



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

PETITION 14 OF 2019

PROF. CHERUIYOT THOMAS KIMELI.....1ST PETITIONER

PROF. JOSHUA KWONYIKE.....2ND PETITIONER

AND

THE CABINET SECRETARY MINISTRY OF EDUCATION1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

THE PUBLIC SERVICE COMMISSION3RD RESPONDENT

BOMET UNIVERSITY COLLEGE COUNCIL.....4TH RESPONDENT

AND

MOI UNIVERSITY COUNCIL.....1ST INTERESTED PARTY

PROF. ANNE KISAKA NANGULU.....2ND INTERESTED PARTY

PROF. GEORGE OTIENO.....3RD INTERESTED PARTY

RULING

1. On 5th December, 2019, this court delivered a judgment in Petition Number 11 of 2019. In that petition the petitioner one Julius Singoei sought orders among others, the interdiction of appointments to the position of Principal and Deputy Principal of Bomet University. The petitioner faulted the appointment claiming several articles of the constitution as well as provisions of the Fair Administrative Actions Act were violated.
2. The petitioner projected himself as a public-spirited person committed to the observance of national values and tenets of governance.
3. The court considered that petition and the issues raised and became of the view that there was no evidence to support the alleged violations of the constitution and Fair Administrative Actions Act. The court was further of the view that the appointments were in conformity with the relevant statutes and human resource policy and manual governing the University.
4. The present petition has been brought by the two petitioners who were the persons holding the positions of Principal and Deputy Principal of the University in acting capacity. Their appointment was pending the recruitment through a competitive selection process of the substantive office holders. They both applied to be recruited to these positions when they were advertised. Unfortunately, they were not successful in the interviews.
5. The current petition while introducing new issues such as unlawful termination, non payment of leave and terminal dues, essentially concerns the process of recruitment of the Principal and Deputy Principal of Bomet University which was entertained and decided by the court in its judgment delivered on 5th ? December, 2019.

6. The court therefore cannot entertain the same as that would be tantamount to sitting on appeal over the court's own judgement. Save for claim for unpaid leave and terminal benefits the issues raised in the petition are res judicata and further the claim for unpaid leave and terminal dues ought to have been pursued as ordinary claims and not by way of a constitutional petition.

7. In conclusion the petition is found lacking in merit and hereby dismissed with costs.

8. It is so ordered

Dated at Nairobi this 23rd day of October, 2020

Abuodha Jorum Nelson

Judge

Delivered this 23rd day of October, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge