



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
JUDICIAL REVIEW NO. 6 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 20th September, 2016)

DR. JOHN KARANJA NGUGI.....APPLICANT

VERSUS

KENYATTA UNIVERSITY.....1ST RESPONDENT

THE VICE CHANCELLOR

KENYATTA UNIVERSITY.....2ND RESPONDENT

JUDGMENT

Pleadings

1. The *Ex parte* Applicant filed his application on 27.5.2016 through the firm of P. K. Njoroge & Company Advocates seeking for Orders that:

1. The Honourable Court be pleased to grant the ex parte Applicant leave to commence Judicial Review proceedings of Mandamus directed at the 1st and 2nd Respondent to compel them to reinstate the ex parte Applicant to his employment at the 1st Respondent's institution of Higher Learning which the Respondent unlawfully terminated/dismissed on the 3rd day of May 2016.

2. The Honourable Court be pleased to grant leave to the ex parte Applicant to commence Judicial Review proceedings in the nature of prohibition directed at the Respondents to prohibit them from termination or purporting to give effect to a letter dated 3rd May, 2016, whose contents are illegal, unlawful and against all known statutes.

3. This Honourable Court do grant leave to the ex parte Applicant to commence Judicial Review application of Certiorari in order to bring to the High Court for the purpose of being quashed the Respondents' letters dated 29th March, 2016 and 3rd May, 2016, the essential validity of the contents of the letters invalidated.

4. An Order for declaration do issue directing the Respondent to compensate the ex parte

Applicant in damages for defamation, psychological torture, loss of income, aggravated damages, exemplary damages and an Order for unconditional reinstatement to his employment position.

5. An Order for a declaration that the purported convened disciplinary committee and the subsequent minutes and decision of the Respondents were predetermined, malicious, mala fides, arbitrary, unconscionable, unreasonable, unjust, against fair administrative justice, illegal, unconstitutional and the ex parte Applicant seeks general damages at this Court's discretion.

6. An Order that costs be borne by the Respondents.

2. The grounds on which the reliefs are sought are:

1. The ex parte Applicant will rely on the grounds that the actions of the Respondents in suspending him, subjecting him to disciplinary proceedings and subsequently purporting to dismiss the ex parte Applicant from employment are:

i) Arbitrary and capricious.

ii) Contrary to the Universities Act, Cap 210-B and Kenyatta University Act Cap 210 C, Laws of Kenya.

iii) Unreasonable, unfair and contrary to public policy and to rules of natural justice.

iv) Mala fides.

v) Ultra vires the powers of the Respondents.

vi) Contrary to fair administration of justice.

vii) Against legitimate expectations.

viii) Illegal.

3. The Application is supported by the Affidavit of Dr. John Karanja Ngugi, the *Ex parte* Applicant; wherein he states that he was employed by the 1st Respondent in 2013 vide an appointment letter dated 10th December, 2013.

4. He states that on 29th March, 2016, he was suspended for the alleged reason that he was Director of two companies; Supreme Consulting Limited and Double Entry Consulting Limited. He says that he was forced to appear before a disciplinary committee whose results did not give rise to a suspension, warning or other non-judicious action but resulted in termination of his career as a lecturer, a consultant farmer and a businessman when he was issued with a dismissal letter dated 3rd March, 2016.

5. The *ex parte* Applicant avers that the accusations leveled against him associated him with bureaus involved in plagiarism of projects and thesis for postgraduate students an allegation which has him contemplating instituting defamation action against the Respondents and against the Acting Deputy Vice Chancellor (Administration) at the opportune time.

6. He states that from the time the Respondent published the false information the right thinking members of society have disparaged him, ridiculed him, reduced his estimation and image as a lecturer, businessman, consultant, farmer and in all spheres of his life including but not limited to being avoided, scanded, shunned, mistreated, distressed him and the feeling of psychological torture.

7. That the Respondent has not offered any apology and as such the *ex parte* Applicant will be seeking

damages for defamation, exemplary and aggravated damages in addition to reinstatement and other reliefs in the proceedings.

8. He further states that during the hearing before the disciplinary committee he was given a small letter containing the allegations or charges facing him fifteen minutes before the meeting started and this was inadequate for preparation of a defence, he was not allowed to appear with his advocate and he was not supplied with any documentary evidence in the possession of the disciplinary committee. He was also not allowed to meet his accusers and cross examine them on their accusations and thus arriving at an unreasonable decision bordering on unfair administrative action.

9. He states that the committee disregarded all known rules of natural justice and in keeping with the traditions; the committee rarely clears any person even after the complainant appeals their decision.

10. He prays for his application to be allowed as prayed.

11. The Respondents filed a Replying Affidavit sworn by one Professor Wangari Mwai the Acting Deputy Vice Chancellor – Administration of the 1st Respondent wherein she states that the *ex parte* Applicant worked in the University as a lecturer in the Department of Accounting and Finance and while discharging his duties as a lecturer the *ex parte* Applicant would also be appointed as a supervisor for the PhD students who were working on their theses.

12. She states that the 1st Respondent received an anonymous tip off concerning the *ex parte* Applicant's conduct as a supervisor from one of the supervisees to the effect that he owned various plagiarism bureaus wherein he employed young undergraduate students to aid Masters and PhD students do their theses for profit.

13. That prior to this the *ex parte* Applicant had been appointed as a supervisor for one Wellington Kihato who was subsequently suspended from the University for examination irregularities concerning the irregular progression of his PhD studies.

14. In accordance with the tip off the Respondent alleges that the 1st Respondent through its investigators visited Summit House Room 209 wherein they were issued with a quotation of Shs. 45,000/= being the payment for topic selection, commitment fee and fees towards finalizing a proposal. They were also given a Business Card for Supreme Consulting Limited.

15. It is the 1st Respondent's contention that the *ex parte* Applicant was an associate Director of Supreme Consulting Limited after examining the *ex parte* Applicant's Curriculum Vitae which is downloadable from the School of Business Link in the University's website.

16. In addition the Respondent states that they were also able to establish that the *ex parte* Applicant was associated with Double Entry Consulting as the postal address availed on the Bureau's facebook page was similar to that appearing on the *ex parte* Applicant's Curriculum Vitae.

17. The Respondent avers that they invited the *ex parte* Applicant before the Senior Board of Discipline Committee on April 20, 2016, where he was given an opportunity to defend himself, which he did. They found that he was dishonest in his presentation and found him guilty of the charges. The Board also reached the decision to dismiss the *ex parte* Applicant from employment. They wrote him a letter to that effect on 3rd May, 2016.

18. The Respondent is of the view that the orders to stay the letters of 3rd March, 2016 and 3rd May, 2016, have already been overtaken by events and as a result of the delay in bringing these proceedings.

Submissions:

19. The application was dispensed with by way of written submissions.

20. The *ex parte* Applicant states that the Respondents are in contempt of Court for disregarding the Orders of the Court made on 30.5.2016.

21. The *ex parte* Applicant also states that the Court has special jurisdiction designed to correct errors, mistakes, excessiveness of authority, abuse of office, abuse of due process and unfair administrative actions by subordinate tribunals and quasi-judicial bodies which have authority to perform statutory responsibilities.

22. The 1st Respondent having been established by Statute, the *ex parte* Applicant states that it should exercise its powers within the law. The Senate should be the one giving the final word or determination such as the one now before Court “dismissal of a lecturer”, and the Senate cannot delegate its powers to the disciplinary committee.

23. In relation to being associated with two bureaus, the Claimant states that the Respondents have failed to attach evidence from the Registrar General to show that the *ex parte* Applicant is affiliated to the said Bureaus. Further that the *ex parte* Applicant was not given time to prepare his defence which is not only unconstitutional but it is also against the rules of natural justice.

24. The Respondents filed submissions wherein they state that there were serious allegations made concerning the academic integrity of the *ex parte* Applicant. The 1st Respondent investigated those allegations and found sufficient material to establish probable cause connecting him to those allegations and subjected him to a disciplinary process, the outcome of which was to dismiss him.

25. They submit that Judicial Review is not concerned with private rights and rely on the case of **Maseno University & 2 Others vs. Professor Ochieng Okello (2012) eKLR** upheld by Odunga J. in **Republic vs. Kenyatta University ex parte Solomon J Mummah (2013) eKLR** where it was held:

“...the breach or threatened breach of the appellants’ contract of employment was not a public act or a matter of public law but was a matter of contractual relationship between the respondent and the appellants, governed by private law. It was not therefore an appropriate action justifying the granting of Orders of judicial review. The Respondent may well have had a genuine grievance. His remedy however, lies under private law which covers disputes relating to contractual relationships. Therefore the Court erred in granting the Orders of Judicial Review as Prof. Ochong did not have a public law right capable of protection under the supervisory jurisdiction of the Court.)

26. They state that it is incumbent on the *ex parte* Applicant to show that the dismissal of his employment was a matter of public law so as to properly invoke judicial review proceedings to challenge them which he has not done. They further go to refer to Odunga J. holding in the **Solomon J Mummah** (supra) where he stated:

“Therefore the mere fact that a statute provides the procedures to be followed before an employee can be dismissed does not necessarily make the employment statutorily underpinned. What it means is that in the event that employment is not terminated in accordance with the provisions of the statute, the termination of the employment may be wrongful in which event damages may be awarded in accordance with the law governing labour relations.”

27. The Respondent submits that the *ex parte* Applicant has not moved the Court in accordance with any law governing labour relations in Kenya and they invite the Court to echo Odunga J’s words in the above mentioned case that:

“It therefore follows that judicial review procedure was neither the most efficacious method for the ex parte Applicant to ventilate his grievances nor are the remedies under judicial review available to the ex parte Applicant in the circumstances of this case.”

28. In addition to submitting on the impropriety of Judicial Review to ventilate this claim the Respondent

submits on the scope of Judicial Review and cite the case of **Republic vs. National Transport & Safety Authority & 10 Others ex parte James Maina Mugo (2015)eKLR** where it was held that:

“Therefore Judicial Review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected...”

It follows therefore that where the resolution of the dispute before the Court requires to make a determination on disputed issues of fact that is not a suitable case for judicial review. The rationale for this is that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal. It follows that where an Ex parte Applicant brings judicial review proceedings with a view to determining contested matters of fact and in effect determine the merits of the dispute the Court would have jurisdiction in judicial review proceeding to determine such a dispute would leave the parties to ventilate the merits of the dispute in the ordinary civil suits... Those are the general principles governing judicial review.”

29. They submit that the bulk of the *ex parte* Applicant’s complaint challenges the merits of the 1st Respondent’s decision, not the decision making process and therefore invite the Court to decline the invitation to review the merits of the Respondent’s decision.

30. They outline the procedure followed prior to dismissal as follows:

1. Through a letter dated 29th March, 2016, he was suspended pending further investigation and/or appearance at the Senior Board of Discipline. The reasons for his suspension they state were elaborated in that letter.

2. On 4th April, 2016, he was invited to appear before the Senior Board of Discipline on 18.4.2016 though he subsequently appeared before it on 20th April, 2016. They state it is not true that he was only give fifteen minutes before the disciplinary hearing to learn of the charges he faced.

3. They state that he knew of the evidence in support of the charges by virtue of his introduction in his own pleadings.

4. Way before the disciplinary hearing, he submitted his own written defence in response to the suspension letter responding each allegation. They refer to annexure JKN 4b. Additionally that he presented affidavits by other people indicated to have been sworn before the date of the disciplinary hearing. They refer to annexures JKN 4, 6 and 7.

5. That at the disciplinary hearing, the ex parte applicant urged for the withdrawal of his lawyer’s letter, saying that he was able to defend himself. They refer to annexure KU 6.

6. That his defence at the disciplinary hearing echoed the contents of his previously prepared documents.

7. That the Respondents considered his defence and made a decision to dismiss him from employment which decision was communicated to him.

8. That he was allowed an opportunity to appeal the decision; he chose not to do so. Instead he filed the instant proceedings more than three weeks later.

31. The Respondents submit that due process was followed and any claim otherwise is unmerited.

32. As to the allegation of contempt raised in the *ex parte* Applicant’s submissions the Respondents submit that it was incumbent upon him to file a formal application to which the Respondents would have

an opportunity to respond. In any event they submit that they have not been in contempt of that Order and invite the Court to note that while the stay Order was issued on 30.5.2016, it relates to letter dated 29.3.2016 and 3.5.2016. The Order they state was too late in time and could not be enforced.

33. They cite the case of **Taib A. Taib vs. The Minister for Local Government & Others**; where it was held:

“A stay is only appropriate to restrain a public body from acting. It is, however, not appropriate to compel a public body to act.”

34. The Respondents further submit that some of the remedies sought do not fall under the purview of Judicial Review. They rely on the case of **Khobesh Agencies Limited & 32 Others vs. Minister of Foreign Affairs and International Relations & 4 Others (2013) eKLR**, Odunga J. elaborated the remedies available in judicial review as follows:

“Section 8 of the Law Reform Act specifically sets out the Orders that the High Court can issue in judicial review proceedings and he orders are, mandamus, certiorari and prohibition. Any other remedy such as declaration does not fall under the purview of judicial review for the simple reason that the Court would require viva voce evidence to be adduced to determine the case on the merits before making such a declaration. Judicial review on the other hand is only concerned with the reviewing of the decision making process and the evidence is found in the affidavits filed in support of the application.”

35. To the extent that the ex parte Applicant seeks for an order of mandamus the Respondent submits that it cannot lie in the instant case. They state that the scope of the order for mandamus is to compel a public body to perform a duty imposed by statute but it leaves the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way. They cite the case of **Kenya National Examination Council vs. Republic ex parte Geoffrey Gathenji Njoroge and 9 Others (1997)eKLR** to buttress this position.

36. The Respondent submits that for the reason that the ex parte Applicant prays for an order of prohibition against a decision that has already been made and as it cannot be an efficacious remedy. They pray for the application to be dismissed with costs.

37. Upon hearing the submissions of both parties, the issues for determination by this Court are as follows:

- 1. Whether there were valid reasons to warrant dismissal of the Petitioner.***
- 2. Whether due process was accorded to the Petitioner.***
- 3. Whether orders of Judicial Review could lie against the Respondent this matter being in the domain of private law.***
- 4. What remedies if any to grant in the circumstances?***

38. On the 1st issue, the Petitioner annexed to this Petition his dismissal letter Appendix JKN1 dated 3.5.2016 which stated as follows:

“Dear Dr. Ngugi,

RE: DISMISSAL

As you may recall, you were invited to appear before the Senior Board of Discipline on 20th April 2016 where you were accorded the opportunity to defend yourself against the charge of professional misconduct by virtue of being associated with bureaus (Double Entry Consulting

Limited and Supreme Consulting Limited) involved in plagiarism of projects and thesis for a postgraduate student.

The Senior Board of Discipline considered the seriousness of the charge for which you were accused, the evidence adduced and your own evidence and found you guilty of the charge. It was therefore decided that you be and are hereby DISMISSED from the University services.

You may appeal against this decision within the next fourteen (14) days upon receipt of this letter.

By a copy of this letter, the Chief Finance Officer is instructed to delete your name from the payroll-----.

Yours faithfully,

Prof. Wangari Mwai

Ag. DEPUTY VICE CHANCELLOR (ADMINISTRATION) “

39. According to this letter, reasons for dismissal are as enumerated therein being professional misconduct by virtue of his involvement in 2 companies involved in plagiarism of projects and thesis for postgraduate students.

40. Before the Petitioner's dismissal he had been placed on suspension on 29th March 2016 for similar reasons pending his appearance before the Senior Board Discipline to answer to the said charges.

41. The question then that this Court needs to determine is whether the reason/s for the dismissal were valid. Under Section 43 (1) and (2) of Employment Act:

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

42. It is therefore important that the reason for this dismissal be reasons that did indeed exist and which formed the basis upon which the Petitioner was dismissed. As indicated above, the Petitioner had been suspended on 29th March 2016, vide a letter reference No. 9435/23. The letter indicated as follows: -

“RE: SUSPENSION

It has come to the attention of the University Management that you have been involved in professional misconduct and have failed to perform your duties as a Lecturer to the disadvantage of the University, the PhD and Masters Students that you have been allocated to supervise.

Specifically, a complaint was raised by one of your students whom you are supervising that:-

a) You have an office at Summit House room 209 where you have employed your undergraduate students to assist students doing their Masters and PH.D do their thesis at exaggerated prices. Failure to use your facilities the student will not stand a chance to graduate under your supervision.

b) You own and run a publishing company known as International Journal of Social Sciences.

That you forcefully use your company to publish papers/journals for your students at a cost of USD 200 per paper failure to which they do not graduate.

c) A report was made by the Dean, Graduate School on irregular progression in Ph.D studies by one of the students by the name Kihato K. W. His proposal was prepared by Mr. Vincent Muli a Senior Researcher at Supreme Consulting Limited where you are a Director.

d) That you are engaged in professional misconduct by virtue of being associated with bureaus (Double Entry Consulting Limited & Supreme Consulting Limited) involved in plagiarism of projects and thesis for postgraduate students.

This conduct is highly unprofessional and unethical and amounts to breach of your obligations where an employee can be summarily dismissed from employment under Section 44(4)(e) of the Employment Act, Section 9(g), 11(1) and 12(1) of the Public officers Ethics Act Cap 183 and Section 11.4 (iii) (c) of your Terms of Service where the University Council reserves the right to terminate appointment without notice -----

Subsequently, as a result of the above, you are hereby SUSPENDED pending further investigation and/or appearance at the Senior Board Discipline-----“.

43. Upon receipt of this suspension letter, the Petitioner wrote a letter which is undated answering to the allegations against him. In the letter the Petitioner denies he has an office at Summit House where plagiarism of Masters and Ph.D thesis and projects take place. He stated that the tenant at Room 209 Summit House is one Bretcom Enterprises Limited, P.O. Box 11787-00100 Nairobi whose Managing Director is Daniel Murimbi. He also denied sending students under his supervision to any office to seek help with their projects.

44. On owning and running International Journal of Social Sciences, he stated that it is owned by International Journal of Social Science and Entrepreneurship Limited whose Directors are Rose Kambura Njilu and Elizabeth Waithera Gitau. His only role he stated is that he is a part-time editor of the said Journal.

45. On irregular progression in PhD studies by Kihato K. W, he stated that he has been supervising the said student for PhD since 2014 and that the student is hard working and did his project satisfactorily and defended it before 2 panels who approved his progression.

46. Petitioner admitted being one of the Directors of a company called Supreme Consulting Limited registered in 2009 before he became a University Lecturer. He stated that he stopped operating the consulting business in 2011 when he was employed by JKUAT.

47. He also admitted that one Vincent Muli is known to him and occasionally assists him in filing his returns with KRA for Supreme Consulting Limited. He also stated that the said Muli without his knowledge and consent had printed letter heads indicating that he was a Senior Researcher with Supreme Consulting.

48. The Petitioner denied knowledge of Double Entry Consulting Limited but stated that he has learnt that the company is owned by one Timothy Kasimolo who has been using the Petitioner's address for his company without the Petitioner's knowledge, consent or authority. The Petitioner's position is that the allegations against him were unfounded.

49. On 4.4.2016, the Petitioner was invited to a Senior Board Discipline meeting where he was expected to attend on 18.4.2016 to defend himself against the charges of professional misconduct by virtue of being associated with bureaus (Double Entry Consulting Limited and Supreme Consulting Limited) involved in plagiarism of projects and thesis for postgraduate students. He was asked to submit a written defence if need be before the date of the hearing. I presume what he wrote as his defence is what I have analyzed above.

50. The minutes of the Senior Board of Discipline meeting held on 20th April 2016 in Mandela Boardroom 'A' are annexed as Appendix KU-6. From the minutes, when the allegations were put before the Petitioner, he denied them. His defence was as stated in his written response following his suspension from work.

51. Several witnesses were called. One Mr. Jasper Muriithi Karani stated that he visited Summit House in March 2016 accompanied by Andrew Mugambi. He found the business which operates under no signage and he was allowed in after identifying himself as a postgraduate student at the University of Nairobi. He was given a quotation of Kshs.45,000/= and a business card by Mr. Vincent Muli. That the curriculum vitae of Dr. Ngugi from Kenyatta University website indicated that he was an Associate Director at Supreme Consulting Limited to date. That they also investigated Double Entry Consultants and found the company engages in proposal writing and data entry among others and has a similar postal address to one appearing on the Petitioner's curriculum vitae.

52. The 2nd witness Andrew Mugambi gave similar evidence.

53. After the hearing, the Board deliberated on the case and observed that Dr. Ngugi was not honest in his presentation. They found he had assisted students in plagiarism and examination irregularity and recommended that he be dismissed from the service of the University.

54. They also recommended investigation of another supervisor Mr. Kihato.

55. Having considered the reasons for the dismissal of the Petitioner, I find that the Petitioner was dismissed for professional misconduct, Clause 11.4 (b) and (c) of the Respondent's Terms of Service for Academic/Senior Library and Administrative Staff state as follows:

“Conduct which shall deem to be such as to constitute failure or inability of the member of staff concerned to continue to perform his/her duties or to comply with the conditions of his/her appointment.....

c. Conduct of scandalous or disgraceful nature, which the Council shall, deem to render a person unfit to hold his/her office”.

----“is considered as good cause for removal.”

56. In the case of the Petitioner, the Respondent's Board of Discipline found the Petitioner involved in plagiarism and aiding of students to do so by his conduct.

57. The Petitioner indeed denied the charges against him. He gave his defence alluding to the fact that other people in this case one Muli and another company used his address for their work without his permission.

58. If indeed this occurred, then the Petitioner behaved in a negligent manner by allowing a company associated with him to run illegal businesses. Evidence from 2 witnesses pointed to the fact that the company Supreme Consultants Limited for which the Petitioner admitted he was one of the Directors through one Muli demanded 45,000/= to aid a witness to finalize his project. There is no evidence that the Petitioner took any action against Mr. Muli for what he did.

59. The Petitioner has not reported one Timothy Kasimolo for using his postal address without his consent. The upshot is that what was done by the company associated with the Petitioner was indeed attributed to the Petitioner.

60. Under Section 145 of the Companies Act it is provided as follows:

“In performing the functions of a director, a director of a company shall exercise the same care, skill and diligence that would be exercisable by a reasonably diligent person with:

1. The general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions performed by the director in relation to the company and;

2. The general knowledge, skill and experience that the director has.”

61. The Petitioner having admitted he was a Director of Supreme Consulting Limited, he could not permit persons working within the company to carry out illegalities and later state that he was not aware of this and even after he came to know about the illegalities, he has not taken any steps to report to the police these occurrences.

62. I therefore make a finding that the Respondents had valid reasons to dismiss the Petitioner in terms of Section 43 (2) of Employment Act.

63. In relation to issue No. 2, the due process expected to be taken is in terms of Section 41 of Employment Act. It is clear from the evidence above that the Petitioner was given an opportunity to defend himself. He was explained the reason for which the Respondent was considering termination of his services. The Petitioner appeared before the Board of Discipline of the Respondents and was given an opportunity to defend himself which he did. It is my finding that due process was accorded to the Petitioner in terms of the law.

64. Having found as above, it may not be necessary to delve into the 3rd issue concerning Judicial Review and private rights. I will however in passing state that the jurisdiction of Employment and Labour Relations Court is provided for under Section 12 of Employment and Labour Relations Court Act 2014 the Remedies that this Court can grant under Section 12 (3) as follows:

3. “In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders:-

(i) interim preservation orders including injunctions in cases of urgency;

(ii) a prohibitory order;

(iii) an order for specific performance;

(iv) a declaratory order;

(v) an award of compensation in any circumstances contemplated under this Act or any written law;

(vi) an award of damages in any circumstances contemplated under this Act or any written law;

(vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or

(viii) any other appropriate relief as the Court may deem fit to grant”.

65. This Court has a duty to deal with both private and public Litigants. It is true that Judicial Review is in the domain of the decision making process and not in the merits of the decision itself as held in **Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited-CA No. 185/2001.**

66. It is assumed that the persons who may be accused of making decisions for which a remedy in Judicial Review lie are public bodies. However in exercising its jurisdiction the Employment and Labour Relations Court (ELRC) cannot demarcate its jurisdiction and make a finding that the Court may delve into issues of remedies and leave the other issue of Judicial Review to another Court.

67. In the **Court of Appeal of Mauritius – Dettatreya Panday vs. The Judicial and Legal Service Commission (2008) UKPC 52 (1 December 2008)** the judgment of the Lords of the Judicial Committee of the Privy Council made the following observations:

“Mr. Boolell raises as an initial objection to any award, whether of salary or damages, that any such claim should be pursued in separate civil proceedings, in the light of any judgment given by the Board. He referred to D. Hurnam vs. The State of Mauritius 2003 SCJ 54 Record No. 606, where the Supreme Court took a restrictive view of the claims for compensation that could appropriately be pursued under Section 17 of the Constitution, which provides for redress in respect of contraventions of Subsection 3 to 16 of the Constitution. The present case concerns an application for Judicial Review based on Chapter VIII of the Constitution. Mr. Boolell cited no authority which restricts the scope of relief that may appropriately be granted in this context. Their Lordships consider that it would be unfortunate if, following a successful application for Judicial Review, a Court were unable to award arrears of salary or give consequential redress that was otherwise appropriate, but had to remit the matter to be decided in separate civil proceedings before another Court. A Court dealing with a Judicial Review application can either assess the appropriate award itself or can, if factual or other issues require further evidence or argument, order a trial of such issues separately, giving such directions as may be appropriate for the further conduct of the proceedings”.

68. In my view whether Judicial Review may not lie in this case, there may have other remedies that could apply if this Court had found the dismissal of the Petitioner fair and justified. Having found otherwise however the Petitioner is not entitled to any other remedy. I will therefore dismiss this Petition with costs to the Respondents for the reasons advanced above.

Read in open Court this 20th day of September, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Khaseke holding brief for Mwangi for Respondent – Present

Petitioner – Absent