



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

PETITION NO. 7 OF 2017

(Before D. K. N. Marete)

PROF. MISIA MANUGUTI KADENYI.....PETITIONER

VERSUS

MAASAI MARA UNIVERSITY.....1ST RESPONDENT

THE VICE CHANCELLOR, MAASAI MARA UNIVERSITY.2ND RESPONDENT

THE CHAIRMAN OF COUNCIL,

MAASAI MARA UNIVERSITY.....3RD RESPONDENT

THE COUNCIL, MAASAI MARA UNIVERSITY.....4TH RESPONDENT

RULING

This is an application by way of Notice of Motion dated 5th November, in 2017 in which the petitioner seeks the following orders of court;

- 1. The matter be certified and urgent and the orders sought herein be granted ex parte at the first instance.*
- 2. That an ex parte order staying the proceedings pending the hearing and determination of this Application.*
- 3. That the court proceedings, orders and directions of 18th of October, 2018, 1st November, 2017 and 29th November, 2017 be and is hereby set aside.*
- 4. The Respondent's Application dated the 30th of May, 2017 and filed in court on the 31st of May, 2017 be reinstated and the same be heard on merit.*
- 5. Costs be provided.*

It is grounded as follows;

- a. That this came up on the 18th of October, 2017 for a mention to confirm whether the 1st and 2nd*

Respondent would withdraw the Application dated the 30th of May, 2017 seeking the transfer of the matter to Nakuru.

b. That on the 18th of November, 2017, the advocates on record for the 1st and 2nd Respondent requested a colleague in Kericho to hold brief in the matter and confirm that no instructions to withdraw had been given and to take a date for hearing of the Application and the Petitioner's Application.

c. That on the day the Advocates for the Respondent were briefed that the Application was dismissed by the court with costs on a mention date.

d. That later the Respondent's advocate were served with submissions on the main petition indicating that this matter was to come for mention before court on the 23rd of November, 2017.

e. No directions had ever been taken on the hearing of the petition. Directions had always been given in respect of the Application on record which has not yet been disposed. Equally, the parties had never agreed on how to proceed with the main petition.

f. It is only fair that the pending Application by the Petitioner be heard and disposed of first before the petition is heard and finally determined.

g. If the court proceeds based on the proceedings and directions of 1st November, 2017 then the rights of the Respondents to a fair hearing as enshrined under Article 50 of the Constitution of Kenya will be severely infringed and the Respondents condemned unheard.

h. It is just and fair that the orders sought be granted.

The petitioner/respondent in a Replying Affidavit sworn on 13th December, 2017 opposes the application for being an afterthought and intended to delay a determination of this petition and prevent the petitioner/respondent from an expeditious course of justice.

When the matter came for hearing on 15th December, 2017 Mr. Wabuge for the respondents/applicants opened by submitting a reliance on the grounds on the face of Supporting Affidavit and Further Affidavit of Mercyline Njoroge on record.

It was his further submission that the orders and directions sought to be stayed were made in the absence of the respondents and their counsel on the date their application dated 30th May, 2017 was for hearing. It was his case that he had instructed counsel to hold his brief but was not informed of the results.

The proper way of dealing with the matter, he further submitted, was for the petitioner to invite them to court to thrash out the issues at hand. Mistakes of counsel should not be visited on a litigating client.

The applicant cited Article 159 of the Constitution of Kenya, 2010 and submitted that procedural justice is an enabler to substantive justice. This should be emphasized by courts.

Miss Odwa for the petitioner/respondent in her oral submissions sought to rely on the Replying Affidavit sworn on 13th December, 2017 and filed on the following day. She also submitted that the orders sought are discretionary in nature and therefore the need for the applicant to demonstrate that they are deserved.

Her further submission is that the applicants were represented by counsel on 18th October, 2017 when the application was fixed for hearing. They did not attend the hearing on 23rd October, instant despite the date having been taken *inter partes*. At this hearing, directions were taken and the respondents notified. They have not proffered an explanation for their absence on this date. The dismissal of the application is lawful, final and there is no room for complaint. They were always aware of the proceedings of 23rd October, 2017.

The petitioner/respondent further submits that on 29th November, 2017, counsel for the respondents, Mr. Wabuge was in court and sought seven days leave to file their written submissions. They cannot now be heard to complain.

In the penultimate, the petitioner/respondent submits that this is a delay tactic on the part of the applicant. This matter was slated for judgement before this application. She therefore prayed that the application be dismissed with costs.

The applicant in rebuttal prayed that the discretion of the court be exercised in their favour. She also submitted that their absence on 23rd October, 2017 is explained at paragraph 3 of their Further Affidavit.

The applicant herein seems to want to take all of us, this court included, for a ride. This application and the submissions thereof does not display any seriousness.

I agree with the case and submissions of the petitioner/respondent. The applicant was represented in court on 18th October, 2017 when the court set the hearing date for their application on 23rd October, 2017. They did not appear in court despite the *inter parte* indulgence in the taking of the hearing date. All this time, they have always been aware of the proceedings of court. This can only be mischief.

I further agree with the petitioner/respondent that this is a callous attempt to delay a determination of this suit thereby occasioning delayed justice to the petitioner. The application is totally devoid of merit.

I am therefore inclined to dismiss this application with costs to the petitioner/respondent.

Delivered, dated and signed this 19th day of December, 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Wabuge instructed by Lubullelah & Associates for the 1st and 2nd respondents/applicants.
2. Miss Odwa instructed by Nyairo & Company Advocates for the petitioner/respondent.
3. No appearance for the 3rd and 4th respondents.