



Republic v Murang’a University of Technology; Wangila & another (Ex parte Applicants); Universities Academic Staff Union National Office & another (Interested Parties) (Judicial Review E046, E047, E051 & E052 of 2024 (Consolidated)) [2025] KEELRC 2327 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2327 (KLR)

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E046, E047, E051 & E052 OF 2024 (CONSOLIDATED)**

MN NDUMA, J

JULY 31, 2025

BETWEEN

REPUBLIC APPLICANT

AND

MURANG’A UNIVERSITY OF TECHNOLOGY RESPONDENT

AND

DR JOSEPH MASINDE WANGILA EX PARTE APPLICANT

BENSON MUCHAI IRUNGU EX PARTE APPLICANT

AND

**UNIVERSITIES ACADEMIC STAFF UNION NATIONAL
OFFICE INTERESTED PARTY**

**UNIVERSITIES ACADEMIC STAFF UNION, MURANG’A UNIVERSITY OF
TECHNOLOGY CHAPTER INTERESTED PARTY**

JUDGMENT

1. Judicial Review E046, E047, E051 and E052 of 2024 were consolidated. The exparte Applicant in E046 is Dr. Joseph Masinde Wangila. The Exparte Applicant in E047 is Benson Muchai Irungu; whereas the Exparte Applicant for E051 and E052 is Muranga University of Technology (MUT), which institution is the Respondent in E046 and E047. The Public Service Commission was joined as an Interested Party in the consolidated suit.



2. The facts and issues in E046 and E047 are similar. The exparte Applicants, Dr. Joseph Masinde Wangila and Benson Muchai Irungu are employees of the Respondent who were subjected to disciplinary process by the Respondent leading to their suspension and dismissal from employment.
3. In the case of Dr. Joseph Masinde Wangila, he was employed on 10/8/2021 as a lecturer. He was suspended from duty on 4/5/2025 and was dismissed from employment on 6/9/2023. The Applicant lodged an appeal against the decision to the Public Service Commission (PSC) and the PSC found that the Respondent's decision to terminate the employment of the Applicant was unlawful and directed that the exparte Applicant be reinstated back to employment and he be paid his arrear salaries and allowances. The Respondent has since refused to comply with the decision of PSC.
4. The facts in respect of Benson Muchai Irungu are similar in all material respects. The exparte Applicant was employed as a lecturer by the Respondent University on 20/5/2013. The exparte Applicant served the Respondent until 4/12//2013 when his services were terminated. The Applicant had been suspended during the period of the disciplinary process on 11/4/2023. The exparte Applicant appealed the decision to PSC and PSC in a decision dated 1/8/2024 found in favour of the exparte Applicant. The PSC directed the Respondent to reinstate the exparte Applicant to his position with full payment of arrear salaries and allowances withheld by the Respondent.
5. The Respondent University aggrieved by the decision of PSC filed Judicial Review applications E051 and E052 which have been consolidated herein. The University seeks the court to quash the decision of PSC in respect of both Applicants.
6. The Respondent University defends its decision to suspend and dismiss the exparte Applicants from employment and states that it has the mandate to do so and that it had followed due process by issuing the exparte Applicants with notices to show cause in respect of Benson Muchai Irungu on 16/3/2023 for failing to defend his PhD study by presenting the academic progress report to the University Management Board on 15/3/2023 at 11:00 a.m. in the Council Boardroom.
7. That on 3/4/2023 Mr. Muchai responded to the show cause letter and on 11/4/2023, Mr. Muchai was suspended from duty.
8. That on 14/6/2023 Mr. Muchai was invited for a hearing before the Respondent on 22/6/2023. That the hearing took place on 22/6/2023. That Mr. Muchai was found guilty on all charges and was dismissed from employment by a letter dated 6/7/2023 on account of gross mis-conduct.
9. That Mr. Muchai appealed the decision by a letter dated 19/7/2023. The appeal panel sat on 4/8/2023 where Mr. Muchai was free to be accompanied by two friends' guardians or union representatives.
10. That the appeal panel upheld the dismissal of Mr. Muchai by a letter dated 16/11/2023. That Mr. Muchai appealed the decision to the PSC on 5/12/2023 which appeal was allowed by PSC on 1/2/2024 and directed that Mr. Muchai be reinstated and he be paid his salaries and allowances from the date of suspension.
11. In the case of Dr. Masinde the facts are similar in all respects except that Dr. Masinde faced four (4) charges being: -

Count I

Inappropriate relationship with a university student contrary to section 44(4) of the *Employment Act*, 2007 and MUT Human Resource manual by allowing her to access departmental minutes without authority.

Count II



Defamation of character of a public officer contrary to the Employment Act, 2007 by discussing the Chairman of the department with the named student.

Count III

Damage of the employer reputation contrary to section 44(4) of the Employment Act 2007 and MUT HR Policy Manual by sharing inappropriate content on social media with Dr. Janet Mbongani; (non MUT staff) and positing an illegally recorded clip on MUT Departmental minutes contrary to the section 44(4) of the Employment Act.

Count IV

Insubordination contrary to the Employment Act and HR Policy Manual by in subordinating the chairman of Education and Technology Department. Dr. Alice Omariba, contrary to section 44 (4) of the Employment Act, 2007 and MUT HR Policy Manual.

12. That Dr. Masinde was found guilty as charged upon being given opportunity to respond in writing to the charges and appeared before a disciplinary committee and appeals committee. That the decision by the Respondent was quashed by PSC which ordered the Respondent to reinstate Dr. Masinde and pay all his arrear salaries and allowances.

Responses

13. The Respondents in all the consolidated applications filed their replying affidavit and supplementary affidavits were also filed. PSC being a Respondent and Interested Party in the consolidated suit filed its replying affidavit also.
14. All parties filed written submissions and the issues for determination are: -
 - i. Whether the Respondent is bound by the decision of the PSC and ought to abide by it.
 - ii. What remedies are available to the parties in the consolidated suit.
15. The consolidated suit largely turns on issues of law and the court has carefully considered the submissions and the authorities submitted by the parties.
16. The key provision is section 74 of the Public Service Commission Act, which provides that: -
 1. Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission.
 2. An appeal under subsection (1) shall be made in writing within ninety days from the date of the decision appealed against:

Provided that the Commission may consider an appeal that was made out of time if, in the opinion of the commission, the circumstances warrant such consideration.
 3. The Commission shall not entertain an appeal by a public officer or a representative of a public officer, in respect of a particular decision, more than once.
 4. Despite the right of appeal conferred in a public officer by this section, disciplinary action shall not be deferred or suspended pending the determination of the appeal.
 5. After considering an appeal the Commission may –
 - a. Uphold the decision;



- b. set the decision aside;
 - c. vary the decision as it considers to be just;
 - d. give such directions as it may consider appropriate with respect to the decision;
 - e. direct the refund, reinstatement of remuneration or release of any withheld payments due to the public officer as it considers to be just;
 - f. direct that disciplinary action be taken against any public officer who has failed to discharge a duty that was the public officer's responsibility to perform in relation to the disciplinary case and the concerned public body has suffered a loss; or
 - g. make any other appropriate decision in view of the circumstances of the case
6. Where the Commission set aside a decision under subsection (5)(b) the public officer shall revert to the previous status held and receive the attendant benefits as though the decision set aside was never made. (emphasis added)
17. In the case of Benson Muchai Irungu, PSC concluded that the Respondent University had no valid reasons to terminate the Appellant's employment and the procedure followed was unfair as it contravened *the Constitution*, the *Employment Act*, the *Fair Administrative Action Act*. The *Public Service Commission Act*, the Public Service Regulation 2020 and the Disciplinary Manual for the Public Service, Revised 2022. The Commission also found that the suspension was unlawful and in violation of section 71(2) of the *Public Service Commission Act* and Section 4.2.2 (1) (d) of the Discipline Manual for the Public Service, Revised 2022. Key to the finding was that no witnesses were called to substantiate the charges and the lecturer was not allowed to be represented by an advocate of his choice in terms of Appendix IX of the Discipline Manual for the Public Service Revised 2023.
18. With respect to Dr. Joseph Masinde Wangila PSC arrived at a similar decision and concluded that the Respondent had no valid reason(s) to dismiss the lecturer from employment and that the Respondent did not follow a fair procedure.
19. The crucial provision as set out earlier is section 74(6) which state that:
- “(6) where the Commission sets aside a decision under sub-section (5) (b), the public officer shall revert to the previous status held and receive the attendant benefits as though the decision set aside was never made.”
20. The court states unequivocally that on matters discipline PSC is a superior body to the disciplinary bodies of any public institution whose employees have a right to appeal to PSC upon being visited with an adverse decision by their employer. The decision by the PSC is not a suggestion.
21. The University has no choice but to abide by the decision of PSC and cannot second guess or fail to implement the decision even where the institution applies to court for review of the decision by the PSC as in this case.
22. They can only avoid implementation where they obtain an injunction and or any interim order from the court stopping such implementation pending the hearing and determination of the suit filed before court.
23. In this case, no interim injunctive relief was obtained by the University in JR E051 and E052 there being no compelling justifiable reason for the court to do so.



24. The University has not faulted the decision by PSC in any material respect to warrant this court to review the decision by PSC.
25. The case of Nation Media Group Ltd versus Cradle, The Children’s Foundation suing through Geoffrey Mayanya (Civil Appeal 149 of 2013) KECA 839 (KLR) (22 January, 2010 (judgment), the court held that;

“It is important to note in every case, that the purpose of judicial review is to determine whether the Applicant was accorded fair treatment by the concerned public body and that it is not within the remit of the court to substitute its own opinion with that of the public entity charged by the law to decide the matter in question.”
26. The Exparte Applicants in E046 and E047 utilized and exhausted, internal and external disciplinary mechanisms available to them in terms of the regulations and law applicable to them as public officers working as lecturers in public university being MUT.
27. This court has time and again penalized employees who fail to exhaust the internal and statutory mechanisms available to them before approaching the court. It is in public interest that the court supports and upholds, utilization of all dispute and grievance mechanisms available to public officers before approaching this court.
28. The application by the University in JR 051 and E052 have not disclosed any justifiable reason to review or set aside the decision by PSC in respect of the two lecturers.
29. Accordingly, JR E051 and E052 are dismissed for lack of merit. The court upholds JR E046 and E047 in favour of Mr. Benson Muchai Irungu and Dr. Joseph Masinde and makes the following final orders: -
 1. An order of mandamus directed at the Muranga University of Technology (MUT) is issued; compelling it to comply with and implement the decision of the Public Service Commission (PSC) in respect of the two Exparte Applicants, being Benson Muchai Irungu and Dr. Joseph Masinde by reinstating them to the position they held from the date of suspension and to pay to the two public officers all arrear salaries and allowances withheld by the university from the said date to the date of this judgment.
 2. The Respondent Murang’a University of Technology (MUT) to meet the costs of the consolidated suit.

DATED AT NAIROBI THIS 31ST DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Odhiambo/Sang for 1st and 2nd Interested Party

Ms. Kimathi/Taak for the Respondent

Ms. Wangechi for 3rd Interested Party

Mr. Kemboi – Court Assistant

