



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 64 OF 2015

Before Hon. Lady Justice Hellen S. Wasilwa on 23rd February 2018

REPUBLIC.....APPLICANT

VERSUS

CHIEF OF STAFF &

HEAD OF THE PUBLIC SERVICE.....1ST RESPONDENT

THE SECRETARY OF STATE CORPORATIONS

ADVISORY COMMITTEE.....2ND RESPONDENT

THE UNIVERSITY.....3RD RESPONDENT

EX-PARTE

PROFESSOR GEORGE A. O. MAGOHA.....EX-PARTE APPLICANT

JUDGMENT

1. The Application before the Court is dated 3/8/2015 which was filed pursuant to leave of the Court granted on 23/7/2015 where the Applicant seeks for prayers that:

1. **THAT** an order of Certiorari do issue to remove to the Employment and Labour Relations Court and quash the Circular letter by the 1st Respondent Reference No. OP/SCAC. 1/12(11) dated 14th May 2015.

2. **THAT** an order of Prohibition do issue prohibiting the 1st, 2nd and 3rd Respondents from amending, varying, vacating or in any manner interfering with the Applicant's terms of Exit Package set out at paragraph 13 of the Terms and Conditions of Appointment of the Vice Chancellor of University of Nairobi as agreed between the Applicant and the 3rd Respondent and dated 29th October 2014.

3. **THAT** the costs incidental to these entire proceedings be awarded to the Ex-Parte Applicant.

2. The Application is based on the grounds:

1. **THAT** the Applicant was the Vice-Chancellor of the 3rd Respondent for the period January 2005 to January 2015 which appointment was subject to specific terms and conditions of employment one such term being the Exit Package contained in the document specifying conditions of Appointment of the Vice Chancellor of the University of Nairobi dated 29th October 2014.

2. **THAT** by a circular letter Ref: No. OP/SCAC.1/12(II) dated 14th May 2015 the 1st and 2nd Respondent purported to withdraw the Exit Package the Applicant is enjoying and to drastically reduce his gross remuneration and benefits.

3. **THAT** the circular letter and its effect is in violation of the Applicant's terms and conditions of service.

4. **THAT** the circular letter purports to amend the Applicant's terms and conditions of service to his detriment.

5. **THAT** the circular letter is issued by the 1st and 2nd Respondent in their administrative capacity in violation of the Applicant's right under Article 47 of the Constitution.

6. **THAT** the circular letter is issued by the 1st and 2nd Respondent without affording the Applicant an opportunity to be heard contrary to Article 50 of the Constitution.

7. **THAT** the withdrawal of the Applicants favourable terms and conditions of service as set out in the Revised Conditions of Appointment letter dated 29th October 2014 is a violation of the Applicant's right to fair labour practice as guaranteed by Article 41 of the Constitution.

8. **THAT** the Circular Reference No. OP/SCAC.1/12(II) violates the Applicant's rights under Sections 5 (3) (b) and 26 (2) of the Employment Act No. 11 of 2007.

9. **THAT** the 1st and the 2nd Respondent are guilty of arbitrary and malafide use for power which in the first place they do not have.

10. **THAT** there is every likelihood that the 1st and the 2nd Respondent would coerce and intimidate the 3rd Respondent to vary the Applicant's contract to the Applicant's detriment.

3. The Application is supported by the Applicant's verifying Affidavit wherein he states:

1. **THAT** he was first employed by the 3rd Respondent as a Lecturer in the Department of Surgery by a letter dated 8th July 1987 a copy of which is annexed hereto as Exhibit "GM 1". He avers that he rose through the ranks and is presently a full Professor of Surgery and Consultant Urologist at the Academic Department of Surgery College of Health Sciences of the University.

2. **THAT** by a letter dated 5th January 2005 annexed as "Exhibit "GM 2"" he was appointed the Vice-Chancellor of the 3rd Respondent which appointment was further renewed as per Exhibit "GM 3".

3. **THAT** by a letter dated October 29th, 2014 the 3rd Respondent revised his terms and conditions of service and specified his Exit Package under Clause 13 of the conditions attached to that letter and he accepted the revised terms.

4. **THAT** the 3rd Respondent paid him his remuneration and awarded him benefits and continues to do so as per the revised terms contained in Exhibit "GM 4" as demonstrated inter alia by his payslips for December 2014 and June 2015.

5. **THAT** his appointment as a Vice Chancellor of the 3rd Respondent terminated in January 2015 having served the required two terms but he continues to be employed by the 3rd Respondent conducting professional duties and other academic responsibilities.

4. He further avers that as per his contract with the University he should continue to enjoy the terms and conditions of service as more particularly contained in the Clause 13 – Exit Package herein referred.

5. It is also the Applicant's contention that he has come to learn from various officers of the 3rd Respondent that by a Circular letter dated 14th May 2015, the 1st Respondent directed State Corporations to ensure that staff in their employment only enjoy remuneration and privileges that fall within the regular terms and conditions of service commensurate to their substantive appointment and grade. As per the said circular staff in Research and Public Universities who retire as Chief Executive Officers but opt to revert to research/teaching roles when their tour of duty as Chief Executive Officer lapses should be required to adopt the perks attached to the newly assigned lower grade.

6. He states that he is now required as per the Circular to draw a salary and benefits of an ordinary professor that is Kshs.211,753/= as opposed to a basic salary of Kshs.744,078/= amongst other benefits unless prohibited by the Court.

7. That unless the orders sought are granted, he will be highly prejudiced as he will be denied remuneration and benefits which the 3rd Respondent has all along committed itself to pay and avail to him and which remain his legitimate expectation as long as he remains employed by the 3rd Respondent.

8. The 1st and 2nd Respondent filed Grounds of Opposition on 18/3/2016 wherein they raise the grounds that:

1. *The proceedings are an abuse of the Court process and lack merits.*

2. *That the engagement of the Applicant as Vice Chancellor was an independent contract and when the same came to an end he ceased to be a Vice Chancellor and cannot continue to reap the benefits of a Vice Chancellor when he is not one.*

3. *That Section 15(5) of the Employment Act has placed an obligation to pay all employees equal remuneration for work of equal value done.*

4. *That Section 5(4) of the Employment Act provides that it is not discrimination to distinguish, exclude or prefer any person on the basis of inherent requirements of the job.*
5. *That salaries and allowances for State Corporations officers is determined by the respective State Corporations with the guidance of the State Corporations Advisory Committee with the advice of the Salaries and Remuneration Commission.*
6. *That the Circular of 14th May, 2015, was issued in good faith, in compliance with the law and was meant to ensure probity in management of public resources.*
7. *That the Orders for judicial review in the circumstances cannot be issued by the Honorable Court as prayed as the Applicant has not demonstrated any breach by the Respondents to warrant issuance of judicial review orders.*
8. *That the Applicant has not established that there was an express provision in the agreement and the alleged exit package does not exist.*
9. *That the public interest in the instant matter outweighs the personal interest of the Applicant.*
10. *That the applicant has not demonstrated any rights and/or legitimate expectation and/or any breach of the rules of natural justice to avail him to the order sought in the application and/or to warrant issuance of Orders sought hence the Respondents' prayer for dismissal with costs.*
11. *That this Court will usurp the discretion of the State Corporations Advisory Committee, which Parliament appointed to make such decisions.*
12. *That the orders sought ought not to issue as the suit is incompetent and ought to be struck out with costs.*
13. *The Applicant has no cause of action left.*

9. The 3rd Respondent filed grounds of opposition wherein he raises the grounds that:

1. **THAT**, *the proceedings are an abuse of the Court process and lacks merit.*
2. **THAT**, *the engagement of the Applicant as a Vice Chancellor was an independent contract and when the same came to an end, then he ceased to be a Vice Chancellor and cannot continue to reap the benefits of a Vice Chancellor when he is not one.*
3. **THAT**, *Section 5 (5) of The Employment Act has placed an obligation to pay all employees equal remuneration for work of equal value.*
4. **THAT**, *Section 5 (4) of The Employment Act provides that it is not discrimination to distinguish, exclude or prefer any person on the basis of inherent requirements of the job.*
5. **THAT**, *salaries and allowances for State Corporation officers is determined by the respective State Corporations with the guidance of the State Corporations Advisory Committee with the advice of the Salaries and Remuneration Commission.*
6. **THAT**, *the circular on 14th May, 2015 was issued in good faith, in compliance with the law was meant to ensure probity in management of Public resources.*
7. **THAT**, *the Orders for Judicial Review in the circumstances cannot be issued by the Honourable Court as prayed since the Applicant has not demonstrated any breach by the Respondents to warrant issuance of Judicial Review remedies.*
8. **THAT**, *the Applicant has not established that there was an express provision in the agreement and the alleged exit package does not exist.*
9. **THAT**, *there is no statutory provision for the payment of the salary and allowances.*
10. **THAT**, *the Applicant has since March 2016, been the Chairperson of the Kenya National Examination Council (KNEC) and is seeking to earn a salary and allowance from 2 State Corporations.*
11. **THAT**, *the Public interest in the instant matter outweighs the personal interest of the Applicants.*
12. **THAT**, *The Applicant has not demonstrated any rights and/or legitimate expectation and/or breach of the rules of natural Justice to avail him to the Orders sought in the application and/or to warrant issuance of Orders sought hence the Respondent 's prayer for dismissal of the proceedings with costs.*
13. **THAT**, *this court will usurp the discretion of the State Corporations Advisory Committee, which Parliament appointed to make such decisions.*

14. ***THAT***, the Orders sought ought not to issue as the suit is incompetent and ought to be struck out with costs.

15. ***THAT***, the Applicant has no cause of action left.

Submissions

Applicants Submissions

10. The Applicant submits that his exit package clause according to his engagement letter was to the effect that:-

That on exit from tour of office, the Vice Chancellor shall be entitled to the following:

- i) Current Basic Salary (Frozen to self).***
- ii) House Allowance (Frozen to self).***
- iii) One House Keeper and One Gardener.***
- iv) Two Security Guards.***
- v) An office with a Secretary and an Office Assistant.***
- vi) An Official car fueled and serviced by the University and a Driver.***
- vii) One Research Assistant.***
- viii) Membership to a club of choice.***
- ix) Sabbatical Leave for 18th months (in case of two terms of service) and 9 months in case of one term of service.***
- x) One local and one international conference fully paid by the University per year.***
- xi) All other allowances payable on monthly basis at the time of exit.***
- xii) Any other benefit as may be approved by the University of Nairobi Council.***

(Signed)

(Signed)

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Signature of Appointee

Dr. Idle Omar Farah

Chairman, University of

Nairobi Council

29th/10/2014

29th/10/2014

.....

.....

Date

Date”

11. The aforesaid clause is the basis of the instant application.

12. That by the time the application for consolidation came up for hearing before the Courts, the proceedings in HCJR No. 1 of 2016 were nearing conclusion and the 1st Respondent was compelled to abandon pursuit of consolidation of the two cases. The fact however remains that the 1st Respondent had, by filing the application for consolidation conceded it was willing to be bound by the decision in either of the cases.

13. The Applicants have referred to the Court’s judgement where the judgment dated 11th November 2016 delivered by Justice Radido in HCJR No.1 the Learned Judge held that:

(a) *The circular Ref No. OP/SCAC.1/12(11) of 14th May 2015 from the 1st Respondent was taking away an employment entitlement which had accrued to the applicant.*

(b) *The Respondents were unilaterally varying a contractual provision without consulting the applicant. The variation was to the disadvantage of the applicant.*

(c) *The variation was inconsistent with a subsequent interpretation issued by the 1st Respondent to the Cabinet Secretary Ministry of Education dated 19th August 2015 (which was produced in those proceedings) to the effect that the circular of 14th May 2015 was one of general application and that it was not meant to apply retrospectively or put another way, meant to disturb accrued or contingent rights.*

(d) *The exit package accrued to the Applicant when he signed for them prior to the impugned circular.*

(e) *The impugned circular was tainted with procedural impropriety because the applicant was not granted an opportunity to make representations or argue his case, in a case where an accrued entitlement was being removed through a variation of the terms of engagement.*

(f) *Not only that, the unilateral variation would also have been unlawful under the common law where a long chain of authorities have held that for a variation to an employment contractual provision to pass legal muster, it must have the consent of both parties.*

(g) *The general rule regarding variation of a term of a contract is clear. For any variation to be lawful, it must be mutually agreed between the employer and the employee. The Employment Court cited several authorities in support of such holding (see Jackson Berege v. Maasai Mara University [2015] eKLR, Samuel Muchiri Gikonyo v. Henkels Chemicals (EA) Ltd [2014] eKLR, Industrial Rubber Products v. Gillon [1977] IRLR 389 EAT, Harlow v. Artemis Ltd [2008] IRLR 629, Rigby v. Ferodo Ltd [1987] IRLR 516).*

(h) *To issue an order of certiorari would be overboard as the circular in question was a general circular. However in the court's view orders of prohibition and mandamus would vindicate the applicant's right and restore whatever entitlements were taken away by the decision of the Respondents. The court therefore proceeded to accordingly issue orders of prohibition and mandamus as prayed.*

14. That the Applicant agreed with most of the judgment save for the refusal to grant the Orders of Certiorari.

15. It is the Applicant's submission that the impugned circular is not lawful as it would violate Fair Administrative Actions Act No.4 of 2015 enacted pursuant to Article 47(3) of the Constitution and which under Section 4 thereof requires *inter alia* that:

“Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:-

a) “An opportunity to be heard and to make representations in that regard;

b) Notice of a right to a review or internal appeal against an administrative decision, where applicable.”

16. That no notice was given by either the 1st or the 2nd Respondent to the Applicant to be heard prior the issuance of the impugned circular, notwithstanding the fact that it was intended to adversely affect his right under his contract of employment with the 3rd Respondent. Furthermore the circular letter was issued in the form of a directive and left no room for negotiations. It amounted to a unilateral amendment of conditions of employment without recourse to negotiations or appeal.

17. The Applicant further submits that the impugned circular letter violated Section 26(2) of the Employment Act No.11 of 2007 which provides as follows:

“(2) Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part VI, then such favourable terms and conditions of service shall apply.”

18. That the terms and conditions of employment of the Applicant having been agreed upon as per **Exhibit “GM4”** of the Replying Affidavit, such favourable terms acquired are statutorily underpinned and the Respondents could not unilaterally amend them.

19. That the remedies sought are warranted as the impugned decision was illegal, irrational and marred by procedural impropriety.

20. The Applicant reiterates the grounds in his statement and submits that he has established a prima facie case and the same ought to be allowed.

3rd Respondent's submissions

21. The Respondent submits that the Applicant in this instance is seeking the combined orders of certiorari and prohibition which is not appropriate in the instant case as only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.

22. That under Article 23 (3) of the Constitution, the remedy of prohibition is not explicitly recognized as a self-standing right but rather one under the general remedy of Judicial Review.

23. Further that the scope of a writ of prohibition is fairly clear. A writ of prohibition is an instrument of judicial control to prevent an excess or abuse of jurisdiction by inferior tribunals. Where a tribunal assumes or threatens to assume a jurisdiction which it does not possess prohibition may issue so long as the proceedings are not complete. Prohibition also lies for a departure from rules of natural justice. If the presiding officer of the inferior tribunal is interested in the *lis*, or is otherwise biased, he can be restrained by prohibition from acting further in the matter.

24. It is also the Respondent's submission that it is well settled that prohibition will not lie to correct an error of law, or a mere irregularity of procedure, or a wrong decision on the merits of proceedings unless there is an excess of jurisdiction.

25. Furthermore that the remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself. That in this instance, the State Corporations Advisory Committee (SCAC) is well within the limits of its powers to issue the said circular OP/SCAC.1/1/12 (11) and in that context, it should be clear to the Applicant that an order of prohibition as a judicial review remedy cannot be granted in an application such as the present case.

26. The Respondent prays for the application to be dismissed with costs.

27. The Attorney General on behalf of the 1st and 2nd Respondents submitted that the State Corporations Advisory Committee acted well with their jurisdiction when they issued a directive in compliance with the circular issued by the Chief of Staff and Head of Public Service under Ref. No. OP/SCAC.1/12(11) on 14th May 2015.

28. That they followed the correct decision making process as per the rules of the State Corporation Act and rules of natural justice. They aver that Article 47 of the Constitution on Fair Administrative Action was followed as the Applicant was given reasons for reviewing his remuneration vide the above circular.

29. The 1st and 2nd Respondent submit that the decision communicated by the State Corporations Advisory Committee was made without excess of jurisdiction and in compliance with the rules of natural justice. Therefore they submit that an order of certiorari will not lie.

30. In respect of the order of Prohibition sought, the 1st and 2nd Respondents have submitted that the same cannot lie because such looks at the future and not the past. They aver that since the Applicants' exit package has already been varied and amended by the circular of 14th May 2015, an order of prohibition cannot lie. They cited **Kenya national Examination Council vs Republic Exparte Geoffrey Gathanji Njoroge and 9 Others** where the Learned Judge described when orders of certiorari and/or prohibition can lie.

31. I have examined the averments of all the Parties herein plus submissions made. The issues for determination are as follows:–

1. Whether the Respondents acted ultra vires in revising the terms of service of the Applicant.

2. Whether the decision of the State Corporations Advisory Committee was procedurally fair.

3. Whether the Applicant is entitled to orders sought.

32. On the 1st issue, I note that the Applicants' exit package was determined vide his letter of Appointment Appendix GM2 dated 5th January 2005 and the renewal of this contract agreement dated 2nd September 2009 and thereafter the revised condition of Appointment letter dated 29th October 2014 Appendix GM 4).

33. The Applicant exited service on 4th January 2015 and reverted to his teaching position. He continued enjoying the exit package as per his appointment letter.

34. The Respondents proceeded to issue a circular Ref. No. OP/SCAC.1/12(11) on 14th May 2015 whose effect was to reverse the gains the Applicant was enjoying in the exit package. The Applicant avers that the 1st and 2nd Respondents acted ultra vires their powers because they acted unilaterally without consulting the Applicant and varying the Applicant's exit package to his disadvantage.

35. The Applicant also submitted that the variation was inconsistent with a subsequent interpretation issued by the 1st Respondent to the Cabinet Secretary Ministry of Education dated 18th August 2015 to the effect that the circular of 14th May 2015 was one of general application and that it was not meant to apply retrospectively.

36. The 2nd Respondent is the Secretary to the State Corporation Advisory Committee whose function is to "Advice on the appointment and removal or transfer of officers and staff of the State Corporations, the secondment of Public Officer to the State Corporations and the terms and conditions of any appointment, removal, transfer or secondment".

37. The Applicant submitted that with the passing of the constitution of Kenya 2010, the Salaries and Remuneration Commission (SRC) was established. The functions of SCAC became obsolete.

38. I do not agree with this condition because Salaries and Remuneration Commission (SRC) deals with State officers who are defined under Article 260 of the Constitution as persons holding State office. A State organ on the other hand is defined to mean ...”Commission, office, agency or other body established under this Constitution”.

39. The SCAC on the other hand is a body established under Section 26 of the State Corporation Act (Cap 446 Laws of Kenya). The Committee’s duties and functions are provided under Section 27 of Cap 446 and these include revising and investigating the affairs of State Corporations advising the President on the establishment and reorganization or dissolution of State Corporations and where necessary advise on the appointment, removal or transfer of officers and staff on State Corporations, the secondment of public officers to State Corporations and the terms and conditions of any appointment, removal, transfer or secondment.... (Emphasis is mine).

40. That being the position, the action of SCAC was advisory. It is in this capacity as advisor that the SCAC advised the Office of the President and the advise result in the impugned circular No. OP/SCAC.1/12(11) of 14th May 2015. I would therefore disagree with the Applicant’s position that the advice of the SCAC was obsolete with the coming in of Salaries and Remuneration Commission (SRC).

41. On the issue of the 1st and 2nd Respondent’s acting outside their powers without consulting the Applicant, I refer to Article 47(1) (2) of the Constitution of Kenya 2010 which provides as follows:-

1. ***“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***
2. ***If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.***

42. Pursuant to Article 47(3) of the Constitution, Parliament enacted the Fair Administration Action Act No. 4 of 2015 which provides at Section 4 as follows:-

- 1) ***.”Every persons has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.***
- 2) ***Every person has the right to be given written reasons for any administrative action that is taken against him.***
- 3) ***Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:-***
 - a) ***Prior and adequate notice of the nature and reasons for the proposed administrative action;***
 - b) ***An opportunity to be heard and to make representations in that regard;***
 - c) ***Notice of a right to a review or internal appeal against an administrative decision, where applicable;***
 - d) ***A statement of reasons pursuant to Section 6;***
 - e) ***Notice of the right to legal representation, where applicable;***
 - f) ***Notice of the right to cross-examine or where applicable; or***
 - g) ***Information, materials and evidence to be relied upon in making the decision or taking the administrative action.***
- 4) ***The administrator shall accord the person against whom administrative action is taken an opportunity to:-***
 - a) ***attend proceedings, in person or in the company of an expert of his choice;***
 - b) ***be heard;***
 - c) ***cross-examine persons who give adverse evidence against him; and***
 - d) ***request for an adjournment of the proceedings, where necessary to ensure a fair hearing.***
- 5) ***Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.***
- 6) ***Where the administrator is empowered by any written law to follow a procedure which confirms to the principles set out in Article 47 of the constitution, the administrator may act in accordance with that different procedure”.***

43. My understanding of the above provisions is that where an administrative action would affect an individual, that individual should be

given an opportunity to be heard. The Applicant was however never heard of an administrative action that adversely affected him.

44. The circular letter was given in form of a directive and no room for negotiation was left. This amounted to a unilateral amendment to a condition of employment without recourse to negotiation or appeal.

45. Section 26(2) of the Employment Act No. 11 of 2007 provides as follows:-

“(2) Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply”.

46. In the Applicant’s case, it is clear that the terms of his exit package were underpinned in his employment contract and in that case, such favorable terms and conditions of service shall apply.

47. That notwithstanding, the benefit of the supervisor exit package had already accrued to the Applicant. The Respondent could not unilaterally take away this benefit from the Applicant.

48. Section 10(5) of Employment Act 2007 provides as follows:-

“(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.”

49. Under Section 10(5) of Employment Act, terms of an employment contract can only change after consultation with the employee and the same notified to the employee in writing.

50. In the case of the Applicant, there were no consultations and as such, the action of the Respondent was in bad faith. The effect of the action of the Respondent as to apply the circular retrospectively taking away accrued rights and without consultation with the Applicant. This was an impropriety and unlawful.

51. In **Nakuru ELRC JR No. 1/2016 Professor James Tuitoek vs Chief of Staff and Head of Public Service and Egerton University**, the issues were similar to those in the current case. The Learned Judge J. Radido found the circular OP/SCAC.1/12(11) as taking away entitlements accruing under an employment contract and was to the advantage of the Applicant. The Learned Judge found the circular a general circular and issued orders of prohibition and mandamus vindicating the Applicant’s rights.

52. I agree with the Learned Judge’s finding that indeed the circular herein took away rights which had accrued to the Applicant and without consultation and without giving him an opportunity to be heard. I therefore find the action by the 1st and 2nd Respondent procedurally unfair.

53. The circular has been couched in general terms and therefore it should operate futuristically without taking away rights, which have accrued. In the circumstances, I find that to the extent that the circular took away what had properly accrued to the Applicant, it is unfair and unjustified to that extent and in order to vindicate the Applicant and safe guards rights which have already catalyzed, I issued orders of prohibition against the Respondents from enforcing the circular against the Applicant.

54. I also issue orders of mandamus compelling the Respondents to enforce the rights and benefits of the Applicant as spelt out as his exit package under his employment contract.

55. The Respondents will pay costs of this Application.

Read in open Court this 23rd day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties