local community in general. He was at the vanguard of protecting constitutionalism, public interest and the rule of law, while the 2nd, 3rd and 5th Respondents, retreated to the rearguard. It is not a light matter, where a public officer, in an important public service institution, rides to a high public service office, on the wheels of falsified personal documents. The Petitioner is to be garlanded.

It is ordered: -

- a. It is declared that the 1st Respondent’s appointment to the position of Deputy Vice-Chancellor, Administration, Finance & Strategy, is unconstitutional, unlawful, null and void, and the same stands revoked.
- b. It is declared that the 1st Respondent’s appointment does not meet integrity test, and the values and principles of public service, under Article 232 of *the Constitution*.



- c. It is declared that the 1st Respondent's appointment is against the public interest.
- d. It is declared that the 1st Respondent is not fit and qualified to hold the position of Deputy Vice-Chancellor, Administration, Finance & Strategy, Maasai Mara University.
- e. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

