



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E109 OF 2020

PROFESSOR MICHAEL KIPTOO.....CLAIMANT

VERSUS

KENYA MEDICAL TRAINING COLLEGE.....1ST RESPONDENT

PROFESSOR PHILIP KYALO KALOKI.....2ND RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION.....1ST INTERESTED PARTY

DR. MIRIAM NDUNGE MUTHOKA.....2ND INTERESTED PARTY

JUDGMENT

1. The Petition was filed on 31/12/2020 by the Petitioner, Professor Michael Kiptoo praying for an Order in the following terms: -

(a) A declaration that the purported termination of service of the petitioner on 24/12/2020 together with all disciplinary proceedings thereto breached the petitioner's right to be heard and be heard by an independent tribunal and as such are unconstitutional and void *ab initio* and should be set aside.

(b) A declaration that the decision of the first and second respondents given on 24/12/2020 to terminate the petitioner's employment was malicious and in contravention of a direct Order given by the 1st Interested Party protecting the Petitioner as a witness under Section 33 of the Witness Protection Act, Cap. 79 as well as Section 4(4) of the Leadership and Integrity Act, regarding reprisals against witnesses of the Commission in terms of Section 65(1) of the Ethics and Anti-Corruption Act and Section 21(1) of the Bribery Act.

(d) An Order of mandamus directing the Respondents to reinstate the petitioner to his employment as Chief Executive officer of Kenya Medical Training College, with full pay and without loss of benefits and at the end of his term, to be appraised as per the law and the Constitution and if found he lawfully passes, his contract accordingly renewed without bias.

(e) Alternatively, the Petitioner also seeks for damages for unlawful and unconstitutional bundling out-of-office before the lapse of his 3-year contract, for the remainder of 12 months to 7/12/2021.

(f) A declaration that the Petitioner is entitled to payment of salary and full pay up to the end of his contract on 7/12/2021 of Kshs. 448,200/= per month for 12 months till 7/12/2021.

(g) Damages for unlawful and unconstitutionally hounding out of office of the Petitioner before the lapse of his 3-year contract, for the remainder of 12 months to 7/12/2021.

(h) Costs be borne by the Respondents.

2. The petition is premised on facts set out in paragraphs 6 to 41 in the body of the petition that may be summarized that the petitioner was employed by the 1st respondent as the Chief Executive Officer on 7/12/2018 on a contract period of 3 years ending on 7/12/2021 and was earning a monthly gross salary of Kshs. 448,200 made up of a basic salary of Kshs. 328,000, Kshs. 80,000 house allowance and Kshs. 40,000 extraneous duty allowance.

3. The petitioner performed his work diligently and continuously.
4. The 1st Interested Party requested the petitioner to provide information regarding untoward relationship between the 2nd respondent and 2nd interested party which relationship led to the employment of the 2nd interested party as the Company Secretary whilst she was not qualified for the job.
5. The petitioner provided the documents and evidence required by the 1st Interested Party to aid the investigations regarding breach of Article 10 and 73 of the Constitution on the part of the 1st and 2nd respondents and the 1st interested party, Ethics and Anti-corruption Commission (EACC) and was thenceforth a protected witness by dint of Section 33 of the witness Protection Act, Cap. 79 Laws of Kenya and no disciplinary proceedings could have been tendered against the petitioner on the basis of that.
6. Upon delivery of the said documents, the 2nd respondent began to hound the petitioner by insisting that he provides an account of his whereabouts on various dates which request could have led to breach of Section 33(3) of the Witness Protection Act by disclosing the protected witnesses and exposure of the petitioner himself and the witnesses to harm.
7. The Petitioner gave a proper explanation, truthfully without breaching section 33 of the Witness Protection Act by a letter dated 27/10/2020.
8. On 28/10/2020, the Petitioner was served a Show Cause Letter to explain why he should not be dismissed and was charged with 21 offences which were fictitious including failure to attend duty on gazetted public holiday, Jamuhuri day on 12/12/2019.
9. The respondent responded to the allegations by a letter dated 4/11/2020 requesting for documents he required to answer the charges against him. On 5/11/2020 the 2nd respondent declined to grant the requested documents and did not place the petitioner's request before the Board. That the conduct by the 2nd respondent was unilateral and malicious and in violation of Article 236 of the Constitution which governs conduct of disciplinary actions in respect of Public officers.
10. On 7/11 2020 the petitioner answered all the charges comprehensively and was requested to attend a disciplinary hearing on 20/11/2020 at 3pm by a notice of the same day issued at 11 a.m.
11. The petitioner at 11.30 wrote to the 2nd respondent requesting for 7 days to prepare for the hearing of his case and to instruct an advocate.
12. The 1st respondent wrote a letter at 2 pm. on 20/11/2020 insisting that the hearing must proceed and required the petitioner to attend.
13. Mr. Musudi Advocate, appeared on short notice at the hearing to protest the proceedings. The application by the Advocate for adjournment was refused.
14. Meanwhile the 1st interested party had written to the respondents requiring and directing the 1st and 2nd respondents not to continue with the hearing since the matter was pending investigations and the petitioner was a witness against the second respondent and there was therefore conflict of interest in the scheduled proceedings by the 2nd respondent against the petitioner and in particular regarding the issue of the 2nd respondent having employed the 2nd interested party as the Company Secretary without disclosing that the 2nd interested party was his girlfriend/lover/second wife.
15. The Petitioner states that he was not given opportunity to attend a fair disciplinary hearing. The matter was not heard on that day and the claimant continued working until 24/12/2020. On 24/12/2020, whilst on his way for Christmas, the petitioner was informed that there was a board meeting on the same day and the employment of the petitioner had been terminated.
16. The petitioner states that the termination was unlawful and unfair as he was not given a hearing; not served with a hearing notice; was irregular and clandestine as only two (2) directors and the 2nd respondent were in attendance. Indeed, five (5) Directors were not notified and were absent and so there was no quorum.
17. The petitioner as an ex- officio member of the Board had also not been notified of the meeting.
18. The Petitioner states that the conduct by the respondents violated his rights to fair Administrative action under Article 47(1) and (2) of the Constitution. That he was not accorded the right to administrative action which is expeditious, reasonable and procedurally fair and was adversely affected by the action by the respondents.
19. That the respondents breached the rules of natural justice in conducting a biased and unfair proceedings against him without opportunity to be heard. That this conduct violated Article 50(1) of the Constitution.
20. That the respondent also violated section 33 of the Witness Protection Act, read with Section 65(1) which prohibits reprisals against witness of the Commission.
21. The petitioner prays that the petition be allowed as prayed.
22. The 1st, interested party - Ethics & Anti-Corruption Commission(EACC) filed a replying affidavit in response to the Notice of Motion dated 30/12/2020 and the petition in which the deponent Jackson Mwai, an investigator with Ethics & Anti-corruption Commission supports

in all material respects the deposition by the petitioner that the Commission was investigating complaints of abuse of office and conflict of interest against the 2nd respondent and the 1st interested party. That the Commission requested the petitioner by a letter dated 15/10/2020 to furnish the Commission with information and documents regarding the complaints. That by a letter dated 21/10/2020, the petitioner supplied to the Commission the requested documents.

23. That the Petitioner recorded a statement at the Commission on 26/10/2020.

24. That on 3/11/2020, the Commission received a complaint from the petitioner that he was being victimized for co-operating with the Commission.

25. That by a letter dated 10/11/2020, the Commission wrote to Kenya Medical Training College Board advising the Board to stop any disciplinary proceedings against the petitioner until the investigations are finalized.

26. That on 19/11/2020, the petitioner informed the Commission that the Kenya Medical Training College Board had invited him to a disciplinary hearing on 20/11/2020.

27. That on 20/11/2020, the 2nd respondent responded to the Commission's advisory dated 10/11/2020 stating that Kenya Medical Training College Board will continue to execute its statutory obligations and accord the petitioner a hearing in accordance with the law and the Constitution unless otherwise prevented by a Court order to do so.

28. The deponent states that the advisory to Kenya Medical Training College by the Commission was lawful to allow for independent and fair investigations on the complaint to take place.

29. That the Commission has established that at the time of appointment as the Corporation Secretary, Dr. Miriam Nduge Muthoka was not registered as a Certified Public Secretary by the Certified Public Secretaries Board but was registered as such on 28/2/2018 when she became a registered member of Certified Public Secretaries of Kenya (KPSK) registration number R1 3365 and was therefore not a qualified person to be appointed Corporation Secretary, of Kenya Medical Training College on 13/11/2015 when she was appointed by Kenya Medical Training College in that capacity.

30. The parties on 1/2/2021 through their respective advocates agreed to dispense with the pending applications; the depositions filed in respect of the respective applications to apply to the petition and the Court to grant judgment in respect of the petition so as to expeditiously conclude this matter in the interest of Kenya Medical Training College as a critical institution during this COVID 19 period.

31. The supporting and replying affidavits filed in the matter have therefore been considered in respect of the petition.

32. In this regard the Supporting Affidavit of Mithano Muchiri, the Chairperson, Human Resource Committee Board of Directors of the 1st respondent is regarded as a replying affidavit to the petition regarding all the facts and matters, the deponent has traversed the grounds of the petition set out by the petitioner in the petition and the supporting affidavit thereof.

33. Mr. Mithano Muchiri deposes that contrary to the petitioner's allegations that he was not accorded the benefits of a fair hearing the 1st respondent (Board) complied with the provisions of Article 47 of the Constitution, The Fair Administrative Act, the 1st respondent's Human Resource and Procedure Manual, the Head of Public Service circulars and Code of governance for state corporations (Mwongozo).

34. That the 2nd respondent has at all material times in respect of this matter acted in his capacity of the Chairman of the Board of Kenya Medical Training College.

35. That the Petitioner was on 27/10/2020, pursuant to a resolution of the Board issued a Notice to Show Cause to respond to the same within 21 days. That the Petitioner responded to the same on 17/11/2020 and he was invited to appear before a full Board Scheduled on 20/11/2020 at 3pm.

36. That on 20/11/2020, the petitioner was given a hearing by the Board during the meeting where he defended himself and a unanimous decision was made to terminate his contract but the Board could not effect the decision to terminate his contract and so it adjourned to await the advisory opinion from the Attorney General in respect of the advisory letter sent to it by Ethics & Anti-Corruption Commission on the matter.

37. That the contract of the Petitioner had no statutory underpinning and could therefore be terminated by the Board. That the Board of 24/12/2020 had quorum contrary to the false allegations by the petitioner. That eight Directors of the Board were present in the meeting and three Directors of the Board sent their apologies as confirmed by the minutes of the Board produced before Court. That at least seven members constitutes quorum of the Board.

38. That on 20/11/2020, the Board resolved as follows: -

(a) That the Chief Executive Officer, Professor Michael Kiptoo, committed an act of gross misconduct by absconding his duties.

(b) That in accordance to article 44(4) (a) of the Employment Act, 2007, which provides that if without leave or other lawful cause an employee absents himself from work or from a place appointed for the performance of his work amounts to gross misconduct and he may be summarily dismissed from employment.

(c) That pursuant to Clause 5 of the employment contract of the Chief Executive Officer, Professor Michael Kiptoo dated 7th December, 2018, the Board reserves the right to terminate the Chief Executive Officer's employment prematurely depending on performance.

(d) That pursuant to Section 44(4) (a) of the Employment Act, 2007, and Clause 5 of the Chief Executive Officer's employment contract, the board to terminate the employment contract of the Chief Executive Officer, Professor Michael Kiptoo, dated 7th December, 2018 and summarily dismiss him from service on ground of gross misconduct as a result of his absenteeism, insubordination contrary to his terms and conditions of employment and failure to comply with Article 73(2) (c) and Article 75 (a) (c) of the Constitution of Kenya, 2010, the code of conduct and ethics for public officers, and other relevant laws.

(e) The Board resolved to seek an advisory opinion by the Hon. Attorney General in respect of the letter dated 10th November, 2020 by the Ethics and Anti-Corruption Commission (attached) on WHETHER or NOT the Ethics and Anti-Corruption Commission was justified to direct the Kenya Medical Training College BOARD NOT to perform its statutory obligation of undertaking disciplinary action against its Chief Executive Officer, Professor Michael Kiptoo.

(f) The College to comply with the relevant provisions of the Human Resource Policies on the Chief Executive Officer, Professor Michael Kiptoo's benefits and dues and the same to be included in his dismissal letter.

39. That the Hon. Attorney General had by a letter dated 23/11/2020 responded to a letter dated 10/11/2020 by Ethics & Anti-Corruption Commission in which the Hon. Attorney General advised that Ethics & Anti-Corruption Commission was not justified to direct the Kenya Medical Training College Board not to perform its statutory obligation of undertaking disciplinary action against the Chief Executive Officer, the petitioner herein.

40. That on 24/12/2020 the Board lawfully resolved to terminate the services of the petitioner and in his place appointed Dr. Kelly Oluoch as its acting Chief Executive Officer who took over office immediately.

41. That the Petition is incurably defective, based on falsehoods, is incompetent, frivolous and vexatious and it be dismissed with costs.

42. The petitioner restated his grounds in the replying affidavits to the applications dated 6/1/2021 and 8/1/2021 in which he joins issues with the statements of fact deposed to by Mr. Mithano Muchiri, for the 1st respondent.

43. The Petitioner filed written submissions on 8/1/2021 and the 1st respondent filed submissions dated 27/1/2021 touching on all relevant matters in this petition.

Determination

The issues for determination are: -

(i) Whether the petitioner has proved on a balance of probabilities that his right to a fair hearing in terms of the rules of natural justice and as restated under Article 50(1) of the Constitution was violated by the respondents.

(ii) Whether the petitioner's right to fair administrative action provided under Article 47(1) and (2) of the Constitution and under Fair Administrative Action Act, 2015 was violated by the Respondents.

(iii) Whether the petitioner is entitled to the reliefs sought.

44. At the outset, the Court has considered the application to have the 2nd respondent struck out of the suit and upon a careful analysis of the facts of the case and issues for determination, the Court is satisfied that the 2nd Interested party has been properly joined as an interested party being the Corporate Secretary of the 1st respondent and in respect of whom the petitioner has made various allegations which according to the Petitioner substantially contributed to the termination of his employment by the 1st and 2nd respondents.

45. The Court has considered the decision of the Supreme Court in **Trusted Society of Human Rights –vs- Mumo Matemu & 5 Others – Petition No. 12 of 2013 [2014] eKLR** where the Court observed: -

“a party could be joined in a matter on the basis of certain considerations

(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings.

(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law.

(iii) Joinder to prevent a likely course of proliferated litigation.”

46. The aforesaid test has been satisfied in respect of the 2nd interested party and the Court finds that she has been properly joined as a party in the suit.

47. With regard to the main issue whether the petitioner's right to fair administrative action provided under Article 47(1) and (2) of the

Constitution and under the Fair Administrative Action Act, 2015, was violated by the respondents, the Court has carefully considered the facts set out in the petition and in the supporting affidavit thereof.

48. The Court has also considered the deposition by the respondents and has come to the following conclusion on the facts of the case and law applicable: -

49. Article 2 of the Constitution of Kenya, 2010 provides: -

“(1) This Constitution is the supreme law of the Republic and binds all persons and all organs at both levels of government.

(2) No person may claim or exercise state authority except as authorized under this Constitution.”

50. Article 73, under Chapter six of the Constitution on Leadership and Integrity provides: -

“(1) Authority assigned to a state officer.

(a) Is a Public trust to be exercised in a manner that -

(i) Is consistent with the purposes and objects of this

Constitution;

(ii) Demonstrates respect for the people;

(iii) Brings honour to the nation and dignity to the office;

and

(iv) Promotes Public confidence in the integrity of the

office;

(b) Vests in the state officer the responsibility to serve the people, rather than the power to rule them.

2. The guiding principles of Leadership and integrity includes: -

(a) Selection on the basis of personal integrity, competence sustainability, or election in free and fair elections.

(b) Objectivity and impartiality in decision making and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices.

(c) Selfless service based solely on public interest, demonstrated by-

(i) Honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties;

(ii) the declaration of any personal interest that may conflict with public duties;

(d) accountability to the public for decisions and actions; and

(e) discipline and commitment in service to the people.”

51. The petitioner has set out in the petition, circumstances that led to unexpected curiosity from the 2nd respondent that led to immediate institution of disciplinary action against him and eventual termination of his employment and replacement with an acting Chief Executive Officer.

52. The petitioner has vividly set out facts in paragraphs 6,7,8, and 9 of the petition to the effect that the petitioner since being employed by the 1st respondent as the Chief Executive Officer on 7/12/2018 on a contract of 3 years' period ending on 7/2/2021 had continued to do his work diligently without any single absenteeism and in line with his contract of employment.

53. That unbeknown to him the 2nd respondent, the Chairman of the Board had a romantic relationship with the 2nd interested party at the time the 2nd interested party was employed by the 1st respondent as the Company Secretary. That the petitioner had continued to work harmoniously with the 2nd respondent and the 2nd interested party.

54. However, following a confidential report to Ethics & Anti-Corruption Commission by an informer on the clandestine relationship between the 2nd respondent and 2nd interested party and that the 2nd interested party was appointed as company secretary of the 1st respondent whilst she did not have the minimum qualification of being a Registered Secretary as per the job specification stipulated in the advertisement for the position, Ethics & Anti-corruption Commission, requested the petitioner, being the Chief Executive Officer of the 1st respondent and the person in custody of all the relevant documents and information relating to the recruitment of the Company Secretary to provide that information to Ethics and Anti-corruption Commission for investigations on alleged breach of Articles 10 and 73 of the Constitution. The petitioner became a protected person by dint of Section 33 of Witness Protection Act, Cap. 79 Laws of Kenya.

55. That notwithstanding and in circumstances which point to victimization on the basis of the co-operation given to Ethics and Anti-Corruption Commission by the petitioner, the Board of the 1st respondent chaired by the 2nd respondent who was a subject of the investigations by Ethics and Anti-Corruption Commission immediately commenced disciplinary process against the petitioner. The connection, and patent proximity of the disciplinary process to the report made to the Ethics and Anti-Corruption Commission, was demonstrated by the demand by the 2nd respondent for the petitioner to explain where he was on the specific dates he had visited the Ethics and Anti-Corruption Commission.

56. These matters are set out with clarity in the body of the petition under paragraphs 11, 12, 13, 14 thereof.

57. These events are confirmed by Ethics and Anti-Corruption Commission, the 1st Interested party, in their replying affidavit.

58. The 1st and 2nd respondents have not attempted at all in the affidavit by Mithamo Muchiri, to deny and or contradict, the facts set out by the petitioner under oath regarding the clandestine relationship between the 1st respondent and the 2nd Interested party, which relationship coupled with non-disclosure of the same at the point of appointment of the 2nd interested party by the 1st and 2nd respondent constitute a gross breach of Article 10 and 73 of the Constitution of Kenya, 2010 and the subject of the report made to EACC by the petitioner which report led to the victimization of the petitioner by the respondents.

59. Indeed, the 1st respondent and the 1st interested party have not filed any replying affidavit specifically dealing with the aforesaid breach by themselves of Article 10 and Chapter 6, Article 73 of the Constitution of Kenya, 2010.

60. Indeed, Mr. Mithano Muchiri, the Chairperson, Human Resource Committee of Board of directors restricted himself to the conduct of the disciplinary hearing conducted by the Board against the petitioner leading to the termination and did not attempt to traverse, serious allegations of lack of integrity and breach of Chapter 6 of the Constitution of Kenya by the 1st and 2nd respondents.

61. The respondents vide the said affidavit by Mr. Mithano, justify, their decision to proceed against the petitioner despite an advisory by Ethics and Anti-corruption Commission that the petitioner was a protected witness, under Section 33 of the Witness Protection Act, and so no disciplinary action ought to be taken against him in circumstances that indicated that he was being victimized for having co-operated with Ethics and Anti-corruption Commission against the 1st respondent and 2nd interested party by dint of the proximity of the two events by hiding behind the advisory by the Hon. Attorney General that Ethics and Anti-corruption Commission could not fetter the statutory authority of the 1st respondent on matters of discipline.

62. This notwithstanding the Court is satisfied that by fact of the proximity and quick succession of the events at the Ethics and Anti-Corruption Commission by the Petitioner with the subsequent uncontroverted demands by the 2nd respondent that the petitioner explains his whereabouts on the dates and period the petitioner was engaged at Ethics and Anti-corruption Commission on the matter, that the disciplinary process was *malafide*, malicious and abuse of office by the 1st and 2nd respondents and in violation of Articles 10 and 37 of the Constitution of Kenya, 2010.

63. Indeed, the proceedings that followed, as ably demonstrated by the petitioner were a sham with a pre-determined end to punish the petitioner for having co-operated with Ethics and Anti-Corruption Commission against the 2nd respondent and the 1st interested party. No wonder the 2nd respondent and the 2nd interested party have not found courage to controvert the serious allegations of impropriety in the manner the 1st interested party was appointed without declaration of interest she had between her and the 2nd respondent.

63. The facts of the case lead the Court to the inevitable conclusion that the 1st and 2nd respondents violated the rights of the petitioner to an administrative action, that is expeditious, efficient, lawful, reasonable and procedurally fair in violation of Article 47(1). The Court also finds that the manner in which the disciplinary hearing was conducted violated the 1st respondent's Human Resource Manual and the disciplinary code thereof by failing to allow the petitioner to be accompanied by a representative of choice and by giving him very short notice that amounted to no notice at all to prepare his case.

64. The Petitioner was also not allowed to confront and cross-examine the complainant and or any witness who adduced evidence against him. This process in addition violated Article 50(1) of the Constitution being the right of the Petitioner to have the dispute between himself, and the employer resolved in a fair manner by an impartial tribunal, in this case, the disciplinary panel constituted in terms of the respondents Human Resource Manual.

65. Furthermore, the manner in which the disciplinary process was conducted violated the rules of natural justice in that the petitioner was not given a fair hearing and the complainants appear to have been the prosecutors and judge in the matter hence violating the rule against bias.

66. In the case of **Republic –vs- Fazul Mohammed & 3 Others Exparte Okiya Omtatah Okoiti [2018] eKLR- Miscellaneous Civil Application 017 of 2017**, the Court stated: -

“The power of the Court to Review an administrative action is extra ordinary. It is exercised sparingly, in exceptional circumstances where illegality, irrationality or procedural impropriety has been proved. How that conclusion is to be reached is not statutorily ordained and will depend on established principles informed by Constitutional imperative that administrative action must be lawful, reasonable and procedurally fair.”

67. In John **Wachiuri T/A Githakwa Graceland & Wandumbi bar and 50 others –vs- The County Government of Nyeri and Another** the Court stated that-

“there are three categories of Public Law wrongs which are commonly used in cases of this nature and which include, illegality, unfairness, irrationality and non-proportionality.

68. The Court stated that: -

“The Courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute “**irrationality**” or “**perversity**.” **on the part of the decision maker. The benchmark decision on this Principle of Judicial Review was made as long ago as 1948 in the celebrated decision of Lord Green in Associated Provincial Picture House Limited –vs- Wednesbury Corporation:** -

“If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere but to prove a case of that kind would require something overwhelming.”

69. In the present case, the respondents acted illegally, irrationally and unreasonably in punishing the petitioner, a Chief Executive Officer who had hitherto served the organization very well, on the basis, in Court’s view and finding that he had co-operated with the Ethics and Anti-Corruption Commission in an investigation involving impropriety by the Chairman and the Company Secretary of the 1st respondent. The Attorney General gave the respondents an objective advisory opinion in good faith. The advisory was never meant to be carte blanche to cover up malicious, illegal, irrational and unreasonable conduct by the respondents.

70. Accordingly, the petition succeeds and the Court makes the following final orders: -

(a) A declaration is made that the purported termination of service of the petitioner on 24/12/2020 together with all disciplinary proceedings thereto breached the petitioner’s right to be heard and be heard by an independent tribunal and are unconstitutional and void *ab initio* in violation of Article 50(1) of the Constitution.

(b) A declaration is made that the purported termination of Service of the Petitioner on 24/12/2020 together with all disciplinary process violated the petitioner’s right to fair administrative action in violation of Article 47(1) of the Constitution.

(c) An Order of Mandamus is issued directing the Respondent to reinstate the Petitioner to his employment as Chief Executive Officer of Kenya Medical Training College, with full pay and without loss of benefits in terms of his contract of service.

(d) Costs to follow the event.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2021

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this Judgment has been delivered to the parties online with their consent. 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 has 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Magare Musundi & Co. Advocates for the Petitioner

M/s Kithi & Co. Advocates for the respondent

M/s Kurauka & Co. Advocates for the 2nd respondent

Mr. Okwara for 1st Interested Party.

Mr. Makhoka for 2nd Interested Party.