

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT ELDORET

COURT NAME: ELDORET LAW COURT

CAUSE NUMBER: ELRCJR/E004/2021

CITATION: REPUBLIC VS KISII UNIVERSITY AND KISII UNIVERSITY COUNCIL AND 1 OTHERS

RULING

ON 2021-11-19 BEFORE HON. JUSTICE J. N. ABUODHA

1. On 13th October, 2021 I granted the applicant leave to commence judicial review proceedings. I however invited submissions on the issue whether leave so granted should operate as a stay of the decision sought to be impugned by way of Judicial Review.
2. In support of the application to operate as a stay Counsel for the ex parte applicant, Mr. Samba has submitted among others that the 3rd respondent was the Deputy Vice Chancellor in charge of Academics, Research and Student Affairs at Kisii University on 5-year contract expiring on 30th November, 2021.
3. At the time of his appointment section 35(1)(V) of the Universities Act had not been amended hence his appointment was made by the 2nd respondent's the University Council. Relying on the case of Republic v National Hospital Insurance Fund Management (2019) eKLR in which Nyamweya J (as she then was) stated that the purpose of a stay order in judicial review proceedings was to prevent the decision maker from continuing with the decision making process, if the decision has not been made or to suspend the validity and implementation of the decision that has been made.
4. The Interested Party herein filed an Affidavit in response in which he raised serious issues of law including the advisory opinion of the Honourable Attorney General wherein it was opined by the AG that the role of the PSC lies in the competitive recruitment of the respective top university managers. Once the competitive recruitment has been done, the University Council in consultation with the Cabinet Secretary appoints the successful candidates. That the aspect of competitive recruitment does not arise in the context of reappointments.
5. Of more concern is the deposition by the Interested Party that the present application amounted to an abuse of the Court process in that it was a project sponsored by insiders within the University who were against his candidature and who have since filed three judicial review applications in different courts touching on the same subject matter using different sponsored applicants. One such application has been stated a Kisumu JR ELRC NO E15 and E013 of 2021 filed by different individuals.
6. This is a disturbing averment and revelation that obviously operates in the mind of the Court in considering whether leave so granted should operate as stay. It sets the Court on the path of extra caution in order to avoid issuing orders contradictory to those which may have or will be issued by these other courts on similar issue.
7. From the foregoing, the Court does not find it appropriate to direct that the leave so granted do operate as a stay of the decision sought to be challenged by the substantive motion.
8. The Court further directs that the respondent be at liberty to move the Court for the consolidation of similar applications filed in other courts and that they be dealt with by one Court.
9. It is so ordered.

GIVEN under my hand and Seal of this Court on 2021-12-01 11:52:55

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)