



REPUBLIC OF KENYA



**Nandi v Machogu, Cabinet Secretary Ministry of Education & 3 others (Employment and Labour Relations Petition E014 of 2024) [2024] KEELRC 13545 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13545 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E014 OF 2024  
MN NDUMA, J  
DECEMBER 19, 2024**

**BETWEEN**

**PROF MANYASA JO NANDI ..... PETITIONER**

**AND**

**EZEKIEL MACHOGU, CABINET SECRETARY MINISTRY OF  
EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**DR BEATRICE MUGANDA IMANYALA, PRINCIPAL SECRETARY  
STATE DEPARTMENT FOR HIGHER EDUCATION AND  
RESEARCH ..... 2<sup>ND</sup> RESPONDENT**

**DR BERNADETTE MUNGAI, CHAIRMAN KAFU UNIVERSITY  
COUNCIL ..... 3<sup>RD</sup> RESPONDENT**

**PROF MARY O ABUKUTSA ONYANGO ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Facts of the Petition**

1. The Public Service Commission (“The Commission”) in compliance with the University Act 2012, and the statute law (Miscellaneous Amendments [Act, No. 18 of 2018](#)) issued a recruitment advertisement for the position of Vice Chancellor at Kaimosi Friends University on August, 8<sup>th</sup> 2023.
2. Interviews for the shortlisted candidates were conducted within the month of December 2023. By a letter dated 15<sup>th</sup> December 2023, the Commission published the interviews results in order of performance.
3. The Petitioner emerged first having obtained an average score of 80.33 points while the 4<sup>th</sup> Respondent emerged second having obtained 71 points.



4. The Commission forwarded the names of all shortlisted candidates to the University Council to facilitate the selection of the Vice Chancellor from the pool of eight shortlisted candidates. The report submitted by the Commission contained the outcomes of the selection process and incorporated feedback gathered from a public participation exercise conducted by the Commission.
5. Upon receiving the report, the University Council convened a special council meeting on 2<sup>nd</sup> January 2024, to deliberate on its contents and fulfill its role in the recruitment process. That Council recommended the appointment of the Petitioner/Applicant to the position of Vice Chancellor.
6. That the 1<sup>st</sup> Respondent, Cabinet Secretary, Education, then, recommended the 4<sup>th</sup> Respondent for appointment to the position of Vice Chancellor of the University. The information was relayed to the 1<sup>st</sup> Respondent by a letter dated 5<sup>th</sup> of February 2024.
7. The Petitioner being aggrieved by the decision of the 1<sup>st</sup> Respondent to recommend the 4<sup>th</sup> Respondent for appointment as Vice Chancellor filed this petition.
8. The Petitioner deposes in the petition and supporting affidavit that he was the Principal of Kaimosi Friends University College and the Acting Vice Chancellor for the Kaimosi Friends University since it was chartered.
9. The Petitioner states that the Council had sought concurrence of the 1<sup>st</sup> Respondent on the decision it had made to recommend appointment of the Petitioner to the position but the 1<sup>st</sup> Respondent made an unlawful departure from the recommendation vide a letter dated 5/2/2024, by recommending appointment of Prof. Mary O. Abukutsa, Onyango as the Vice Chancellor as opposed to the Petitioner. That the decision by the 1<sup>st</sup> Respondent was not based on any valid or rational reason there being no justification at all to deviate from the sound recommendation by the Council that the Petitioner was the best suited candidate for appointment upon considering all factors presented in the report by the Finance and Human Resource Committee.
10. The Petitioner further states that the Commission was satisfied with the suitability of the Petitioner as the best candidate and there was no basis to deviate from the merit list. That the Council was properly guided, as mandated by the *Universities Act*, to recommend the best candidate on merit.
11. That there was no need for the Council to present to the 1<sup>st</sup> Respondent more than one name for appointment. That the Council had deviated from what other universities had done, by submitting the best candidate for appointment to the Cabinet Secretary, Education.
12. The Petitioner has not been given any reasons why he was not appointed despite being judged the best candidate. The Petitioner states that he had a legitimate expectation that he would be appointed to the position of Vice-Chancellor especially upon being recommended by both the Commission and the University Council as the best candidate to fill the position.
13. That the deviation by the 1<sup>st</sup> Respondent amounted to unfair labour practices in violation of Article 41(1) of *the Constitution* of Kenya 2010 and the same was indeed unfair administrative action in violation of Article 47 of *the Constitution*.
14. The Petitioner therefore prays for: -
  - a. A declaration that the recommendation by the 1<sup>st</sup> Respondent is unlawful, null and void.
  - b. A declaration that the selection and recommendation by the 3<sup>rd</sup> Respondent, for appointment of the Petitioner as the Vice Chancellor, Kaimosi Friends University be sustained as it conforms



with the provisions of Article 10 and 232 of *the Constitution* of Kenya and the University Act 2012.

- c. A declaration that the selection and recommendation by the 1<sup>st</sup> Respondent, for appointment of Prof. Mary O. Abukutsa Onyango as the Vice Chancellor, Kaimosi Friends University contravenes the provisions of Article 10 and 232 of *the Constitution* of Kenya and the University Act 2012.
- d. An order of mandamus directed to the 3<sup>rd</sup> Respondent being the appointing authority to comply with the provisions of Article 232 on appointments on merit and proceed to appoint the Petitioner.
- e. An order of prohibition restraining the 3<sup>rd</sup> Respondent from proceeding with any meeting set to deliberate the appointment of Prof. Mary O. Abukutsa Onyango as the Vice Chancellor, Kaimosi Friends University.
- f. An order of mandamus directed to the 3<sup>rd</sup> Respondent being the appointing authority to comply with the provisions of Article 232 on appointments on merit and proceed to appoint the Petitioner.
- g. Declaration to the effect that the Petitioner has legitimate expectation of being appointed to the position of Vice Chancellor for a term of 5 years which would have been renewable subject to performance.
- h. In the event of the Petitioner being denied the appointment, a compensation for the one term of 5 years as per his legitimate expectation.
- i. costs of the petition.
- j. Any other order that this honourable court deems fit to grant and just in the circumstances.

## Responses

15. The Chairman of the University Council, the 3<sup>rd</sup> Respondent filed a replying affidavit to the petition in which he concurred with the recruitment process conducted by the Commission to fill the position of the Vice Chancellor of the said University. The deponent concurs that the Commission conducted public participation and interviews and presented a report to the Council dated 15/12/2023 in which a list of 8 names in order of merit was presented to the Council for appointment to the position of Vice Chancellor, Kaimosi Friends University.
16. That as mandated by the law, the Council through the Chairperson commenced consultations with the 1<sup>st</sup> Respondent, Cabinet Secretary, Education in order to agree on the suitable candidate. The deponent states that the law does not stipulate the ranking on position of the candidate to be appointed. That the law requires consultation to identify the suitable candidate after the competitive process by the Commission.
17. That on 5/2/2024 the Council held a consultative meeting with the Cabinet Secretary, Education, the 1<sup>st</sup> Respondent to deliberate accordingly and consider various submission that had been made concerning all the candidates seeking appointment to the position.
18. That taking into consideration that the Council had received an adverse petition against the Petitioner, the Petitioner was invited and informed of the grounds of the petition against him. The meeting noted that there was general hostility against the Petitioner. The meeting also took into consideration the fact that the Petitioner had already served in the institution for ten years starting as Director, then, Principal



and Acting Vice Chancellor. That section 39 of the University Act 2012 provides that the term of a Vice Chancellor shall be five years, renewable once.

19. That the meeting upon consultation resolved that there was need to make an appointment that would not only enhance stability and tranquility with the University but also would breath new life into the University, hence the decision to appoint the 4<sup>th</sup> Respondent. That failure to appoint the Petitioner does not raise any constitutional violation to found this petition.

#### **1<sup>st</sup> and 2<sup>nd</sup> Respondents Replying Affidavit**

20. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their response sworn to by the Principal Secretary, State Department for Higher Education and Research and states, inter alia, the Council of Friends University wrote to the 1<sup>st</sup> Respondent, the Cabinet Secretary, seeking concurrence on the appointment of Professor Nandi as Vice Chancellor, pursuant to the provisions of section 35 (1) (a) (v) of the *Universities Act*.
21. Upon review of the letter from the University Council, the Cabinet Secretary noted that there were pertinent issues raised concerning the Petitioner that had an import on Article 10 and Article 232 of *the Constitution*. In particular, by a letter dated 15<sup>th</sup> December, 2023, addressed to the Chairperson of the University Council, the commission forwarded concerns by one Mr. Simon Shimeka Indasi, to the effect that the Petitioner is a member of WA varsity sacco where he is listed as a loan defaulter as at 31<sup>st</sup> March, 2019 for a loan of ksh 1,781,273 and that also whilst serving as the acting vice chancellor the Petitioner employed 29 persons who were his relatives, as members of his staff. That the Petitioner also employed his friend, one Anthony Anyika Shivatse, who has a fake KCSE certificate of 1989.
22. That following consultations between the Chairperson of Council and the Cabinet Secretary, it was resolved that there was need to make an appointment that would maintain and enhance tranquility and stability in the University and with the surrounding community, to ensure that teaching, research and training went on without interruption and to ensure there was thorough investigations into the serious allegations that had been levelled against the Petitioner.

#### **4<sup>th</sup> Respondent's Response to the Petition**

23. The 4<sup>th</sup> Respondent states that she attended the interview organized by the PSC on the 8<sup>th</sup> day of December, 2023. The Commission then vide a letter reference number PSG/GEN/37/VI/48 released interview results wherein she emerged second with an average score of 71% from the eight candidates who had been selected.
24. The letter contained details of the advertisement, the particulars of shortlisted applicants, information gathered about the applicants from public participation; and the interview results. That the report and totality of its content was indeed to ensure that the eventual decision of the University Council will be made after giving due regard to the totality of the report. The proper discharge of the mandate of the Council facilitates the appointment of the Vice Chancellor from amongst any of the candidates forwarded to them after consultations with the Cabinet Secretary of Education as required by the law.

#### **Submission and the Law**

25. The governing legislation for the appointment of a Vice Chancellor as set out in the depositions and submissions by the parties may be summarized as follows:

Section 35(1) (V) of the University Act provides: -

35      Governing organs of a university



1. In addition to the provision of its charter a University shall establish the following organs of governance or their equivalent.
    - a. A Council which shall
      - i. ---
      - ii. In the case of Public Universities appoint Vice Chancellor, Deputy Vice Chancellors and Principals and Deputy Principal of Constituent Colleges in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission.” (emphasis added).”
26. A plain reading of this provision shows that the Commission is mandated to conduct a competitive recruitment process which it did and the University Council based on the Commission’s recruitment outcome as contained in the Commission’s report submitted to the Council is mandated to appoint the Vice Chancellor upon consultation with the Cabinet Secretary. It is not for the Council to recommend the appointment of the Vice Chancellor to the Cabinet Secretary. The Council is fully mandated to appoint the Vice Chancellor upon consulting the cabinet Secretary. The Cabinet Secretary has no other role in the appointment of a Vice Chancellor after being consulted by the Council and giving any input the Cabinet Secretary may wish to make before the appointment.
27. Articles, 10 and 232 of *the Constitution* mandate appointment based on meritocracy barring any compelling evidence on integrity issues.
28. At the meeting of the 4<sup>th</sup> Special Council held on 2<sup>nd</sup> January 2024, whose proceedings are well depicted before court in the minutes attached to the petition, the Council did the following:
- i. Considered the report by the Commission in which the names of 8 candidates ranked in order of merit from interviews conducted by the Commission is listed. The Petitioner is listed as number one (1) candidate with a score of 80.33 and two other candidates with same score of 71.0 are named as number 2 and 3 respectively as Prof. James Njiru and Prof. Mary O. Abukutsa Onyango.
  - ii. Council noted the best candidate was the Petitioner with a difference of 9.33 points with the 2<sup>nd</sup> ranked candidates.
  - iii. The Council adopted the report of the Finance and Human Resource Committee to recommend the appointment of the Petitioner to the Cabinet Secretary, Education for appointment to the position of Vice Chancellor Kamosi Friends University.
  - iv. The Council in its meeting noted,
    - a. It had set a precedent on meritocratic appointment and therefore the best candidate should be recommended for appointment unless sufficient cause is shown to justify the need to deviate from meritocratic appointment.
    - b. That no major issue was raised against the best candidate.
    - c. That the Commission was satisfied with the suitability of the best candidate hence no need to deviate from the merit list.



- d. That the best candidate was ahead of the 2<sup>nd</sup> candidates by about 9.3 points which reflects how well he did at the interview. The Council is mandated under section 39(1) (a) of the University Act to present only one name for consideration of appointment by the Cabinet Secretary, Education and does not make provision for submission of more than one name for consideration of appointment.
  - e. Other Universities have also presented only one name for consideration of appointment and the council should not depart from the law and this precedent that has been set and accepted by the Ministry of Education.
  - f. The Council resolved and recommended one name of the Petitioner, Prof. Manyasa J. O. Nandi for appointment to the position of the Vice Chancellor of Kaimosi Friends University.
29. The Petitioner produced a letter dated 5/2/2024, in which the Cabinet Secretary Ministry of Education recommended the appointment of the 4<sup>th</sup> Respondent Prof. O. Abukutsa Onyango as the Vice-Chancellor Kaimosi, Friends University.
30. The 3<sup>rd</sup> Respondent thereafter scheduled a meeting which was due on 9/2/2024, to deliberate on the appointment of the 4<sup>th</sup> Respondent as the Vice Chancellor of the University. The said meeting was however enjoined by the court pending the hearing and determination of the interim application and later this petition.

#### **Determination**

31. The issues for determination are: -
- i. Whether the Council had abdicated its mandate to appoint the Vice Chancellor of the Kaimosi Friends University to the Cabinet Secretary Education.
  - ii. Whether the resolution by Council at the meeting of 2/1/2024 is binding on them
  - iii. Whether any departure from the purported position violates the rights of the Petitioner under Article 10, 41, 47 and 232 of *the Constitution*.
  - iv. Whether the Petitioner had legitimate expectation to be appointed to the position of Vice Chancellor KKFU.
  - v. What remedies are available to the Petitioner.

#### **Did the Council of the University abdicate its mandate to appoint the Vice Chancellor to the Cabinet Secretary for Education?**

32. The Subject legislation as already stated above is the Section 35 (1) (v) *Universities Act*, 2012 as amended by the Statute Law (Miscellaneous Amendments) Act, 2018
33. It is at the outset noteworthy that the changes made to the then section 39 (1) (a) of the Act by the Statute Law (Miscellaneous Amendment Act) 2018 which introduced section 35 (1) (v) of the *Universities Act*, 2012. The previous section read;

Section 39 (1) (a)

The Vice-Chancellor of a university shall be appointed—



- a. in the case of a public university, competitively by the Cabinet Secretary on the recommendation of the Council;

Section 35 (1 (v) provides for the appointment to be done by the Council in consultation with the Cabinet Secretary.

34. In *Josphat K.Z Mwatelah versus Technical University of Mombasa Council and 2 Others* 2017 eKLR, Onesmus Makau J had the following to say regarding what was then section 39(1) (a) of the Act,

After considering the provisions of section 39(1)(a) of the *Universities Act* and section 51(1) and (2) of the Interpretations and General Provisions Act, I agree with the claimant that the CS lacks the power to either appoint a VC of any Public University in Kenya without recommendation to appoint. Going by section 51(2) of the *Interpretation and General Provisions Act*, it is obvious that because the power to appoint a VC under section 39(1)(a) of the *Universities Act* is subject to recommendations by the University Council, it follows therefore that his power to terminate would naturally be subject to recommendation by the council. The foregoing view is however not supported by the letter and the spirit of the *Universities Act* because the said Act has established the University councils with the exclusive power to recruit, prescribe the terms and conditions of service, and discipline the VCs just like any other members of staff of the Universities under section 35(1)(a)(1) & (b) and 39(1)(a).

35. In *Nairobi Petition No. 47 of 2019 Okoiti v Cabinet Secretary, Ministry of Education, Science and Technology and Another; Council of the University of Nairobi and 7 Others* (not reported) the Court held that;

In the view of the Court, it was not lawful for the 1st Respondent to go beyond the list of the recommended persons or even to consider those not recommended even if they participated in the interviews. In going beyond the recommendations of the 1st Interested Party, the Court is of the view that the 1st Respondent acted ultra vires. According to the Court, the most which was expected of the 1st Respondent was to make her reservations with the reasons thereto known to the 1st Interested Party, and request for reconsideration, if at all. Another option which was open to the Cabinet Secretary was to seek a legal interpretation from an appropriate adjudicative body, if she felt that the values and principles underpinning public service recruitment were violated by the 1st Interested Party in making the recommendations. In this Court's view, an office given the function or mandate to formally appoint on recommendation of another person has an obligation to seek the intervention of the Courts when it strongly believes or has reasons to demonstrate that the recommendations or recommended persons did not meet some Constitutional requirement

36. This Court is of the view that properly construed, what the subject Act of Parliament as amended contemplates by having the Council appoint the Vice Chancellor on consultation with the Cabinet Secretary is to allow the Cabinet Secretary to compliment or make known to the Council misgivings, if any, that he or she may have on the suitability of a particular candidate and where necessary request for reconsideration.

37. It is not open for the Cabinet Secretary to reject or make a recommendation for appointment outside the name submitted to it by the Council as this would go along away in defeating the very essence of having the participation of the PSC on the selection of a suitable candidate as well as the role of the



Council in making the appointment. The process is also expected to be competitive hence the standard practice with other Universities having to submit the name of the candidate considered to have had the highest score, barring no major issue is raised as to the suitability of the said candidate.

38. The commission and Council investigated all relevant matters including complaints against the candidature of the Petitioner and was satisfied that there were no major issues raised. The later complaints can therefore only be construed as after process fabrication to justify the decision to depart from the decision to appoint the 4<sup>th</sup> Respondent instead of the Petitioner as the Vice Chancellor. The Council in the view of the Court did this so as to ensure conformity with what the Cabinet Secretary had recommended. This is particularly so, as the said recommendation from the Cabinet Secretary was itself unclear on why he was recommending the 4<sup>th</sup> Respondent instead of the Petitioner as the Vice Chancellor as can be seen in the letter MOE/SDHER/CON/2/25(2) dated 5/2/2024.
39. The Court accordingly returns that the Council had the exclusive powers to appoint the Vice Chancellor and abdicated its role to the 1<sup>st</sup> Respondent in disregarding its resolution of 2/1/2024 appointing the Petitioner as the Vice Chancellor. Absent any cogent reason why the Council was departing from the said resolution, the resolution of 2/1/2024 was binding on the Council.

**Does the departure from the purported position violate the rights of the Petitioner under Article 10, 41, 47 and 232 of *the Constitution*?**

40. Article 10 provides, inter alia, that the national values and principles of *the Constitution* are human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized, good governance, integrity, transparency and accountability. The 1<sup>st</sup> Respondent evidently violated the above requirements and there was lack of equity, social justice, inclusiveness, transparency and accountability.
41. Further, the decisions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent cannot be said to be impartial and objective and accordingly violates Article 73 of *the Constitution* on the guiding principles of leadership and integrity as well as Article 231(1) on the adequate and equal opportunities in appointments and promotions. The Petitioner's right to fair labour practices was also violated by reason of lack of equal opportunity.
42. Under Article 47(1) of *the Constitution* of Kenya 2010, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
43. The Court in *Dry Associates Ltd vs. Capital Markets Authority and Another Petition No. 328 of 2011* held that

Article 47 is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under the *Law Reform Act* (Cap 26 of the Laws of Kenya) but it is to be measured against the standards established by *the Constitution*.

44. The House of Lords in *Animisnic -vs- Foreign Compensation Commission* (1969) ALL ER 20 held that:

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word 'jurisdiction' has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in questions. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of



such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.”

45. The Court of Appeal in Civil Appeal 52 of 2014 Judicial Service Commission vs Mbalu Mutava 2015 eKLR held that;

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

46. The Petitioner cannot be said to have been subjected to an administrative process that was procedurally efficient, lawful and reasonable. The 1<sup>st</sup> Respondent for instance decided to settle on another candidate after the Petitioner was duly appointed without giving adequate reasons, the decision to do so was unfair and was not procedurally efficient, reasonable and lawful. Further, the 3<sup>rd</sup> Respondent misconstrued its powers relating to the appointment to the detriment of the Petitioner. There was therefore breach of Article 47 of *the Constitution* of Kenya 2010.

47. H. W. R. Wade & C. F. Forsyth in Administrative Law, by H.W.R. Wade, C. F. Forsyth, Oxford University Press, 2000 at pages 449 to 450, states that;

“It is not enough that an expectation should exist; it must in addition be legitimate.... First of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation..... Second, clear statutory words, of course, override an expectation howsoever founded..... Third, the notification of a relevant change of policy destroys any expectation founded upon the earlier policy....

48. E. C Mwita J in Jane Kiongo & 15 others v Laikipia University & 6 others [2019] Eklr quoted the South African case in National Director of Public Prosecutions v Phillips and Others. [2002] (4) SA 60 (W) para 28, per Hehe J, that;

The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation, include the following:

- i. the representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification
- ii. the expectation must be reasonable,



- iii. the representation must have been induced by the decision-maker;
- iv. the representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate.

49. In the case before court, there was an established practice by the Universities to submit the single name of the candidate with the highest score to the 1<sup>st</sup> Respondent who was understood by all the stakeholders in the process to be the eventual appointee to the position of the University Vice Chancellor. The University Council sought to, and indeed followed this practice which the Petitioner had basis to believe would result in his ultimate appointment to the position of the Vice Chancellor. This expectation was well founded in law and there was loss of the expectation when the 1<sup>st</sup> Respondent for reasons which were not readily explicable decided to recommend the 4<sup>th</sup> Respondent for the appointment to the position of VC.

50. It follows that the Petition before Court has merit, and is accordingly allowed.

51. The Court makes the following orders in favor of the Petitioner as against the Respondents: -

- a. A declaration that the recommendation by the 1<sup>st</sup> Respondent for appointment of the 4<sup>th</sup> Respondent as Vice Chancellor Kaimosi, Friends University is unlawful, null and void.
- b. A declaration that the selection and recommendation by the 3<sup>rd</sup> Respondent and Council, Kaimosi, Friends University for appointment of the Petitioner as the Vice Chancellor, Kaimosi Friends University be sustained as it conforms with the provisions of Article 10 and 232 of *the Constitution* of Kenya and the University Act 2012.
- c. A declaration that the selection and recommendation by the 1<sup>st</sup> Respondent, for appointment of Prof. Mary O. Abukutsa Onyango as the Vice Chancellor, Kaimosi Friends University contravenes the provisions of Article 10 and 232 of *the Constitution* of Kenya and the University Act 2012.
- d. An order of mandamus directed to the 3<sup>rd</sup> Respondent and Council of Kaimosi, Friends University being the appointing authority to comply with the provisions of Article 232 on appointments on merit and proceed to appoint the Petitioner.
- e. An order of prohibition restraining the 3<sup>rd</sup> Respondent and Council of Kaimosi, Friends University, from proceeding with any meeting set to deliberate the appointment of Prof. Mary O. Abukutsa Onyango as the Vice Chancellor, Kaimosi, Friends University.
- f. An order of mandamus directed to the 3<sup>rd</sup> Respondent and Council of Kaimosi Friends University being the appointing authority to comply with the provisions of Article 232 on appointment on merit and proceed to appoint the Petitioner.
- g. Declaration that the Petitioner has legitimate expectation of being appointed to the position of Vice Chancellor for a term of 5 years which would be renewable subject to performance.
- h. Costs of the petition.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF DECEMBER 2024**

**MATHEWS NDUMA**

**JUDGE**

Appearance:



Dr. Oloo for Petitioner

Mr. Eredi for 1<sup>st</sup> and 3<sup>rd</sup> Respondent

Ms. Amutabi for 4<sup>th</sup> Respondent

Mr. Kemboi – Court Assistant

