



Nyangongo v Cabinet Secretary, Ministry of Education & 2 others (Employment and Labour Relations Petition E019 of 2023) [2024] KEELRC 294 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 294 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E019 OF 2023
DN NDERITU, J
FEBRUARY 15, 2024

BETWEEN

EVANS MORARA NYANGONGO PETITIONER

AND

CABINET SECRETARY, MINISTRY OF EDUCATION 1ST RESPONDENT

TEACHERS SERVICE COMMISSION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

I. Introduction

1. The petitioner herein filed a petition dated August 1, 2023 seeking for the following prayers –
 - a. A declaration that the 1st respondent’s appointments and deployments are unconstitutional, illegal, null and void.
 - b. An order of *certiorari* to quash 1st respondents appointments and deployments in TVET institutions *vide* handing and taking over schedules dated January 18, 2023, September, 2020, December, 2021.
 - c. A declaration that sections 17(1)(4) and (m) is inconsistent with article 237 of the [Constitution](#) thus unconstitutional, null and void.
 - d. A declaration that the 1st respondent appointments and deployments violate the petitioner’s fundamental rights and freedoms of articles 10, 25, 27, 28, 29, 35, 41, 47, 50, 236 and 258 by the respondent jointly and several.

An order of judicial review to bring unto this court for the purpose of quashing the 1st respondent appointments, and deployments *vide* handing and taking over dated schedules,



January 2023, 10th September, 2020, November 11, 2021, December 16, 2021 and July 6, 2022 respectively.

- e. An order of judicial review to bring unto this court for the purpose of quashing the 1st respondent's illegal decision to appoint and the Director Human Resource Management in SDTTV.
 - f. An order to the 2nd respondent the Teachers Service Commission to advertise afresh all the vacant position of Principal, Deputy Principal, Registrars, Dean of Students and substantive Heads of departments in TVET institution within three months after the court judgment.
 - g. In the alternative, an order compelling the respondents to transfer the service of the 3780 teachers to PSC in accordance with Section 166 of the *TSC Code of Regulations* before advertising a fresh the vacant positions of Principal, Deputy Principal, Registrars, Dean of students and substantive Heads of departments in TVET institutions within three months after the court judgment.
 - h. An order for the Ethics and Anti-Corruption Commission and Directorate of Criminal Investigations to immediately institute independent and impartial investigation and prosecute on the alleged manipulation of the PSC payroll since July, 2019 to date.
 - i. An award of compensation for Exemplary, Special and General damages.
 - j. 14% court interest rates
 - k. Cost of the suit.
2. The petition is accompanied with a purported affidavit that is neither dated nor signed by the petitioner, with several annexures thereto.
 3. Alongside the petition was filed an application under a certificate of urgency seeking various interlocutory reliefs. This application of even date is supported with an affidavit that is also improper in law as shall be explained hereunder.
 4. While the above application was pending hearing in court, the 2nd respondent filed a notice of motion dated 11th September, 2023 seeking that its name be struck out from these proceedings on the basis that no cause of action is disclosed against it.
 5. When the matter came up in court for directions on 19th October, 2023 it was agreed that the notice of motion by the 2nd respondent be disposed of first, by way of written submissions.
 6. When the matter came up again in court on 8th February, 2024 the court noted that a replying affidavit allegedly filed by the petitioner in response to the application was not on record. The petitioner promised and undertook to avail on record the said already filed replying affidavit.
 7. However, it now seems that the petitioner was not forthright when he told the court that he had already filed a replying affidavit. What he placed on record on 9th February, 2024 is a replying affidavit filed on that date allegedly sworn by the petitioner on 16th September, 2023. There is no evidence or explanation why the said replying affidavit was not filed earlier on as per the procedure when the petitioner was served with the said application.
 8. The above alleged replying affidavit is not signed by the petitioner as the deponent and in law it is of no evidential value.



9. As stated above, the affidavit in support of the petition is neither dated nor signed by the petitioner as required by both the substantive and procedural law. The court also notes that the affidavit in support of the petitioner's application dated 1st August, 2023 is not commissioned as required in law.
10. The net effect of all the foregoing is that the petition herein and the notice of motion by the petitioner, both dated August 1, 2023, are incurably defective for lack of proper affidavit in support thereof and the same are hereby struck out.
11. The *Oaths and Statutory Declarations Act* provides that the name of the place of taking of the oath or declaration and the date thereof shall be indicated in the jurat of the affidavit wherein the commissioner for oaths shall verify and authenticate the mark or signature of the deponent as the person making the oath or the statutory declaration. The affidavits stated above do not meet this threshold and hence the petition and the application by the petitioner are hereby struck out for lacking the support of competent affidavits as required in law.
12. With the above finding and holding, it is of no use for this court to consider the merits and demerits of the 2nd respondent's application dated September 11, 2023 as there is no proper petition on record.
13. The net effect is that the petition herein is struck out with no order as to costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 15TH DAY OF FEBRUARY, 2024.

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DAVID NDERITU

JUDGE

