



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT NAKURU**

**ELRC CAUSE NO. E012 OF 2021**

**PROF. LOIS WANJIKU CHIURI.....CLAIMANT/APPLICANT**

**VERSUS**

**LAIKIPIA UNIVERSITY.....1<sup>ST</sup> RESPONDENT**

**THE VICE CHANCELOR,**

**LAIKIPIA UNIVERISTY.....2<sup>ND</sup> RESPONDENT**

**THE CHAIRPERSON OF THE COUNCIL,**

**LAIKIPIA UNIVERSITY.....3<sup>RD</sup> RESPONDENT**

**THE COUNCIL, LAIKIPIA UNIVERSITY.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Claimant, herein has filed an application dated 19<sup>th</sup> March, 2021 through a Notice of Motion brought pursuant to Section 74(1)(2) of the Employment Act and section 12 of the Labour institutions Act No. 12 of 2007 laws of Kenya seeking Orders That:

**1) That this Honourable Court be pleased to order the Respondents to provide the applicant records as per the list of documents enumerated in the schedule attached to the supporting affidavit herein.**

**2) That the costs be in cause.**

2. The document which the applicant is requesting are as follows;

1) Minutes of appointment of associate professor of Laikipia university for 17.01.2018

2) Laikipia university council minutes from July 2018 to January, 2021

3) Laikipia university departmental minutes of the public administration and environmental science department from January 2018 to September 2019.

4) Laikipia university Earth science departmental minutes from September, 2019 to December,2020.

5) Commission of Laikipia university education staff assessment report 2019

6) Laikipia university Earth science departmental correspondences with graduate school in the department and their supervisors.

7) Laikipia university disciplinary rules and procedure.

8) Laikipia university policy and procedure of hiring deputy vice chancellor and associate professor

9) Laikipia university human resource manual

10) Permanent and pensionable contracts and management contracts.

11) Laikipia university examination timetable for environmental science programme for the year 2018, 2019, and 2020

12) Laikipia university staff establishment report 2019.

3. The application is based on the grounds;

a) That the production of the document is necessary as they will assist this Court in the effectual determination of the matter in controversy between the parties.

b) That the claimant/ Applicant's claim is grounded on the issue touching on the documents and the same will hugely assist the court in determination of the issues in dispute.

c) That the documents are in custody of the Respondents and they can only be accessed if they are produced by Respondents.

d) That the said documents are essential to assist the court in determination of the real dispute between the claimant/ Applicant and the Respondent.

e) That no prejudice will be occasioned on the production of the said documents.

4. The application is also supported by the annexed affidavit of Prof. Lois Wanjiku Chiuri sworn on 19<sup>th</sup> March, 2021.

5. The Applicant has averred that she has filed this suit seeking damages for unlawful and unfair termination of employment that arose following the nullification of her position as an Associate professor at Laikipia University. She stated that she was interviewed sometimes in 2017 for the position of an Associate professor while still under a contract as the deputy vice chancellor and passed the interview. That the said position was on permanent and pensionable terms but the respondent illegally nullified the said position on the grounds that the applicant was appointed to a permanent and pensionable position while she was still serving as the Deputy vice-chancellor, Academic and Research on contract basis and failed to report to the department for assignment of duties within the requisite 3 months, also that the council denied the said appointment therefore it's imperative for the application to be allowed and the said documents produced to enable Court determine the claim based on evidence.

6. The Respondents opposed this application and they filed a replying affidavit deposed upon by **Prof. Kibett Rotich**, the vice chancellor Laikipia University on 21<sup>st</sup> April, 2021 contending that the document sought for production by the applicant are huge which covers various issues of sensitive and confidential nature whose disclosure would be injurious to the operations of the university. He stated that the documents do not cover the applicant issue in isolation but covers several unrelated matter which are of no assistance to the court. That the applicant has not demonstrated how the document she seeks to be produced are relevant in her case when the onus lies on her to do so and thus urged his Court to dismiss the said application.

7. The parties agreed to dispose of this application through written submissions.

#### **Claimant's Submissions.**

8. The Claimant submitted from the onset that Article 35(b) of the Constitution of Kenya 2010 provides for the right of access to information which she has a right to access the documents kept by the respondents. It was argued that the respondents are under obligation to maintain and produce the same if requested as envisaged under Section 74 of the Employment Act. Further that the applicant requires those documents in arguing her case.

9. Counsel argues that as much as the respondent alleges that the said documents are of sensitive nature which will infringe on their right to privacy if produced, the right to privacy is not an absolute right and that the right to privacy can be limited as provided for under Article 24 and cited this Court decision in **Mutuku –v- Rift Valley Railways (Kenya) Limited [2015] eKLR**

10. On whether the respondent has a duty to produce documents in their possession, it was submitted that Section 10 of the Employment Act obligates the employer to keep documents relating to employment of employee for a period of 5 years after the termination of that employee's employment. He cited the decision of justice M. Mbaru in **Abigail Jepkosgei Yator & another –v- China Hanan international Co. Ltd [2018] eKLR** that reinforce the need for an employer to keep the document on employment of an employee for 5 years after termination and this Court's decision in **Samuel Mutuku Mutunga-v- steel makers Limited [2019] eKLR** where the Court affirmed that an employer is obligated to keep employment records including wages payment and failure to produce the said document would be construed against the employer.

11. It was submitted further that the document ought to be produced at this discovery stage for the purpose of leveling the litigation field and to expedite the disposal of the claim herein and do so fairly. He cited the case of **Conford Insurance Co. Ltd –v- NIC Bank Ltd [2013] eKLR**.

12. Finally, the applicant urged this Court to allow the application as prayed.

## Respondents' submissions

13. The respondent on the other hand submitted that the documents sought by the applicant offers no probative evidentiary value to assist the court in making a determination of the suit. He argues that the issue for determination in the claim is with regards to an alleged termination of employment of the claimant/ Applicant as an Associate Professor and not the lapse of her contract as a deputy vice chancellor or her entitlement to gratuity for the last year of service as such the documents sought are not of relevance in her case. The respondent cited the cases of of **Rafiki microfinance Bank ltd- v- Zenith Pharmaceuticals ltd [2016] eklr and Concord Insurance Co. Ltd –v- NIC Bank [2013] Eklr** which courts emphasized on the need of relevance of requested document in such an application.

14. It was submitted that the applicant is requesting for documents which are not specific in nature. He contended that document number 5 and 12 in the list are not known to the respondent as such cannot be produced if ordered by the court. With regards to document number 6, it was contended that the applicant has not specified which correspondence she needs. On document number 8 he argued that the same is irrelevant in this case same as document number 10 while document number 11 can be obtained in the respondent's website which does not require this Court to sanction its production as envisaged under section 6(5) of the Access to Information Act.

15. It is the respondents' submission that the minutes requested by the applicant for the periods between July, 2018 to January, 2021 are confidential and privileged documents that contain the internal affairs of the university and personal information of its students which if produced will place confidential information for the public eye that will jeopardize the respondents case herein and others cases filed them. He argued that section 6(1) (d) of the Access to information Act puts limitation to the right to access information where it involves unwarranted invasion of privacy. He reinforce his argument by citing the case of **Baseline architect limited and 2 others –v- National Hospital Insurance Fund Board Management [2008] eklr** where the court held that complete disclosure is not a requirement and that production of private information such as letters, reports, board minutes and opinion of the Attorney General would in the long run be injurious to the general public and curtail the freedom of communication by the public officer in performing their duties as they will be treading carefully and in fear.

16. He thus submitted that the documents requested by the applicant herein are confidential documents that a third party ought not to be granted access.

17. On whether the orders sought should be granted, the respondents submitted that as much as the applicant has a right to access information under Article 24 , the said right is limited by section 6(1) of the Access to Information Act. Further that the applicant has not demonstrated whether the said documents are held by the respondents and the relevant of each document sought thus prayed that the application be dismissed with costs.

18. I have considered the averments of the parties herein. The applicant seeks to have the respondent produce certain documents which he contends are crucial in the fair conclusion of his case.

### **Article 35 of the constitution provides as follows;**

35. *Access to information*
- (1) *Every citizen has the right of access to—*
- (a) *information held by the State; and*
- (b) *information held by another person and required for the exercise or protection of any right or fundamental freedom.*
- (2) *Every person has the right to the correction or deletion of untrue or misleading information that affects the person.*
- (3) *The State shall publish and publicise any important information affecting the nation.*

19. That notwithstanding this right of access to information is limited under Article 24 of the constitution and this right is limited to the extent reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors as stated therein.

20. In the case of the applicant herein, she seeks to be supplied with certain documents and the respondent have submitted that certain documents are not known to them i.e. 5 & 12.

21. They also contend that with regard to document 6, the applicant has not specified which documents she needs. They also aver that document no. 8 is irrelevant and documents No. 10 x 11 can be obtained at the respondent's website.

22. As for the minutes, the respondent submitted that those minutes for period between July 2018 to January 2021 were confidential and privileged in nature.

23. Document 5 & 12 are reports which respondents aver are not known to them. In the circumstances, the applicant would need to give better and further documents to this court to enable the court order the respondents to produce them.

24. As for document No. 6, I also agree that the documents sought are vague to the extent that the period of such documents and even form is not clear. In the circumstances, the court cannot order production in the manner the document is sought.

25. As for document No.8, the respondent cannot just state that they are relevant. It is the applicant who needs them for their case, the

irrelevance cannot be determined by the respondent.

26. As for No. 10 & 11 the respondents have averred that they can be obtained at their website. It is therefore important that the web address be provided by the respondent.

27. As for minutes of the respondents for the period as indicated, the respondents have pleaded that they are private and confidential. Whereas I may agree on this, the minutes in relation to any discussion relevant to the matter before court can be produced while concealing the private parts.

28. Having considered the application in its entirety, I order as follows:-

**1. Minute in relation to the appointment of Associate Professor of Laikipia University for 17/1/2018 be submitted to the applicant.**

**2. Prayer for production of minutes of July 2018 to January 2021 is denied as the request is vague and the applicant has not pointed out which ones are relevant to this case.**

**3. Minutes requested under No. 3 & 4 should be provided to the applicant at the relevant point in relation to the claim before court.**

**4. Better and further particulars be given by the applicant in relation to documents sought under items 5 & 12.**

**5. Documents 7, 8 & 9 be provided to the applicants as prayed.**

**6. Respondents to provide relevant web address where documents No. 10 & 11 can be accessed.**

**7. The respondent to supply the information requested within 14 days.**

**8. Costs of this application to be in the cause.**

**DATED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF JULY, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kabiru for claimant/applicant – present

Wanjau for respondent – present

Court Assistant – Fred and Wanyoike