



REPUBLIC OF KENYA



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**Republic v Kenyatta University (Cause E014 of 2022)
[2022] KEELRC 13468 (KLR) (6 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13468 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE E014 OF 2022

AN MWAURE, J

DECEMBER 6, 2022

**IN THE MATTER OF: ARTICLES 10, 19(2), 20(1)(2) (3)
& (4), 21(1), 22, 23(3), 41, 47 (1) & (2), 50(1), 258(1) AND
259(1) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: AN APPLICATION FOR THE JUDICIAL
REVIEW ORDERS OF CERTIORARI AND MANDAMUS
UNDER ORDER 53 OF THE CIVIL PROCEDURES RULES 1**

AND

**IN THE MATTER OF: SECTIONS 8 & 9 OF THE LAW
REFORM ACT, CHAPTER 26, LAWS OF KENYA**

AND

IN THE MATTER OF: THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015

AND

**IN THE MATTER OF: A DECISION COMMUNICATED BY
THE LETTER DATED 18TH MARCH, 2022 BY KENYATTA
UNIVERSITY TO DEMAND A BOND SUM OF KSHS. 13,777,060.18/= FROM DR. ALICE
MUTHONI NG'ANG'AAND AN AMOUNT OF MONEY EQUAL TO HER SALARY FOR
NINETY (90) DAYS IN LIEU OF THE THREE MONTH NOTICE OF TERMINATION
OF CONTRACT AND THAT ACCORDINGLY, IT WOULD NEITHER SANCTION
HER CLEARANCE FROM ITS EMPLOY NOR SETTLE HER TERMINAL DUES**

BETWEEN



REPUBLIC CLAIMANT

AND

KENYATTA UNIVERSITY RESPONDENT

JUDGMENT

1. The Judicial application review filed by the Applicant and dated 19th June 2022 the *ex-parte* application Dr Alice Muthoni Nganga. The applicant seeks the following prayers:-
 1. That this application be certified urgent and service of the same be dispensed with in the first instance.
 2. That leave be granted to the Applicant to apply for the Judicial Review Orders of:
 - a. Certiorari to remove into this Court for purposes of being quashed the Respondent's decision contained in the letter dated 18th March, 2022 to the effect that the *ex-parte* Applicant owed it a Bond sum of ksh 13,777,060.18/= and an amount of money equal to her salary for ninety (90) days in lieu of the three month notice of termination of contract and that accordingly, it would neither sanction her clearance from its employment nor settle her terminal dues.
 - b. Mandamus to compel the Respondent to immediately issue the *ex-parte* with the Clearance Certificate that will signify her formal exit from the Respondent's employment and ensure expedient tabulation and release of her terminal dues within fourteen (14) days of the subject Order.
 - c. A declaration that by operation of the doctrine of legitimate expectation, the *ex-parte* Applicant for all intents and purposes ceased being an employee of the Respondent in accordance with her Letter of Resignation dated 03/06/2021.
 - d. A declaration that by operation of the doctrine of legitimate expectation, the *ex-parte* Applicant is not bonded to the Respondent in any manner at all.
 - e. A declaration that the refusal to issue a Clearance Certificate to and settle the *ex-parte* Applicant's terminal dues by the Respondent was informed by ulterior motives or purposes calculated to prejudice the legal rights of the Applicant as per Section 7 (2) (e) of the *Fair Administrative Action Act*, 2015 and is contrary to Section 51 of the *Employment Act*, 2007.
 - f. An order for compensation against the Respondent as per Section 11(2) (d) of the *Fair Administration Action Act*, 2015, for having caused the *ex-parte* Applicant reputational damage and injury, as follows:-
 - i. ksh 13,777,060.18/= being equal to the amount of money wrongly demanded from the *ex-parte* Applicant by the Respondent on the pretext of being the Bond sum.
2. The respondent as per the claimant's averments made a decision that *ex-parte* applicant owed it a bond of ksh 13,777,060.18/= and an amount equal to her salary ninety (90) days in lieu of 3 months' notice of termination of contract and further it would neither sanction her clearance from its employ nor settle her terminal dues.



3. That the decision was made without consulting the applicant nor giving her an opportunity to be heard. She had been appointed as a tutorial fellow and her Employment commenced on 16th October 2013.
4. She says on paragraph 3 of her letter of appointment dated 21st July 2013 the position she was being offered would require one to be bonded to work for the Respondent for a period equivalent to that taken to complete her PHD program.
5. The ex-parte applicant was pursuing her PHD programme at the University of Nairobi and so she indicated she was not subject to bond form so she indicated N/A and the same was accepted by the chairperson of the Department Dr. Perez Onono.
6. She was undertaking her PHD studies at a different institution without any financial support from the Respondent.
7. She says she graduated with a PHD Economic on 20th December 2019 from the University of Nairobi and respondent promoted her to a lecturer with effect from 20th February 2020.
8. She says she resigned from the Respondent institution on 1st September 2021 and served the three months' notice period and did a proper handover to her then supervisor.
9. The Respondent then demanded a sum of ksh 9,021,665 for "costs expended to your salary and allowance and less the units you coordinated during the relevant period before it could accept her resignation."
10. They insisted the bond signed by *ex-parte* applicant required her to serve for a period equal to the duration of her fellowship which took six and a half years.
11. The ex-parte applicant wrote her explanation and stated that she was not given any funds by the Respondents for her research.
12. The respondent accepted they did not fund her but allocated her less units to enable her complete her research. They now demanded ksh 1,238,895/= being total of one unit allegedly taught by a part-timer during the period of the PHD program by a letter dated 17th February 2022.
13. On 8th June 2022 the *ex-parte* applicant was served with a letter dated 18th March 2022 asking her to pay ksh 13,777,060.18/= as she had also not given 3 months' notice together with the bond money.
14. The ex-parte applicant says the said demand letter was meant to scare her not to take any legal action and so she says the Respondent violated her rights under the constitution of Kenya 2010, the [Employment Act](#) 2007 and [Fair Administrative Actions Act](#) 245.
15. The respondent breached the [constitution](#) of Kenya 2010 as here under:-

“The Respondent breached *ex-parte* Applicants Rights under articles 10, 19(2), 20(1) (2) (3) and 21(1), 23(3), 41, 47(1) (2) and 25(9) and secure redress.”
16. [Employment Act](#) section 10 and 11 and section 51 which also provide for a certificate of service to be issued to an employee were also breached. Section 10 & 11 of [Employment Act](#) deals with employment particulars.
17. The *ex-parte* applicant avers section 3 and section 4 of [Fair Administrative Action Act](#) was violated and the Respondent has no defence to its actions.



Respondent Replying Affidavit

18. The Respondents replying affidavit is deponed by Professor PAUL OKEMO Deputy Vice Chancellor in charge of administration at the Respondent's University.
19. He admits that the *ex-parte* applicant was employed as a tutorial fellow from 16th October 2013 and she executed bond which provided she was "to serve the university after completion of training for a period equal to the total period she shall have been on training under the training program."
20. She was then promoted to a lecturer on 20th February 2020 and so bonding period was between 16th October 2013 to 20th February 2020 6 years 4 months.
21. He says that even if no actual amount was indicated in the bond it was only because the same would be determined by the period the *ex-parte* claimant would take to complete her studies and so is normally completed when tutorial fellow complete their study.
22. He further depones that the bond figures are rooted in Public Service Commission guidelines for training public servants. He goes further to explain that inapplicable bond sum is the gross salary plus reimbursable tuition where applicable.
23. He says that even though the Respondent did not pay the Applicants tuition fees they provided her research material, allowed her less time to teach while she pursued her studies and that they engaged another member of staff to take her unit. He says she was not given administrative duties and in total the respondent expended ksh 13,805,134.86 as salaries and allowances paid and incurred in kind by the *ex-parte* applicant.
24. The respondent also depones that the *ex-parte* applicant signed the bond in full understanding of the terms thereto and so the respondent retaliates the amount for bond is calculated as per Public Service Commission guidelines.
25. He says the respondent should not be faulted for wanting to recover public finds.
26. He says that the Respondent furthermore has not caused reputational injury to the *ex-parte* applicant as alleged. He says the total sums owed by the *ex-parte* applicant to the Respondent is ksh 8,289,395.13 as follow:-
Total grossksh 13,805,134.86
Less total gross earned.....ksh 3,315,406.40
Less total entitlement of a part time
lecturer.....ksh 2,200,406.40
ksh 8,289,395.13
=====
27. He further depones that *ex-parte* applicant is not entitled to an order of certiorari or mandamus or any other alternative orders prayed in the alternative. So the *ex-parte* applicant is bonded to serve for 6 years and 4 months or to pay ksh 8,289,395/13 and also to pay costs of these proceedings.



Claimant's Submissions

28. The claimants submission are that the respondent being a public institution must be alive to the requirement for adherence to natural and procedural fairness as crystallized in articles 47 and 50 of the constitution. She says the respondent should note the following:-
- a. Hearing rule or opportunity to present ones case
 - b. Bias rule where bias is prohibited against anybody.
 - c. Evidence rule where administrative decision must be based on logical proof and material evidence
29. The claimant submits she had legitimate expectation and especially because she was never bonded by the respondent and did not owe it any money.
30. She says bonding was for pensionable and permanent staff which she was not as a tutorial fellow.
31. As for the respondent claiming she allocated less unit then usual was not logical and she handled the usual contractual maximum of two loads.
32. The applicant says the Respondent took a decision against her without according her an opportunity to be heard.
33. The claimant cited several authorities to support the principle of legitimate expectation among them Provin Bowry v Ethics & Anti Corruption (2013)eKLR.
34. Claimant also submits that the Respondent did not comply with his duty to act fairly and unilaterally and without notice declared she was bonded to ksh 13,777,060.18 and her three months' salary in lieu of notice before she can get her terminal dues and clearances.
35. The claimant submits she never undertook her PHD studies at the Respondent's university and was not funded by the Respondent and the chairperson of the Respondent's Department of Applied economics signed her form with that understanding that she was not bonded to pay the PHD fees.
36. The Claimant on the issue of illegality cites, the case of Benjamin Ayiro Shiraku v Fozia Mohammed (2012)eKLR where court held".
- “ the principles, I understand it, is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave a promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word...”
37. The claimant avers that after interrogation the legitimate reasonable expectations, proportionality and illegality there is no doubt at all the Respondent should adhere to principles of natural justice and procedural fairness. She says that the Respondent's communication by its letter of 18th March 2022 was arbitrary. It is her submission that decision should be removed into this Honourable court for purposes of being quashed.



Respondents Submission

38. The Respondent in its submissions explains the principles in Judicial review as in the case of *Republic v Public Procurement Administrative Review Board & 2 Others ex-parte Rongo University* (2018) eKLR.
39. Judicial review as per the above authority *inter-alia* provides:-
- “Applying the tests discussed above to the facts of this case, it is my finding that the ex parte applicant have established the requisite tests to persuade the court to grant the order of certiorari sought.
- Certiorari is discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles.”
40. In the present case the Respondent states the terms of Applicants engagement with the Respondent are very clearly stated in the letter of appointment and the bond form. The applicant avers bond terms were not applicable to her but burden to prove the same but falls squarely on the respondent. She was not called by the chairperson of the Department and the dean to explain her assertions that she was not bound by the bond terms.
41. The respondent also cites the case of *Republic v Kenya Power And Lighting Company Limited & Another* which held;-
- “It is not enough for an applicant in judicial review proceedings to claim that a tribunal has acted illegally, unreasonably or in breach of rules of natural justice. The actual sums of a tribunal must be exhibited for judicial review remedies to be granted.”
42. The respondent avers that in applicant accepting to execute the bond form the applicant bound herself to the Respondent for 6 years and 4 months being the period between 16th October 2013 when tutorial fellowship commenced officially and 20th February 2020 when she was promoted to a lecturer position.
43. The Respondent further submits that on the doctrine of legitimate expectation as in the cause of *H.W.R & C.F. Forsyth*(3) pages 449, 450 it reads.
- “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 founded upon a promise or practice by the Public authority that is said to be bound to fulfil the expectation.”
44. The Respondent submissions are therefore whether their actions in the letter dated 18th March 2022 were unlawful, in violation of legitimate expectation or breach of rule of natural justice and their answer is that the Respondents actions were not any of the above. They pray the Respondents claim for bond sum was justified and not in breach of principle of legitimate expectation, natural justice or the constitution.
45. They further submit that the prayer for certiorari is not merited as held in the court of Appeal case *Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others* (2012) eKLR where it was held: Moreover where the proceedings are regular upon that face and the inferior tribunal has



jurisdiction in the original narrow sense that is to say it has power to adjudicate the dispute and does to commit any of the errors which go to the Jurisdiction in the wider sense.

46. He says that an order quashing the letter dated 18th March 2022 would impede the Respondent from discharging its statutory mandate under the *universities Act* no 42 of 2012 of providing avenues for professional education and research without incurring costs from public funds.
47. In the same way he objects to mandamus order to give the clearance certificate to the applicant. The respondent submits that order of mandamus are specific in nature. The case of *Kenya v Cabinet Secretary Ministry of Interior and Coordination of National Government & 2 others ex-parte Isaiab Kipngetich Rotich* citing with approval the court of Appeal decision of *Kenya national Examination Council v Republic ex-parte Geoffrey Githinji Njoroge* Civil Appeal no 266 of 1996 where it was held:-

“Orders of mandamus are specific in nature. Mandamus is first employed to enforce the performance of a public duty which is imperative, not optional or discretionary with the authority concerned.”
48. The Respondent submits that to compel the Respondent to release the Applicant’s terminal dues without recovering the bond sum will be incapable of enforcement and contrary to contractual document governing the Relationship of the parties herein being the bond sum.
49. In conclusion the Respondent submits the Applicant has failed to prove the allegations against the Respondent to the required standards and has just attempted to avoid honoring her bond obligations that she voluntarily committed herself to it in clear and uncontroverted terms. They pray the judicial review therefore dated 19th June 2022 be dismissed in its entirety.

Determination

50. The Applicant was a tutorial fellow of the respondent through a letter dated 21st July 2013. It was expected she was to undertake a PHD program and would be bonded for a period equivalent to that taken to finish further studies so that respondent could recover its investment.
51. She was bonded by the letter of Bond where she indicated the bond money was not applicable to her. She wrote in capital letters N/A. She undertook her PHD course at the University of Nairobi and she met the costs of the same.
52. In the said bond form where she indicated N/A the chairperson of the Department of Applied Economics and Dean of School of Economics of the Respondent Institution approved the same, signed and stamped with the university stamp.
53. The applicant’s expectation was that since the respondent did not meet her financial expenses and since she indicated the amount of bond was not applicable (N/A) then she was not bound to serve the period indicated or in the alternative to pay the bond money.
54. The applicant vehemently refuted that she was bound to the Respondent’s bond. The referred bond letter of 16th October 2013 signed by the respective parties read in part;

“I am bound with the said university (hereafter called the Kenyatta University) in the sum total of all training research and supervision fees and other related costs paid and/or extended to me during the training (hereafter called the bond sum) plus interest therein at fourteen per centum or as may be determined by the university after completion of the training from time to time and FURTHER that in the event that I fail to serve the university after completion of training under the training programme irrespective of whether or not



I shall have been successful in the course or courses or programme undertaken during the said training the university shall recover from my final dues if any...”

55. The contract of the bond says if the final dues are not sufficient to cover the bond money the university shall institute other legal means available to recover the same.
56. The applicant signed the bond and were indicated “Total bond sum shall be the total applicable to a student pursuing the same programme at Kenyatta University which in this case is ksh she indicated N/A.
57. The court is of the opinion that there is quite some presumption here. The applicant was bonded to serve as a tutorial fellow at the respondent’s university on condition she was to serve the university after completing her studies for 6 years and 4 months.
58. The way the bond is drafted is very ‘opec’ as it is not clear if the bond is applicable even if the tutorial fellow does not get funding from the university. On the face of it and the first interpretation that can be gleaned therein is that the bond was applicable if the applicant undertook the training under the respondent and was funded by the respondent. In particular the following words;
- “ all the sum total of all training, research, supervision fees and other related training costs paid or extended to me during the training and earlier before the definition of university was clarified to be Kenyatta University.”
59. The applicant undertook her programme elsewhere and met all her training costs. She also penned boldly that the bond money was not applicable to her and her signature was witnessed by the Respondent’s representatives and in particular chairperson of the Department Dr. Perez Onono and Dean of School Prof Nelson Wawire. To cap it the stamp of the university was affixed there.
60. The court finds the doctrine of estopped is well applicable in this particular case. In determining estopped by representation there must be demonstration of representation in words or acts by the representer:-
- “The civil suit no 20 of 2020 *Carol Construction Engineers Limited, Jeremiah Mwebi Mayiekan v National Bank Of Kenya*. The court held that the doctrine of estopped operates as a principle of law which precludes a person from asserting something contrary to what is implied by acts or word.”
61. The court further goes to hold that:-
- The other element in the doctrine of estopped is whether the person relying must satisfy the court that it was reasonable for them to rely on that presentation.
- The third element raised by the court is that the victim must demonstrate that he was induced by the representation and in such reliance acted on it and fourthly the victim must show by acting on representation he suffered some detriment or changed his positions and fifthly that the victim must show it would be unconscionable to resile from the representation.
62. Equally in the decision of *Serah Njeri Mwobi v John Kimani Njoroge* (2013) eKLR the Court held “The doctrine of estopped operates as a principle of law which precedes a person from asserting something contrary to what is implied by a previous action to the detriment of that person.



63. In this case the applicant applied to pursue her PHD programme out of the Respondent's organisation and made it clear that the bond money was not applicable to her. She pursued her studies as she continued to offer her services at the Respondent's organisation. The organisation has not indicated anywhere that they were not aware that the applicant was pursuing her programme elsewhere at her costs.
64. To pursue that reasoning further we can look at section 120 of the *Evidence Act* which provides:-
“when one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceedings between him and such person or his representative to deny the truth of that thing.”
65. The applicant was in that place where she believed she was precluded from the terms of the bond specifically because she did not utilize the Respondent's resources to pursue her PHD programme.
66. Lord Denman in the English Case *Pichard v Sears* 112, ER 179 held thus:-
“The rule of law is clear that where one by his words or conduct willfully causes another to believe in existence of a certain state of things and induces him to act on that belief so as to alter his own previous position the former is precluded from averring against the latter a different state of things as existing at the time.”
67. The applicant successfully completed her PHD programme and upon graduation applied for a lecturer's position at the Respondent's university. That was with effect from 20th February 2020 and then tendered her three months' notice of resignation effect 1st September 2021.
68. Now that is when issues arose when respondent demanded ksh 9,021,665/= as costs expended to her as salary and allowance and less these units she coordinated during the relevant period – (letter dated 16th July 2021). After several communication from respective parties the Respondent wrote to her to pay ksh 1,238,395/= for one unit allegedly taught by a part-timer during the period of her PHD programme. These were letters dated 6th October 2021 and 13th January 2022.
69. Further on 18th March 2022 she was asked to pay ksh 13,777,060/18 being bond sum and three months salary in lieu of notice. In the respondent's submission they are now demanding ksh 8,289,395/12 plus 14% interest or to serve 6 years and 4 months (submission dated 20th July 2022). This is not in the pleadings but only in their submissions.
70. The court notes the fact that the respondent did not clarify the formula to charge the bond sum and it was all unclear and no wonder they keep shifting from their demands. Even if they could not work out the figures accurately as they averred the same was dependent on the period the applicant was to pursue her PHD nevertheless they could at least have indicated the formula they were applying to work out the bond sums.
71. They could also have indicated that the bond sum was applicable whether the tutorial fellow undertook their studies in the institution or not. In the absence of all these details the court finds the applicant was at disadvantage as to what she was committing herself to. The particulars of employment are crucial and are supposed to be provided by the employer. Particulars are missing in this matter.
72. The court has considered the pleadings of the respective parties and the submissions and the Law. The Respondent has submitted what is and what is not judicial review. They aver that judicial review do



not deal with merits of the case but only with the process. They say that judicial review does not deal with the innocence of the applicant but on question of fairness.

73. In this case the court has considered the fairness of the process premised on the doctrine not only of estoppel but also of legitimate expectation of the applicant considering the facts surrounding the case.
74. The Court in each case is always concerned on whether the parties have satisfied the particular burden and standard of proof imposed on him.
75. On legitimate expectation the court is not looking to the fact that applicant was enjoying a benefit and at not being bonded. The legitimate expectation is that the applicant was precluded from paying the bond sum because she did not enjoy the respondent's finances and furthermore she made it clear in the bond for that she was not bound by it and the respondent conceded to that when they signed and stamped the bond form. The applicant cannot be blamed for having had the notion that she was not bonded. It was a legitimate expectation.
76. It can also be said that the circumstances pertaining to this case from the time applicant was appointed as a tutorial fellow of the respondent she had legitimate expectation that she was exempted from the bond. Legitimate expectation as provided *Republic Applicant & Kenya Revenue Authority And Proto ex-parte Energy Limited* 023/2021 arises when a body by representation or by past practice has aroused an expectation that is within its power to fulfil. The court went further to hold that for expectation to be claimed legitimate it must be founded upon a promise or practice by a public authority that is expected to fulfil the expectation.
77. It was further observed that a party seeking review of a decision citing the circumstances relied upon by the applicant must demonstrate the act or omission constitutes a clear abuse of discretion.
78. It must also be demonstrated that the respondent acted in an arbitrary manner. Arbitrary manner would show a tendency of abuse of possession of power.
79. So if a public body makes a decision without reasonable grounds or adequate consideration of circumstances it is said to be arbitrary and court can invalidate it.
80. The court went further to proffer that unreasonableness and irrationality are grounds for judicial review. Rationality and proportionality are elements of reasonableness.
81. In this case the court is trying to find if respondent acted reasonably or did he act arbitrarily and capriciously.
82. The respondent allowed the applicant to sign the bond form with clear indication that the bond sum was not applicable to her. They knew all the while that the applicant was undertaking her PHD program from University of Nairobi and she was meeting her costs. When she graduated with her PHD they offered her a job as a lecturer. All this time they did not clarify the terms of the bond and the formula to work out the bond sum. Infact the Respondent does not seem clear to himself what exactly is the amount is demanding and what does it cover:-
 - a. Initially when she gave her resignation letter she was asked to pay ksh 9,021,665/= on account of costs expanded as salary and allowance.
 - b. She was then asked to pay ksh 1,238,895 being total costs of one- unit taught by the part timer when she undertook her studies.
 - c. She was further asked to pay ksh 13,777,660/= as bond sum and three months' salary in lieu of notice. The applicant had tendered her three months' notice letter dated June 3rd, 2021.



- d. In the respondents submission the figures demanded are ksh 8,289,395.12 plus interest at 14%. These figures are not claimed in the petition. She was also asked to pay 3 months salary in lieu of notice. She had tendered her 3 months' notice but respondent rejected it.
83. Even if the applicant was bonded the arbitrary manner the respondent handled the whole process is to be frowned upon. They never involved the applicant at any point and yet they made demands of colossal amounts of money without any clarification of how those figures were arrived at. They do submit that the bond form in Appendix 1 of PSC guidelines is a guideline and is fully complaint in terms of content therein. They say that Public Service Commission guidelines on bond for training Public Servants is applicable to the applicant but none of this is put anywhere in writing or communicated to the applicant.
84. With due respect this is a very generalized submission and there is no reason why the Respondent could not have specified exactly what sections of the said guidelines applied to the applicant. The court is unable to find how the applicant could have interpreted the sums she was expected to commit to and the details pertaining to the same with such unclear documentations and information and yet regrettably to say from such a high and credible institution of learning.
85. The respondent has also referred to the units the applicant should have covered and so avers some were covered by part-timers on her behalf. There is nowhere in these documents produced as evidence states how many units the applicant was to cover and so this again cannot be used to work out her bond sums.
86. The respondent allude they are keen to safeguard public funds but then the way they went about this case lacked clarity and professionalism. It would be unfair and wrongful to order the applicant to pay the bond sum which is so unclear what it is and how it is arrived at and whether she actually is legitimately bonded to pay the same.
87. Going by the analysis of the facts as presented hereto, the cited authorities and the law and especially the Constitution of Kenya 2010, the Employment Act 2007 and the Fair Administrative Action Act 2015 and the discussions on each issue the irresistible conclusion is that the applicant deserves the judicial review orders sought as hereunder:-
- a. Certiorari to remove into this Court for purposes of being quashed the Respondent's decision contained in the letter dated 18th March, 2022 to the effect that the *ex-parte* Applicant owed it a Bond sum of ksh 13,777,060.18/= and an amount of money equal to her salary for ninety (90) days in lieu of the three month notice of termination of contract and that accordingly, it would neither sanction her clearance from its employment nor settle her terminal dues.
- b. Mandamus to compel the Respondent to immediately issue the *ex-parte* with the Clearance Certificate that will signify her formal exit from the Respondent's employment and ensure expedient tabulation and release of her terminal dues within fourteen (14) days of the subject Order.
88. Each party to bear their costs.
Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 6TH DECEMBER 2022

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 15th March 2020 and subsequent directions of 21st 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 had 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 Civil 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.

ANNA NGIBUINI MWAURE

JUDGE

