



Wang’ombe v Tangaza University College & 9 others (Petition E145 of 2023) [2024] KEELRC 501 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 501 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E145 OF 2023
B ONGAYA, J
MARCH 7, 2024**

BETWEEN

DAVID KARUNGU WANG’OMBE PETITIONER

AND

TANGAZA UNIVERSITY COLLEGE 1ST RESPONDENT

TANGAZA CONSORTIUM TRUST 2ND RESPONDENT

**REGISTERED TRUSTEES OF BROTHERS OF THE CHRISTIAN SCHOOLS
(DE LA SALLE CHRISTIAN BROTHERS) 3RD RESPONDENT**

**REGISTERED TRUSTEES OF THE COMBONI MISSIONARIES
(MCC) 4TH RESPONDENT**

**REGISTERED TRUSTEES OF THE SELASIAN OF DON BOSCO
(SDB) 5TH RESPONDENT**

APOLLINAIRE CHISHUGI 6TH RESPONDENT

PAOLO W. MERSMER 7TH RESPONDENT

JONAS YAWOVI DZINEKOU 8TH RESPONDENT

HENRY TUCHOLSKI SDB 9TH RESPONDENT

ELEANOR GIBSON 10TH RESPONDENT

RULING

1. The respondents filed the notice of preliminary objection on 17.01.2024 through Onsando Ogonji & Tiego Advocates. The respondents object to the petition upon the following grounds:



- a. The doctrine of estoppel applies because the petitioner voluntarily entered a mediation agreement with the respondents dated 16.02.2020 pursuant to which the petitioner was paid Kshs. 10, 000,000.00 and he resigned from his position in addition to settling HCCC E015 of 2022 and his Advocates paid Kshs.450,000.00.
 - b. The petition is res judicata in view of section 7 of the Civil Procedure Act as relates to prayer (c) in the petition because the same issues were raised in HCCC E015 of 2022 and settled by the court's order of 13.10.2022 marking that suit settled.
 - c. The petition offends the doctrine of constitutional avoidance in that the pleadings, averments and prayers have been addressed under the Employment Act as such and there are no constitutional issues for determination.
2. The petitioner filed the petition dated 18.07.2023 through Achachi & Associates Advocates LLP. The petitioner prayed for :
- a. A declaration that the respondents created a hostile work environment for the petitioner and his subsequent resignation was obtained under duress or undue influence.
 - b. The respondents to jointly and severally pay the petitioner Kshs. 3, 000, 000.00 bonus for 1st year of service; Kshs. 4, 800,000.00 bonus for 2nd year of service; Kshs. 975, 000.00 extra duties by the petitioner outside the contract of service; Kshs.9,000,000.00 remuneration for remainder of the contract of service; a declaration that the employment of the 6th, 7th, 8th, 9th, and 10th respondents herein was illegal, null and void for want of requisite academic qualifications, work permit and non-compliance with immigration laws.
 - c. Interest on (b), (c) (d) and (e) above until payment in full.
 - d. Costs.
3. The alleged facts of the petition relate to employment of the petitioner by the 1st respondent as Vice-Chancellor effective 01.01.2020. At paragraph 40 of the petition, the petitioner pleads that because of the respondents' impugned actions as pleaded in the instant petition, the petitioner filed a suit against the respondents and others in HCCC No. E015 of 2022 praying for a judgment to be entered against the defendants therein and being respondents in the instant petition. It is further pleaded that the suit was later settled out of Court between the respondents with a term of settlement requiring that the petitioner resigns and which he did on 16.02.2022.
4. The parties filed submissions on the preliminary objection. The Court has considered all material on record as relates the preliminary objection and returns that the preliminary objection must entirely succeed upon the following findings:
- a. The petitioner by his own pleadings has confirmed that the issues pleaded in the instant petition were subject of HCCC No. E015 of 2022 settled between parties and encompassing the requirement, that he resigns. The same was the basis for withdrawal of HCCC No. E015 of 2022. The parties are bound by the settlement agreement dated 16.02.2023 at page 234 of the respondents' replying affidavit. Estoppel applies as the respondents fully complied with the terms of the settlement agreement as per the preliminary objection.
 - b. The petitioner has confirmed that the dispute is about his contract of service as Vice – Chancellor in the 1st respondent's establishment. Nothing in the petition goes beyond the contractual relationship and as already settled between the parties. The Petition is indeed trapped by the doctrine of constitutional avoidance.



- c. All material on record point that all matters in the petition were determined by the mediation settlement agreement leading to withdrawal of HCCC No. E015 of 2022. That being the case, the dispute between parties was conclusively settled by the mediation settlement agreement and there cannot be a dispute for determination. The situation amounts to petition being res judicata, impliedly or constructively. The petition must fail.

In conclusion, the preliminary objection is upheld and the petition hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

