



**Walingo v Maasai Mara University Council & 4 others (Petition  
E007 of 2022) [2023] KEELRC 1 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E007 OF 2022  
HS WASILWA, J  
JANUARY 17, 2023**

**BETWEEN**

**PROF. MARY KHAKONI WALINGO ..... PETITIONER**

**AND**

**MAASAI MARA UNIVERSITY COUNCIL ..... 1<sup>ST</sup> RESPONDENT**

**MARA UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**

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

**THE PUBLIC SERVICE COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Petitioner/Applicant's application dated October 28, 2022, filed pursuant to Article 162(2) of the [Constitution](#) of Kenya, Section 89 [Public Service Commission Act](#), Rule 19 and 23 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#), Section 3(1), 12 and 20 of the [Employment and Labour Relations Court Act](#) and Rule 17(2) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) and all other enabling provisions of law, seeking the following Orders:-
  1. That this Application be certified urgent and service hereof be dispensed with in the first instance.
  2. That the decision of the 4<sup>th</sup> Respondent dated September 6, 2022 on an appeal by the Applicant be recognized, adopted as a Judgment of this Court and a decree issued for appropriate enforcement.



3. That this Honourable Court be pleased to issue an order directing 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents by way of mandamus to commence implementation of the Ruling of the Public Service Commission dated September 6, 2022.
  4. That the Petition herein be deemed as disposed upon the Honourable Court granting prayers No 2 & 3 above.
  5. That the cost of this application be borne by the Respondents.
2. The application is supported by the grounds on the face of the application and the supporting affidavit of the applicant sworn on the October 28, 2022 and based on the following grounds; -
- i. The Applicant herein had initially filed an appeal against her dismissal by the 1<sup>st</sup> Respondent, which appeal was lodged on May 20, 2022 to the 4<sup>th</sup> Respondent on the basis that the termination did not follow the substantive and procedural disciplinary process and that the same was discriminatory to her.
  - ii. The basis upon which the applicant had appealed is that the 4<sup>th</sup> Respondent is mandated to exercise disciplinary control over public service and remove persons holding or acting in offices in the public service, which included the Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - iii. It is averred that the applicant made several follow ups with the 4<sup>th</sup> Respondent on her appeal vide the letters dated June 20, 2022, June 28, 2022 and July 5, 2022 which had not received any response at the time of filing this Petition.
  - iv. On September 6, 2022, the 4<sup>th</sup> Respondent proceeded to hear and determine her appeal and gave the following directions that; -
    - a. The Appellant be reinstated back to her employment on suspension pending the hearing and determination of the Anti-Corruption Case No 2 of 2020 and/or until her contract is lawfully terminated.
    - b. The Appellant be paid half (1/2) salary and the attendant allowances pursuant to Section 62 of the *Anti-Corruption and Economic Crimes Act* if the same has not been paid from the date of the charge and/or suspension
  - v. To enforce the Orders of the 4<sup>th</sup> Respondent, the applicant wrote a letter to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents dated September 15, 2022 informing them of the said decision and seeking enforcement and compliance of the same which letter has not been acted upon.
  - vi. That having received no communication from the 1<sup>st</sup> Respondent towards enforcement of the decision by the 4<sup>th</sup> Respondent, the Applicant wrote another follow-up letter dated October 4, 2022 which letter was equally not answered.
  - vii. On October 21, 2022 the Applicant proceeded to inform the Cabinet Secretary Ministry of Education on the said decision of the 4<sup>th</sup> Respondent in order to assist with compliance but the same was to no avail.
  - viii. It is alleged that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have adamantly refused to comply with the Public Service Commission decision of reinstating the Applicant to her position as the Vice-Chancellor of Maasai Mara University and Professor of the School of Tourism and Natural Resource Management (Department of Hospitality and Tourism).



- ix. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent have also refused to comply with the Public Service Commission's decision to pay the Applicant all the salary arrears from the date of suspension.
  - x. That the issues determined by the 4th Respondent in the appeal therein are similar to the issues raised in this Petition, and the 4th Respondent's decision if enforced, will protect and secure the Applicant's rights and compromise the entire petition herein.
  - xi. It is averred that there is no judicial review application contesting the 4th Respondent's decision or any orders for stay, the decision remains enforceable. As such, the refusal to comply with the directions as and when due is unfair and against the laws. The same is equally a clear violation of the Applicant's constitutional rights.
  - xii. Further that no appeal has been preferred against the 4th Respondent's decision dated September 6, 2022 by the aggrieved party or any of the Respondents.
  - xiii. That the 2<sup>nd</sup> Respondent has and continues to use its powers, as the Council, to intimidate, dress down and make unlawful decisions importing that the Applicant is incapable of conducting her duties and as such she cannot work with the 1st Respondent.
  - xiv. It her contention that she has suffered and continues to suffer intimidation, harassment, discrimination and victimization having been condemned unheard.
  - xv. She therefore urged this Court to intervene, failure to which she will continue being subjected to untold mistreatment and is equally at risk of unfairly being terminated on unsubstantiated allegations.
  - xvi. She added that from the above circumstances, she stands to suffer irreparable harm if the orders sought are not granted since the circumstances disclose clear infringement of the Applicant's constitutional rights.
3. Directions were taken on October 31, 2021 for the application to be disposed of by way of written submission. The Applicant filed her submission while no response or submissions were filed by all the Respondents.

#### **Applicant's Submissions.**

4. The Petitioner/Applicant submitted on two issues; - Whether the 4<sup>th</sup> Respondent's decision dated September 6, 2022 on an appeal by the Applicant should be recognized, adopted as a Judgment of the Court and an order be issued for appropriate enforcement and What should be the order as to costs.
5. On the first issue it was submitted that the decision made by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent to terminate the services of the Petitioner/Applicant were overruled by the 4<sup>th</sup> Respondent in the appeal rendered on the September 6, 2022. It was argued that the Public Service Commission as provided under Section 74 of the *Public Service Commission Act, 2017* is mandated to exercise disciplinary control over public service and to hear and determine appeals of disciplinary nature on persons holding or acting in offices in the public service, which included the Applicant and the 1st & 2nd Respondents herein. It was further submitted that enforcement of decision by the commission is to be done by this Court as provided for under section 89 of the *Public Service Commission Act, 2017*, which provides as follows;-

“Section 89 of *Public Service Commission Act* Provides for enforcement of appeal decisions as follows;



- (1) Any person who is affected by the decision of the Commission made under this Part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2)(a) of *the Constitution*.
  - (2) Any person who refuses, fails or neglects to implement the Commission's decisions is liable to disciplinary action in accordance with the applicable laws including removal from office.”
6. On that basis, it was argued that any action short of compliance, amounts to impunity and not in keeping with the principles and values of public service to which the University is bound by in provisions of Articles 232(1) (a), (e) and (2) (b) of the *Constitution* of Kenya, 2010.
7. To support its argument, the Petitioner cited the case of *Patrick Nyaga v Kenya Forest Service; Public Service Commission (Interested party) [2021] eKLR* where the Court stated that;

“Willful disobedience of a lawful decision of Public Service Commission violates these values and principles and amounts to unfair labour practice in violation of Article 41 of the *Constitution*. That conduct also violates Article 47 of the *Constitution* which entitles all persons including public servants to...the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”
8. The Petitioner also relied on the supreme Court advisory opinion *In the Matter of Interim Independent Electoral Commission [2011] eKLR* while underscoring the role of constitutional commissions stated that;

“It is a matter of which we take judicial notice, that the real purpose of the “independence clause”, with regard to Commissions and independent offices established under the *Constitution*, was to provide a safeguard against undue interference with such Commissions or offices, by other persons, or other institutions of government. Such a provision was incorporated in the *Constitution* as an antidote, in the light of regrettable memories of an all-powerful Presidency that, since Independence in 1963, had emasculated other arms of government, even as it irreparably trespassed upon the fundamental rights and freedoms of the individual. The *Constitution* Page 7 of 14 established the several independent Commissions, alongside the Judicial Branch, entrusting to them special governance-mandates of critical importance in the new dispensation; they are the custodians of the fundamental ingredients of democracy, such as rule of law, integrity, transparency, human rights, and public participation. The several independent Commissions and offices are intended to serve as ‘people’s watchdogs’ and, to perform this role effectively, they must operate without improper influences, fear or favour: this, indeed, is the purpose of the “independence clause”
9. To put more emphasize on their argument, the Petitioner cited the case of *Kenya Medical Practitioners, Pharmacists & Dentists Union & 61 others v County Government of Laikipia & another; Public Service Commission (Interested Party) [2020] eKLR* where the Court held follows;-

“In my considered view, the Court not having determined that the proceedings were impaired, can the Court now adopt for action or as a Court order the decision that was obtained after the ex parte Applicant sought the relief in the correct forum? I think so. The proceedings though challenged by the preliminary objection filed, a determination thereon was not made as the preliminary objection was compromised by way of a consent. The



consent of the parties made no mention of the illegality of the proceedings before me or the alleged defect in the suit. It is clear the best course is to have the 1st Ex parte Applicant to make an application seeking enforcement by way of mandamus. In the premises as the orders sought in the first substantive prayer of the motion are in the nature of mandamus, I grant the motion by the 1st Ex parte Applicant in part to the extent that the Interested Party's ruling of August 12, 2020 be and is hereby deemed as duly filed and adopted as an order of the Honourable Court. I accordingly direct and compel the Respondents by way of mandamus to commence implementation of the Ruling of the Public Service Commission dated August 12, 2020 bearing in mind the provisions of Section 89 of the Public Service Commission”

10. On the issue of costs, it was submitted that under Section 27 (1) of the *Civil Procedure Act*, costs follow the event unless the Court orders otherwise. It was argued further that as a general rule, party who comes to Court to enforce a legal right is entitled to costs unless there has been misconduct on its part. In this she relied on the case of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR*, where the Court quoted the literary work of Justice Richard Kuloba (retired) in Judicial Hints on Civil Procedure at page 101 where he states:

“The law of costs as it is understood by Courts in Kenya, is this, that where a plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the Court to deprive him of his costs-the Court has no discretion and cannot take away the plaintiff's right to costs. If the defendant, however Page 9 of 14 innocently, has infringed a legal right of the plaintiff, the plaintiff is entitled to enforce his legal right and in the absence of any reason such as misconduct, is entitled to the costs of the suit as a matter of course”.

11. On that basis and in conclusion, the Petitioner submitted that it has made out a case in her favour which was well supported by the 4<sup>th</sup> Respondent and unopposed by the other Respondents therefore the application should be allowed with costs.
12. I have examined the averments of the applicants herein plus submissions filed. This application remains uncontroverted.
13. The 4<sup>th</sup> Respondents had indicated that they have no objection to the implementation of the orders sought and that was their advice on the matter.
14. The application as it stands now is unopposed and is therefore allowed as prayed in the following terms;-
1. That the decision of the 4<sup>th</sup> Respondent dated September 6, 2022 on an appeal by the Applicant is recognized, adopted as a Judgment of this Court and a decree issued for appropriate enforcement.
  2. That this Honourable Court grants an order directing 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents by way of mandamus to commence implementation of the Ruling of the Public Service Commission dated September 6, 2022.
  3. That the Petition herein is deemed as disposed upon the Honourable Court granting prayers No 1 & 2 above.
  4. That the cost of this application be borne by the Respondents.

**RULING DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JANUARY, 2023.**



**HON LADY JUSTICE HELLEN WASILWA**  
**JUDGE**

**In the presence of:-**

Manwa for the Petitioner – present

Ogosso holding brief for Manani for The Public Service

Commission – present

Other Respondents – absent

Court Assistant – Fred

