



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION NO. 58 OF 2017**

**IN THE MATTER OF: ARTICLES 22(1), 23(3) (a), (e), (f), 159(1), 162(2) (a), 165(3) (b) & (d) (ii) & (6) & 258(1) OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: RULE 4, 8, 10, 11, 13 AND 14 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF: THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015**

**AND**

**IN THE MATTER OF: THE UNIVERSITIES ACT, 2012**

**AND**

**IN THE MATTER OF: THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER  
ARTICLE 21(3), 27(1), 29(d), 33(3), 35, 41, 47(1) & 57 AND THE ALLEGED VIOLATION OF ARTICLES 3(1), 10, 73(1) & (2)(d)  
& (e) AND 232(1) AND 236(b) OF THE CONSTITUTION OF KENYA, 2010**

**PROF. GODFREY MBITI NGURU**

**PETITIONER**

**v**

**CABINET SECRETARY,**

**MINISTRY OF EDUCATION**

**1<sup>ST</sup> RESPONDENT**

**TECHNICAL UNIVERSITY OF KENYA**

**2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Prof. Godfrey Mbiti Nguru (Petitioner) was appointed as Chairman of the Council, Technical University of Kenya (2<sup>nd</sup> Respondent) through a letter dated 18 November 2015 by the Cabinet Secretary, Ministry of Education, Science and Technology (1<sup>st</sup> Respondent) after a competitive recruitment process.

2. The appointment was to run for 4 years and was also gazetted on 11 November 2015.

3. On 24 November 2015 the 2<sup>nd</sup> Respondent issued to the Petitioner the *Terms and Conditions of Service* as Chairman of Council.
4. The Petitioner served as Chair of Council until the 1<sup>st</sup> Respondent revoked the appointment through Gazette Notice No. 2351 of 14 March 2017.
5. The Petitioner was aggrieved and he launched the instant Petition on 29 June 2017 contending that the revocation of his appointment violated the national values and principles, rights to equality and freedom from discrimination, reputation, access to information, fair labour practices, fair administrative action, due process and principles of the public service and responsibilities of leadership.
6. The Petitioner sought a whopping 23 orders and/or declarations.
7. Upon service, the 1<sup>st</sup> Respondent caused to be filed a replying affidavit sworn by one James M. Kiburi in opposition to the Petition.
8. The firm of Tongoi & Co. Advocates filed a *Notice of Appointment* on behalf of the 2<sup>nd</sup> Respondent.
9. None of the Respondents filed any responses to the Petition.
10. When the Petition came up for directions on 18 December 2018, the Court directed the Petitioner to file/serve a further affidavit and submissions on or before 25 January 2019 and the Respondents to file/serve submissions before 15 February 2019 (the Petitioner filed the further affidavit on the same day).
11. The Court has considered the pleadings and submissions and come to the conclusion that the Petition has no merit and stands to be dismissed (in the course of preparing the judgment, the Court came across and has considered the decisions in ***Joseph Mutuura Mbeeria & another v Cabinet Secretary for Education Science and Technology and another (2014) eKLR*** and *Okiya Omtatah Okiiti & another v Cabinet Secretary Ministry of Education & 5 others (2017) eKLR*).
12. The Court has come to the conclusion that the Petition has no merit because the revocation of the appointment of the Petitioner, as indeed was the revocation of appointment of other Council members of several other public universities was pursuant to a Court order in the aforesaid decisions.
13. The decision set out the law in *rem*, and the fact that the Petitioner was not a party does not assist his case.
14. Considering that the revocation of the appointment(s) was founded upon a Court order which has not been overturned, there was no basis upon which the Respondents could go through the process of due process or natural justice.
15. The Court wishes to register its regret that this is yet another case where the Office of the Attorney General has failed to file an answer to Petition and/or file submissions despite directions being given in the presence of his representative.
16. The Petition is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 22<sup>nd</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner Onyoni Opini & Gachuba Advocates

For 1<sup>st</sup> Respondent Ms. Odhiambo. State Counsel, Office of the Attorney General

For 2<sup>nd</sup> Respondent Tongoi & Co. Advocates

Court Assistant Lindsey