



**Gongera v Co-operative University Of Kenya (Cause E848 of 2021)  
[2023] KEELRC 1464 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1464 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E848 OF 2021  
MN NDUMA, J  
JUNE 8, 2023**

**BETWEEN**

**GEORGE GONGERA ..... CLAIMANT**

**AND**

**THE CO-OPERATIVE UNIVERSITY OF KENYA ..... RESPONDENT**

**RULING**

1. The applicant brought a notice of motion application dated October 8, 2021 seeking an order in the following terms:-
  - (a) Spent
  - (b) That pending the hearing of this suit, and/or further orders of this Court, the respondent be and is hereby restrained from instituting and/or maintaining any disciplinary proceedings against the claimant.
  - (c) Spent
  - (d) That the costs of this application be provided for.
2. The Court granted prayer (c) ex-parte but same was reviewed following an application by the respondent dated November 17, 2021 in which they sought the interim orders granted to be set aside. The Court set aside the interim orders but directed that status quo be maintained pending the hearing and determination of this application.
3. The application is premised on grounds set out on the face of the application, the supporting affidavit of the applicant and written submissions filed by the applicant, the nub of which is that the respondent has commenced disciplinary process against the applicant based on a complaint by his former master's student at Mt. Kenya University that the applicant had plagiarised the master's thesis of the student one Dr Nancy Mucogo Njeru, presented in partial fulfilment of the requirement of the degree of Masters



in Science Health Systems Management titled “External and Internal Factors affecting Management of Hospitals Drug Formularies in Nairobi, Kenya. That the applicant had published a paper in the European Journal of Business and Management (International Institute for science, technology and education) and submitted to the respondent/applicant titled “Critical Analysis in the Management of Drug formularies Case of Health Facilities in Nairobi, Kenya” as his own work in his Curriculum Vitae when applying for the position of Associate Professor and the article was also published in the University repository in February, 2016.

4. The applicant states that the intended action by the respondent against the applicant is manifestly flawed and is an egregious scheme to mar the academic, intellectual and professions reputation of the applicant.
5. That the applicant has since 2001, rendered tuition in institutions of higher learning that include, Kenyatta University, Kigali Institute of Management as Vice Chancellor for 3 ½ years; Mt. Kenya University (2010) as dean for graduate studies and Co-operative University as dean school of Co-operative and Community Development since 2014. That he has been Director Post-Graduate Studies at the respondent University.
6. That the respondent appointed him as an Associate Professor of Human Resource Management on December 16, 2015 as per the terms and conditions set out in annexure “GG1” annexed to the application.
7. The applicant states that he has served the respondent diligently, and in all other universities he has served as resident and external lecturer; adjunct Professor and Associate Professor.
8. That he has authored numerous publications in high impact journals globally and has been a keen researcher in a bid to contribute to knowledge for mankind.
9. That he was shocked to receive a notice to show cause dated June 4, 2021 for “plagiarism” which notice is attached.
10. That the applicant wrote a letter dated June 10, 2021 seeking further particulars. That the respondent answered the applicant by a letter dated September 28, 2021 providing particulars of alleged plagiarism which word was misspelt in the notice to show cause.
11. That the alleged plagiarism is alleged to have occurred at Kenya Methodist University where the applicant supervised one Dr. Nancy Mucogo Njeru alongside other senior lecturers in her master’s programme.
12. That in the further information presented, the student had attached a “plagiarism’ test report dated January 27, 2021 and a form presented by the student on June 17, 2021.
13. The applicant states that there has been no credible comparison between the student’s work and the applicant’s publication to determine who has plagiarised who. That for any plagiarism to hold, such comparison and degree thereof are mandatory. That the report marked GG (c) (i) by the student does not support even in the remotest the allegations of plagiarism against the applicant and the respondent is not clear what they are addressing the applicant about which they variously call “plaigarism” plagiarism’ respectively.
14. That these misspelling, are not accidental but go to the core of the allegations as this is indicative of lack of understanding of the subject matter by the respondent.
15. That in any event the said plagiarism is alleged to have occurred at Kenya Methodist University and not at the respondent University and so the respondent lack mandate to address the matter at all.



16. That plagiarism is dealt with by statutory organs such as the Kenya Copyright Board and is a complex issue that not only requires authority but competence, none of which is possessed by the respondent.
17. That these events are said to have occurred long before the respondent engaged the applicant and the complaint has no connection with the respondent. That this is a clear case of manipulated complaint to complete manipulated proceedings.
18. That unless the process is injuncted, the applicant would suffer irreparable injustice and loss.
19. That despite protestation by the applicant, the respondent persists on conducting a disciplinary process against the applicant and the Court should injunct the unlawful process.

## **Response**

20. The respondent instead of filing a replying affidavit to the application filed an application dated November 17, 2021 with a supporting affidavit of one Anne Jemimma Mmata, the Principal Human Resource Manager of the respondent.
21. The officer deposes in the said affidavit that the applicant herein was employed by the respondent on November 16, 2013 as an associate Professor of Human Resource. That the employment was based on his application letter of October 14, 2013, his Curriculum Vitae and the support documents all attached to the supporting affidavit of M/s Mmata.
22. That in October, 2020, the respondent received a complaint from one Dr Nancy Mucogo Njeru, a former student of the applicant at the Kenya Methodist University that the applicant had plagiarized her master's thesis and published it as his own work without giving her credit. That the respondent received the official letter of complaint on January 27, 2021 which is attached to this affidavit.
23. That upon checking the records, the respondent noted that the applicant had listed the said publication as his own work in his curriculum vitae when applying for the position of an associate professor and the article was also published in the respondent's university repository in February, 2016.
24. That the respondent carried out Academic Quality Assurance Investigation on the two academic papers following the complaint and the investigation revealed that the two academic papers were similar word for word with the few samples taken which is very unlikely for any two academic projects. The report of investigation is attached and marked "JM-5".
25. That the respondent takes the issue of academic plagiarism and dishonesty seriously and it is on this basis that the respondent issued a Notice to Show Cause to the respondent on June 4, 2021. That the applicant responded to the Notice To Show Cause by requesting for further information on June 10, 2021. That the further information was availed to the respondent on September 28, 2021 and the same is attached to the supporting affidavit.
26. That the explanation by the respondent in the letter dated October 4, 2021 was not satisfactory and as a result he was served with a charge sheet and invitation to Disciplinary hearing on October 18, 2021. The meeting was scheduled for October 27, 2021.
27. That the process was injuncted by this Court on October 22, 2021.
28. The respondent in its submissions prays the Court not to grant the interim relief pending the hearing and determination of the suit and allow the respondent to exercise its lawful mandate of discipline over the applicant who is its employee and has submitted to the authority of the respondent in the terms and conditions of employment, in the contract of employment between the parties. The respondent prays that this application be dismissed with costs.



## Determination

29. The criteria for grant of interim injunction pending the hearing and determination of the suit was long established in the case of *Gielle -vs- Cassman Brown Limited* [1975] E.A. 358 as follows:-
- a. That the applicant must establish a prima facie case with a probability of success
  - b. That the applicant must demonstrate that he will suffer irreparable harm which cannot be adequately compensated by an award of damages and
  - c. If the Court is in doubt, it should decide the application on the balance of convenience.
30. These principles were further elaborated by the Court of Appeal in *Mrao -vs- First American Limited and 2 Others* [2009] K.L.R as follows:-
- “A case which on the material presented to Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...”
31. From the facts presented by the parties in the respective depositions and considering the submissions and list of authorities presented by the parties, it is apparent to the Court that the impugned academic paper was presented to the respondent in the curriculum vitae of the applicant as one of his credentials. That this being the case, the respondent is presumed to have taken into consideration the impugned academic paper in deciding to employ the applicant as an Associate Professor Human Resource, the position the applicant held at the respondent’s university to date.
32. The Court cannot determine the merit or otherwise of the disciplinary case intended to be conducted against the applicant by the respondent at this stage of the proceedings. However, the Court is not satisfied that the applicant has established a prima facie case with a probability of success to warrant this Court to stop the respondent from exercising its contractual mandate to conduct disciplinary proceedings against the applicant on matters which present a probable cause of action against the applicant, to be determined at the conclusion of the disciplinary process.
33. The applicant has also not demonstrated that he will suffer irreparable loss which cannot be adequately compensated by an award of damages, if the Court does not injunct the disciplinary process.
34. To the contrary, the Court is satisfied that the balance of convenience favours a proper investigation of the complaint made against the applicant in terms of a disciplinary process conducted in terms of the contract of employment between the applicant and the respondent while respecting the rules of natural justice. Nothing has been presented before this Court to demonstrate any form of infraction of the right to a fair hearing which must be respected by the respondent in the intended disciplinary process.
35. Accordingly, the application lacks merit and is dismissed with costs in the cause.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8<sup>TH</sup> DAY OF JUNE, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**



**Mr. Nyakundi for the claimant/Applicant**

**Mrs Maina for Respondent**

**Ekale – Court Assistant**

