



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 512 OF 2019

PROFESSOR FREDRICK OTIENO.....CLAIMANT

v

PUBLIC SERVICE COMMISSION.....1st RESPONDENT

**CABINET SECRETARY, MINISTRY OF EDUCATION, SCIENCE &
TECHNOLOGY.....2nd RESPONDENT**

MASINDE MULIRO UNIVERSITY OF

SCIENCE & TECHNOLOGY.....3rd RESPONDENT

DR. JEREMY MIRITI BUNDI.....4th RESPONDENT

RULING NO. 2

1. Prof Fredrick Otieno (Claimant) commenced these proceedings against the Respondents on 7 August 2019 and he stated the Issues in Dispute as

1. Unlawful, unprocedural, unfair termination and discriminatory termination of service.
2. Breach and violation of the Claimant's rights under:
 - a) Sections 5, 31, 35, 41 and 44 of the Employment Act, 2007.
 - b) Articles 10, 27(5), 28, 41, 47(1) & (2) and 50 of the Constitution of Kenya, 2010. c) Section 4 of the Fair Administrative Action Act No. 4 of 2015.
 - d) The express and implied terms under the Masinde Muliro University of Science and Technology Statutes of 2017 and the MMUST Charter.
 - e) The express provisions of the Universities Act, No. 42 of 2012.
 - f) The express and implied terms of his employment contract. g) Breach of rules of natural justice.
3. Reinstatement or in the alternative unpaid terminal dues.
4. Damages for wrongful, unprocedural and unfair termination of service and for loss of employment and future earnings.

2. On 18 September 2019, the Universities Academic Staff Union and the Kenya Universities Staff Union (Proposed Interested Parties) filed a motion seeking to be joined into the proceedings as Interested Parties (the application is the subject of this Ruling).

3. The grounds advanced by the Proposed Interested Parties were that the Claimant had pleaded that the Respondents had adversely

mentioned the proposed interested parties officials in the Statement of Claim; that the recruitment of a Vice-Chancellor for the Masinde Muliro University of Science and Technology directly affected the Proposed Interested Parties' members and that justice dictated the joinder of the proposed Interested Parties.

4. The 1st and 2nd Respondents opted not to oppose or support the application and left it to the Court to exercise its discretion whether to join the Proposed Interested Parties into the proceedings while the 3rd and 4th Respondents supported the application for joinder of the Proposed Interested Parties.

5. The Claimant filed a replying affidavit in Court on 31 October 2019 opposing the application and therein he deposed that the question of the joinder of the Proposed Interested Parties had become superfluous because the allegations against union officials had been made in a supporting affidavit to an application seeking interim orders and which application had been determined by the Court; that the Proposed Interested Parties had not demonstrated personal interest or stake in the proceedings; that the dispute before Court was between an employer and employee and that there were no prayers sought against the Proposed Interested Parties.

6. The Court took submissions on 26 November 2019.

7. Although this is not constitutional litigation, the Courts have synthesised the threshold a party wishing to be joined as an Interested Party should meet (see *Kenya Medical Laboratory Technicians and Technologists Board & 6 Ors v Attorney General & 4 Ors* (2017) eKLR).

8. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 also define the role of an Interested Party.

9. Under the Practice and Procedure Rules, an Interested Party must show an *identifiable stake or legal interest or duty* in the proceedings sought to be joined.

10. In the instant action, the Claimant is asserting breach of his contractual rights as an employee of Masinde Muliro University of Science and Technology.

11. Although he has alleged violations of his constitutional rights, the primary remedies he has sought are plainly in the realm of private/contract law.

12. In the view of the Court, there is no identifiable stake the Proposed Interested Parties have in the instant action as the Claimant was not their member. Equally, the Proposed Interested Parties did not stand in the place of the Claimant's employer.

13. The participation of the Proposed Interested Parties would not add any value to the proceedings.

14. The application filed in Court on 18 September 2019 is dismissed with costs in the cause.

Delivered, dated and signed in Nairobi on this 17th day of January 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr Change instructed by Arwa & Change Advocates

For 1st and 2nd Respondents Ms. Oyugi, Litigation Counsel, Office of the Attorney General

For 3rd and 4th Respondents Ms. Soita instructed by Kitiwa & Co. Advocates

For Proposed Interested Parties Mr. Bigambo instructed by Amasakha & Co. Advocates

Court Assistant Judy Maina