



Moi University v Zaippeline & another (Civil Application 27 of 2015) [2018] KESC 21 (KLR) (5 October 2018) (Ruling)

Moi University v Oindi Zaippeline & another [2018] eKLR

Neutral citation: [2018] KESC 21 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 27 OF 2015
DK MARAGA, CJ & P, PM MWILU, DCJ & V-
P, JB OJWANG, SC WANJALA & NS NDUNGU, SCJJ
OCTOBER 5, 2018**

BETWEEN

MOI UNIVERSITY APPLICANT

AND

OINDI ZAIPPELINE 1ST RESPONDENT

KARATINA UNIVERSITY 2ND RESPONDENT

(Being an application for review of the decision of the Court of Appeal (Nambuye, Kiage & Kihara, JJA) given at Nyeri on 14th October, 2015 declining to grant certification that the matter herein is one of general public importance warranting a further appeal to the Supreme Court))

Nature of matters that constitute matters of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction

An issue as to whether a university could award a degree to a student who was no longer registered with it and whom it did not examine was a matter of general public importance.

Reported by Beryl A Ikamari

Jurisdiction - jurisdiction of the Supreme Court - appellate jurisdiction of the Supreme Court - exercise of appellate jurisdiction over matters that were certified to be of general public importance-nature of matters that would be deemed to be of general public importance - whether an issue concerning whether a student who registered with certain university to study in a campus of that university was entitled to be awarded a degree from that university, notwithstanding the fact that the campus had been transformed into a full-fledged university at the time of the student's graduation, was a matter of general public importance.

Brief facts

The applicant sought a review of the Court of Appeal's decision whereby certification for purposes of an appeal to the Supreme Court was declined.



The 1st respondent was admitted by the applicant to its Central Kenya Campus at Karatina to pursue a three-year course leading to the award of a bachelor's degree. While the 1st respondent was studying, the campus was transformed by Legal Notice No 163 of 2010 into a constituent college known as the Karatina University College. Paragraph 5(1) of the Legal Notice stated that the degrees and postgraduate diplomas to be awarded by Karatina University College shall be the degrees and postgraduate diplomas conferred by Moi University. Two months before the 1st respondent completed his studies, the constituent college was transformed into a full-fledged university known as Karatina University via a Charter. Paragraph 33 of the Charter provided that students pursuing degrees, diplomas and other certificate programmes at the former Karatina University College shall be allowed to complete their courses and be awarded degrees, diplomas and certificates of Karatina University.

The 1st respondent wanted to be awarded a Moi University degree and not a degree from the relatively new and unknown Karatina University. He went to the High Court seeking a mandatory injunction to compel the Applicant to award him the degree he wanted. The High Court dismissed the 1st respondent's case but on appeal to the Court of Appeal, the Court of Appeal granted the mandatory injunction. The applicant wanted to appeal to the Supreme Court for a review of that decision but the Court of Appeal declined to grant certification which would allow the Applicant to file an appeal at the Supreme Court.

Issues

Whether an issue concerning a student, who was registered in the campus of a given university which was eventually granted a charter and transformed into a full-fledged university, was entitled to a degree from the university in which he started his studies, was an issue of general public importance warranting the exercise of the Supreme Court's appellate jurisdiction.

Held

1. In order for a matter to be certified as one that raised matters of general public importance, an applicant had to satisfy the Court that the issue to be canvassed was one whose determination transcended the circumstances of the particular case. Where the issue was a point of law, the Applicant, had to demonstrate that the point was substantial and its determination would have a significant bearing on public interest.
2. An issue as to whether a university could award a degree to a student who was no longer registered with it and whom it did not examine was a matter of general public importance.

Application allowed.

Citations

East Africa

1. *Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscone* Application No 4 of 2012 – (Followed)
2. *Ngoge v Kaparo & 5 others* [2012] 2 KLR 419 – (Followed)

Statutes

East Africa

1. Constitution of Kenya, 2010 articles 159(2); 259(1); 163(4) (b) – (Interpreted)
2. Supreme Court Act, 2011 (Act No 7 of 2011) sections 15, 16, 21- (Interpreted)
3. Supreme Court Rules, 2012 (Act No 7 of 2011 Sub Leg) rules 26, 31(2) – (Interpreted)

RULING

1. In its ruling delivered at Nyeri on 14th October 2015, the Court of Appeal Kihara Kariuki, Nambuye and Kiage, JJA declined to grant Moi University the applicant certification to appeal to this Court against its decision delivered on 14th April 2015. On 27th October 2015, the applicant filed this



- application under Articles 1592, 1634b and 2591 of the Constitution; Sections 15, 16 and 21 of the Supreme Court Act, 2011 as well as Rules 26 and 312 of the Supreme Court Rules, 2012 seeking a review of the Appellate Court’s said decision declining to grant certification.
- 2 The application is premised on the grounds that the Appellate Court failed to appreciate that the issue the applicant seeks a decision of this Court on is one of general public importance which transcends the circumstances of this particular case.
 - 3 As this Court stated in the case of *Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione*, Sup. Ct. Appl. No. 4 of 2012 [2013] eKLR, a decision it had also made in *Peter Oduor Ngoge v. Hon. Francis Ole Kaparo & 5 Others* [2012] eKLR Supreme Court Petition No. 2 of 2012 and reiterated in many other subsequent decisions, an applicant seeking such certification “must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case....” If it is a point of law, he “must demonstrate that such point is a substantial one, the determination of which will have a significant bearing on the public interest.” The question is whether or not this threshold has been satisfied in this case.
 - 4 The brief facts of the matter before us are that on 27th July 2009, the applicant admitted the 1st respondent into its Central Kenya Campus at Karatina to pursue a three-year course leading to an award of a bachelor’s degree. In the course of the 1st respondent’s studies, on 1st October 2010, the applicant, by Legal Notice No. 163 of 2010, transformed its said Central Kenya Campus into a constituent college known as Karatina University College. Paragraph 51 of the said Legal Notice stated that “The degrees and postgraduate diplomas to be awarded by Karatina University College shall be the degrees and postgraduate diplomas conferred by Moi University.”
 - 5 Just two months before the 1st respondent completed his studies, the applicant obtained a charter for its said constituent college and had it transformed into a full-fledged university known as Karatina University. Paragraph 33 of the Charter states that “the students of the former Karatina University College who were pursuing degrees, diplomas and other certificate programmes ... shall be allowed to complete their courses and be awarded degrees, diplomas and certificates of Karatina University.”
 - 6 On completion of his studies, the 1st respondent wishing to be awarded a degree by Moi University, the applicant, and not by the new and relatively unknown Karatina University, filed a case in the High Court and sought, inter alia, a mandatory injunction to compel the applicant to award him a degree. The High Court dismissed his case but on appeal, the Appellate Court reversed that decision and granted the 1st respondent the mandatory injunction he had sought. As stated, the applicant wishes to further appeal to this Court against that decision hence its application for review of the Appellate Court’s order declining certification.
 - 7 In their written submissions, counsel for the applicant argued that Moi University could not award a degree to a student who was no longer registered with it and whom it did not examine. On their part, counsel for the 1st respondent argued that para 33 did not apply to him as the relationship between him and Moi University was contractual which contract had not been frustrated by the operation of the law, and that his legitimate expectation was to be awarded a degree from Moi University. Moi University was therefore estopped from denying him its degree.
 - 8 Upon consideration of these rival submissions alongside the said principles governing the grant of certification to appeal to this Court, we find that the issue of whether a university can award a degree to a student who was no longer registered with it and whom it did not examine is a matter of general public importance. In the circumstances, we review the Court of Appeal’s decision declining certification and



grant the applicant leave to file his appeal under Article 1634b of the Constitution. The costs of this application shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2018

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D.K. MARAGA

CHIEF JUSTICE/PRESIDENT OF THE SUPREME COURT

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P.M. MWILU

DEPUTY CHIEF JUSTICE/VICE PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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N. S. NDUNG’U

JUSTICE OF THE SUPREME

COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

