



**REPUBLIC OF KENYA**

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

**CAUSE NO. 443 OF 2016**

**PAUL KIPROP CHEPKUTO.....CLAIMANT**

**v**

**UNIVERSITY COUNCIL, MOI UNIVERSITY.....1<sup>ST</sup> RESPONDENT**

**PROF. J. KINYAMARIO.....2<sup>ND</sup> RESPONDENT**

**MOI UNIVERSITY.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Paul Kiprop Chepkuto (applicant) moved Court through a motion under certificate of urgency on 1 November 2016 seeking

1. **THAT** this application be certified as urgent and be heard on priority basis.

2. **THAT** pending the inter parties hearing and determination of the application herein, this Honourable Court be pleased to issue a temporary order suspending the implementation of the 2<sup>nd</sup> Respondents letter dated 13<sup>th</sup> October 2016 *in toto* suspending the Applicant/Claimant from the Office of the Deputy Vice Chancellor Administration, Planning and development and slashing his salary by half.

3. **THAT** pending the inter parties hearing and determination of the application herein, this Honourable Court be pleased to issue a temporary order suspending the implementation of the 2<sup>nd</sup> Respondents letter dated 1<sup>st</sup> September 2016 *in toto* sending the Claimant on compulsory leave from the Office of the Deputy Vice Chancellor Administration, Planning and development and slashing his salary by half.

4. **THAT** Applicant/Claimant be and is hereby reinstated back to his office and station of Employment as the Deputy Vice Chancellor, Administration, Planning and development pending the hearing and determination of this suit.

5. **THAT** the court be pleased to bar any other appointment as the Deputy Vice Chancellor, Administration, Planning and Development pending the hearing and determination of this suit.

6. **THAT** the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be henceforth restrained either by themselves, their agents or servants from interfering with the Claimant/Applicant in his discharge of duties otherwise than is provided by law.

7. **THAT** the Applicant/Claimant continues enjoying all rights and privileges as prescribed under his office.

8. **THAT** the costs of this application be provided for.

2. The Court certified the motion as urgent on 1 November 2016 and directed that the Respondents be served for an inter partes hearing on 14 November 2016.

3. When the motion was called out for hearing on 14 November 2016, the counsel for the applicant informed the Court that the motion had not been served upon the Respondents.

4. The Court consequently adjourned the motion to 23 November 2016 and directed the applicant to serve it and also pay adjournment fees.

5. 23 November 2016, the applicant was not in Court at 9.10 am when the motion was called out and the Court placed the file aside.

6. The applicant's counsel appeared in Court at 10.10 am and she informed the Court that the motion had been served but that because she did not have proof of service she was seeking for a mention date to enable an affidavit of service to be filed.

7. The Court directed that it would deliver a ruling on the request today.

8. The applicant was given about 14 days at the first instance to serve the motion which had been certified as urgent but for unexplained reasons service was not effected.

9. The Court added the applicant another 10 or so days to effect service but on the new return date, there was no evidence of service.

10. In total, the applicant had about 23 days to effect service but no service or evidence of service was presented in Court.

11. The Court can therefore conclude that the applicant is not interested in having the motion which was certified urgent heard expeditiously.

12. The principle of certifying the motion urgent has therefore become not only superfluous but the inaction of the applicant renders itself to abuse of the court process.

13. The Court therefore dismisses the motion dated 1 November 2016 with no order as to costs.

**Delivered, dated and signed in Nakuru on this 25<sup>th</sup> day of November 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant                      Ms. Wangeci instructed by Musyoki Mogaka & Co. Advocates

Respondents                      not served

Court Assistants                  Nixon/Daisy