



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 179 OF 2019**

**IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF ARTICLES 1(3),  
2(1) & (4), 3(1), 10, 41, 47(1) & (2), 50, 73(1) & (2), 232 & 236 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE CODE OF REGULATIONS FOR TEACHERS**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT NO. 20 OF 2011**

**AND**

**IN THE MATTER OF THE BASIC EDUCATION ACT, NO. 14 OF 2013**

**BETWEEN**

**AGGREY MURUMBA NAMISI**

**MAURICE MMBWANGA CHALLENGA**

**JAMES KIZITO**

**TOM BEN INGOLO**

**JOSPHAT LIDWANGA LUBANGA**

**TUNGANI ALBERT SHIKHULE**

**ELIUD OMBORI**

**ELLY KORINKO**

**PATRICK CHUNGANI**

**ROBERT FUKWO MANDILA**

**BASHIR M. KILALO**

**GABRIEL KISILU**

**ARCHEDIOUS LIYAYI**

MARTIN TONGOLO.....PETITIONERS

VERSUS

TEACHERS SERVICE COMMISSION.....1<sup>st</sup> RESPONDENT

CABINET SECRETARY, MINISTRY OF EDUCATION.....2<sup>nd</sup> RESPONDENT

AND

KENYA NATIONAL UNION OF TEACHERS.....1<sup>st</sup> INTERESTED PARTY

WILSON SOSSION,

KNUT EXECUTIVE SECRETARY GENERAL.....2<sup>nd</sup> INTERESTED PARTY

**RULING/DIRECTIONS**

1. The Petitioners moved the Court under certificate of urgency on 1 October 2019 seeking an array of orders.
2. The reasons advanced by the Petitioners for the urgency were that the Teachers Service Commission had unfairly dismissed 3 of the Petitioners, and was in the process of deregistering the other Petitioners who are serving as KNUT Executive Secretaries (and are registered teachers).
3. The Court declined to grant any *ex-parte* orders, and directed that the Respondents and Interested Parties be served.
4. When the application came up this morning, the 2<sup>nd</sup> Respondent sought for more time to respond to the application, while the 1<sup>st</sup> Respondent raised what it stated were preliminary issues, including jurisdictional concerns.
5. It is not in dispute that the some of the Petitioners were issued with show cause letters and have been invited to appear before the 1<sup>st</sup> Respondent for disciplinary hearing on 7 October 2019 and/or October 2019.
6. The Petitioners now seek to stop the disciplinary process(ess) on the grounds that their rights and freedoms will be gravely violated. It is asserted for the Petitioners that the Respondents do not have the powers to remove any teacher from the register for challenging a policy decision (Competency Based Curriculum) which they say is illegitimate and invalid, and which is currently under implementation.
7. According to the letters inviting the Petitioners to the disciplinary hearings, the Petitioners are accused of *misconduct* (disrupting CBC training sessions).
8. The role of the Court in an ongoing disciplinary process, it has now been accepted in numerous decisions of this Court has been circumscribed. Intervention should be in very exceptional circumstances.
9. The Petitioners contend that there are exceptional circumstances in the present case warranting the grant of interim relief (illegitimacy of CBC). The Petitioners further assert that any action on their part did not fall within *professional misconduct* as understood in the context of the Code of Regulations for Teachers
10. The 1<sup>st</sup> Respondent is of the contrary view, and sought the Court's directions, citing mixed unrelated causes of action among other issues.
11. In the view of this Court, it is not open to it to examine at an interlocutory stage any defences an employee may have to allegations made by an employer. The role of the Court is to ensure, in exceptional cases, that an employer scrupulously complies with the principles and/or rules of procedural fairness.
12. The Petitioners have not impeached in any meaningful way, if all, the process leading to their invitation to appear before the 1<sup>st</sup> Respondent for disciplinary hearing.
13. In the view of the Court, any and all defences the Petitioners have should in the first instance be placed before the employer.
14. In the circumstances the Court directs as follows
  - (a) Respondents and Interested Parties to file and serve their responses and answers to both the application and Petition on or before 9 October 2019 (including any preliminary legal questions).
  - (b) Petitioners to file any further/supplementary affidavits and submissions on both the application and Petition before 16 October 2019.

(c) The Respondents and Interested Parties to file and serve their submissions before 23 October 2019.

(d) Both application and Petition to be urged together on date to be agreed hereinafter.

15. The Court, after further brief oral submissions orders

(e) The disciplinary process(ess) to proceed but the 1<sup>st</sup> Respondent is stopped from issuing any verdict(s) pending the hearing and determination of the Petition

(f) Submissions to be highlighted on 31 October 2019.

**Delivered, dated and signed in Nairobi on this 2<sup>nd</sup> day of October 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioners	Mr. Makhakara instructed by H.M. Wasilwa Advocates
For 1 <sup>st</sup> Respondent	Mr. Anyuor, Advocate, Teachers Service Commission
For 2 <sup>nd</sup> Respondent	Mr. Kioko, Litigation Counsel, Office of the Attorney General
For Interested Parties	Mr. Rono instructed by SMS Advocates, LLP
Court Assistant	Lindsey