



**Joseph v Teachers Service Commission & another (Petition E020 of 2023)  
[2023] KEELRC 2593 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2593 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E020 OF 2023  
S RADIDO, J  
OCTOBER 25, 2023**

**BETWEEN**

**MUTIMBA CM JOSEPH ..... PETITIONER**

**AND**

**TEACHERS SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND  
TECHNOLOGY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. On 27 June 2023, the Teachers Service Commission (the Commission) wrote to Mutimba CM Joseph (the Petitioner) to give him notice of termination of his services with effect from 1 August 2023 because Masinde Muliro University of Science and Technology (the University) had cancelled his degree certificate.
2. Feeling aggrieved, the Petitioner moved the Court alleging that the decision by the Commission was in violation of a Court order issued in Kakamega High Court Petition No 12 of 2019 and also violated his right to fair labour practices.
3. The Petition was accompanied with a Motion seeking interim protective orders which were granted by the Court on 12 July 2023.
4. When the parties appeared for directions/inter-partes hearing on 19 September 2023, the Court suggested and the parties agreed that the Motion and Petition be taken together.
5. Pursuant to directions issued on the same day, the following were filed:
  - i. Petitioner's further affidavit on 2 October 2023.
  - ii. Petitioner's submissions on 2 October 2023.



- iii. Commission's replying affidavit on 16 October 2023.
- iv. Commission's submissions on 16 October 2023.

### **Petitioner's case**

6. Sometime in June 2017, the Commission received communication from the University that it had cancelled the Petitioner's degree certificate because it had been obtained by financial fraud.
7. The Commission then wrote to the Petitioner on 6 November 2017, asking him to resolve the issue with the University or risk termination of employment by 1 January 2018.
8. On 15 March 2018, the University advised the Commission that it had cancelled the Petitioner's degree certificate.
9. The Petitioner sued the University and in a judgment delivered on 16 October 2020, the High Court in Kakamega found that the decision of the University to publish that it had revoked the degree certificate because it had been obtained through financial fraud violated the Petitioner's right to dignity.
10. On 30 August 2022, the Commission requested the University to update it on the outcome of the Petition and the Petitioner sent a copy of the judgment to the Commission through email on 2 June 2023.
11. Before the Court, the Petitioner contended that it was not open to the Commission to rely on a communication that the High Court had found violated his right to dignity to commence a disciplinary action or terminate his employment.
12. The Petitioner took the view that because of the findings by the High Court, the decision of the Commission as conveyed through the letter of 27 June 2023 ran afoul of Article 2(4) of *the Constitution*.

### **Commission's arguments**

13. In opposing the Petition, the Commission stated that for one to be registered as a teacher, Regulation 20 of the Code of Regulation for Teachers requires one to have certain academic qualifications and that the registration and employment of the Petitioner was premised on a degree certificate issued by the University.
14. The Commission contended that sometime on 13 June 2017, it received communication from the University that it had revoked the Petitioner's degree certificate and that it requested the Petitioner through a letter dated 6 November 2017 to resolve the issue of cancellation.
15. The Commission further asserted that despite asking the Petitioner to update it on the High Court proceedings, it was only on 2 July 2023 that the Petitioner emailed it a copy of the judgment which had been delivered on 16 October 2020.
16. According to the Commission, the High Court did not find the decision of the University to revoke the degree certificate irrational, unreasonable, or procedurally improper as a result of which the Court did not quash the decision of the University to revoke the certificate.
17. Consequently, the Commission maintained that as of the date of its notice to the Petitioner, he did not hold a valid certificate to qualify as a registered teacher.
18. The Commission further maintained that it was not a party to the proceedings before the High Court in Kakamega.



## University's position

19. Despite acknowledging service, the University did not enter an appearance or file any response to either the Motion or Petition.
20. The Court has considered the Petition, Motion, affidavits, and submissions.
21. When the Petitioner moved the High Court in Kakamega, he sought 4 substantive reliefs:
  - i. A declaration that the decision by the Respondent to cancel the degree certificate issued to the Petitioner on 6<sup>th</sup> December 2013 and to print another certificate was illegal and unlawful for violating his right to fair administrative action and fair hearing.
  - ii. A declaration that the publication of a notice in national newspapers on 9<sup>th</sup> June 2017, communicating that the degree certificate issued to the Petitioner had been withdrawn or recalled on account of financial fraud violated his human dignity.
  - iii. An order of certiorari to quash the decision to cancel the degree certificate issued to the Petitioner being no 071030 issued on 6<sup>th</sup> December 2013 and the communication of the decision by the Respondent through the letter of 13<sup>th</sup> June 2017.
  - iv. Damages for violation of the rights of the Petitioner (sic) fair hearing, human dignity, and fair administrative action.
22. The High Court though finding in favour of the Petitioner only issued a declaration that the Petitioner's right to human dignity as guaranteed under Article 28 of *the Constitution* had been violated.
23. Notably, the High Court did not quash the University's decision to revoke the degree certificate. Before this Court, the Petitioner made heavy weather of a ratio in the High Court judgment.
24. The ratio cited by the Petitioner did not culminate in the certiorari order that he had prayed for.
25. The effect was that the University's decision to revoke the degree certificate remained because an order of certiorari was not allowed. The High Court merely declared the rights of the Petitioner but did not issue any order calling upon the University to do or refrain from taking any decision.
26. The High Court had occasion to discuss the nature of a declaratory order or judgment in *Katiba Institute v President of Republic of Kenya & 2 Ors; Judicial Service Commission & 3 Ors (Interested Parties)* (Petition 206 of 2020) (2021) KEHC 442 (KLR).
27. The Court held in the said decision:

A declaration or declaratory judgment was an order of the court that merely declared what the rights of the parties to the proceedings were and which had no coercive force – that was, it did not require anyone to do anything. It was available both in private and public law save in judicial review jurisdiction at that moment. The rule gave general power to the courts to give a declaratory judgment at the instance of a party interested in the subject matter regardless of whether or not the interested party had a cause of action in the subject matter.

There could be general declarations that required no action like where the declaration was that a decision of a tribunal was unlawful because it had been made without jurisdiction, which meant that no action was required. But there could be specific declarations, which



required action to be taken by a party to which it was directed, such as in declaratory suits in subrogation cases.

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Declaratory orders were popularly made with respect to proceedings against the government or its agencies or officials, on the presumption of the high improbability that a government officer would not set himself in defiance of a judgment or order of the court, in the belief that the defendant or government agency or official was a responsible authority, and it was thought inconceivable that the declaratory order would not result in the plaintiff obtaining his rights. It was assumed that the Government or its agencies or officials were responsible authorities, and it was hoped that they would abide by or obey the declaratory judgment or order.

Government agencies, entities, and officials often treated declaratory judgments or orders with contempt and disdain, thereby forfeiting their right to be regarded as responsible authorities, and when that happened a suit to enforce the declaratory order became necessary.

28. This Court could not have put it any better. The Petitioner should have moved to enforce the declaratory order against the University.
29. As it is now, the Petitioner does not possess the academic qualification envisaged by Regulation 20 of the Code of Regulations for Teachers to be a registered teacher.
30. The Commission indulged him to pursue the issue of the degree certificate with the University. That is the proper cause for him to pursue as it seems the certificate was issued before he had cleared the University fees.
31. The Commission, being a public body and a responsible authority should indulge the Petitioner further to enable him to put his house in order with the University.

### **Conclusion and Orders**

32. For the above reasons, the Court declines to issue the orders sought by the Petitioner.
33. The Petitioner is still in the employ of the Commission and therefore each party to bear own costs

**DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

