



**Asiago v Mbatia & 2 others (Petition E075 of 2024)  
[2024] KEELRC 2441 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2441 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E075 OF 2024  
AN MWAURE, J  
OCTOBER 4, 2024**

**BETWEEN**

**NATHAN BRONZE ONSARE ASIAGO ..... PETITIONER**

**AND**

**PAUL MBATIA ..... 1<sup>ST</sup> RESPONDENT**

**MULTI MEDIA UNIVERSITY OF KENYA ..... 2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF EDUCATION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant filed an application vide notice of motion dated 16<sup>th</sup> May 2024 and sought the following prayers:
  - a. That the matter herein be certified as urgent, with dispensation of service, and interim orders sought granted in the first instance.
  - b. That pending inter parties hearing and determination of this application this honourable court be pleased to issue conservatory orders prohibiting the 3<sup>rd</sup> respondent from considering, appointing or otherwise implementing the recommendation of the 2<sup>nd</sup> respondent in favour of the 1<sup>st</sup> respondent with regard to an appointment of Vice Chancellor of the 2<sup>nd</sup> respondent University.
  - c. That pending inter parties hearing of this application this honourable court be pleased to grant an order restraining the 1<sup>st</sup> respondent from accepting or assuming appointment or carrying out any functions of the Vice Chancellor of the 2<sup>nd</sup> respondent University or any public University as he fails to meet the standard's outlined in chapter 6 of the constitution of Kenya, 2010.



- d. That this honourable court be pleased to grant a permanent order restraining the 1<sup>st</sup> respondent from accepting or assuming appointment or carrying out any functions of the Vice Chancellor of the 2<sup>nd</sup> respondent university or any public University, as he fails to meet the standards outlined in chapter 6 of the Constitution of Kenya, 2010.
2. The petitioner states that the 1<sup>st</sup> respondent created an advertisement for a job of a professor of sociology and he tailor made it for himself and was with the strategy to give himself the vacancy of a full professor which he unilaterally created for himself. He says the 1<sup>st</sup> respondent was the only candidate.
3. The petitioner says when the position of a Vice Chancellor was advertised he became a full professor in January 2024. He took up the job of a full professor and yet did not give a six months' notice as required as pertains to his contract.
4. The petitioner says that the 1<sup>st</sup> respondent fraudulently secured a job interview for the position of vice chancellor for the 2<sup>nd</sup> respondent by falsifying and misrepresenting facts about his qualifications as at the time of the application the 1<sup>st</sup> respondent had not acquired the status of a full professor as per the University status.
5. He says the 1<sup>st</sup> respondent had therefore not qualified for the position of the Vice Chancellor.
6. The petitioner states the appointment of a Vice Chancellor was scheduled to be announced on 20<sup>th</sup> May 2024.
7. The application herein was served on the respondents respectively on 21<sup>st</sup> May 2024 and an affidavit of service was filed in the Court appropriately.

#### **Determination**

8. On 24<sup>th</sup> May 2024 the court gave interim orders in the presence of the petitioner and the counsel for the 2<sup>nd</sup> respondents and granted prayers Nos 2 and 3 of the aforesaid notice of motion dated 16<sup>th</sup> May 2024.
9. The 1<sup>st</sup> and 3<sup>rd</sup> respondent did not file any replying affidavits and therefore the application was as it were uncontroverted.
10. The 2<sup>nd</sup> respondent the Multi Media University undertook to undertake in depth investigations unto the allegations but in the same breath said they had no objection to the grant of the prayers sought.
11. In view of the fact that the application is not opposed and in regard the court finds sufficient justification to grant the prayers sought by the petitioner as per the application hereto. The court therefore is pleased to issue conservatory orders:
  1. This honourable court be pleased to issue conservatory orders prohibiting the 3<sup>rd</sup> respondent from considering, appointing or otherwise implementing the recommendation of the 2<sup>nd</sup> respondent in favour of the 1<sup>st</sup> respondent with regard to an appointment of Vice Chancellor of the 2<sup>nd</sup> respondent university.
  2. This honourable court be pleased to grant an order restraining the 1<sup>st</sup> respondent from accepting or assuming appointment or carrying out any functions of the vice chancellor of the 2<sup>nd</sup> respondent university as he fails to meet the standard's outlined in chapter 6 of the constitution of Kenya, 2010.
12. Each party will pay their costs of this application.  
Orders accordingly.



**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

