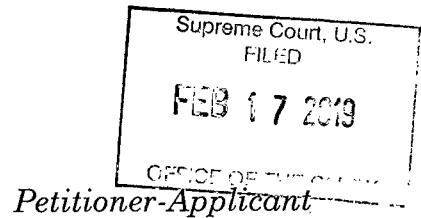


App No. 18A841 **ORIGINAL**

IN THE SUPREME COURT OF THE UNITED STATES.

JOSEPHAT MUA,



v.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY.

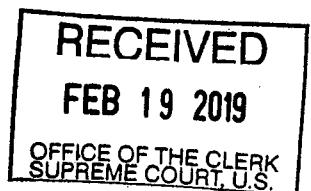
Respondent

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

**PETITIONERS' APPLICATION TO EXTEND TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI**

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Sunday, February 17, 2019



App No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPHAT MUA,

Petitioner-Applicant

v.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY.

Respondent

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., as the Chief Justice and the Circuit Justice for the United States Court of Appeals for the District of Maryland circuit:

Petitioner Josephat Mua respectfully request that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty (60) days to and including April 29th, 2019. The United States Court of Appeals for Fourth Circuit issued its opinion and Order on November 29th, 2018 (See App. A, infra). On January 8, 2019, the United States Court of Appeals for Fourth Circuit issued an order and denied the motion for reconsideration (See App. B, infra) in which it denied a petition for

rehearing *en banc*. Absent an extension of time, the Petition would therefore be due on February 27th, 2019. Petitioner is filing this Application at least ten (10) days before that date. See S.Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C § 1254 (1) and the appeal is not frivolous.

BACKGROUND

Petitioner Mua is a former employee of Prince George's County Public Schools (PGCPS) whose employment was terminated wrongfully by Respondent on June 18th, 2010 while on approved Family medical leave (FMLA).

Petitioner Mua is a member of a labor union, ACE-AFSCME Local 2250 (the "Union"). The Petitioner's employment is governed by a collective bargaining agreement between Respondent and the Union. The Petitioner's contractual rights include the right to be discharged from employment only in accordance with the terms and procedure of the collective bargaining agreement or such other regulations as may apply to the Petitioner's employment and which constitute a part of Petitioner Mua's employment agreement with PGCPS.

PGCPS Supporting Personnel cannot be discharged except in accordance with the Disciplinary Action provisions of the Regulations for Supporting Personnel.

Those provisions require that when an employee appeals a notice of discharge, PGCPS must schedule an appeal hearing "not less than five (5) or more than thirty (30) working days after the receipt of the request." (According to the Union contract at Article VII, Appeals, par. 1.)

PGCPS sent the Petitioner a letter dated June 18, 2010, discharging the Petitioner from his employment with PGCPS while on approved FMLA leave. The Petitioner filed a timely Appeal of Notice of Termination on June 30th, 2010. Letter for termination was mailed out by respondent on June 22, 2010. The Petitioner sought to have a hearing scheduled within the mandated time period. Nevertheless, Respondent failed and/or refused to schedule a hearing during the 30 working day time period, as required by the Regulations.

By letter dated October 14, 2010, counsel for the Petitioner notified Respondent that almost four months had passed since the Petitioner submitted his Appeal of Notice of Termination, and that no hearing had yet been scheduled. Counsel for the Petitioner further notified Respondent that their failure to comply with the contractual requirements of the Regulations constituted a material breach of the Petitioner's employment agreement with PGCPS. The letter demanded reinstatement, back pay, and lost benefits.

By letter dated October 26, 2010, only in reaction to the correspondence from the Petitioner Mua's counsel alleging breach of contract and demanding reinstatement, did PGCPS finally schedule an appeal hearing for Petitioner Mua. That appeal was scheduled for Friday, November 12, 2010. However, the hearing was cancelled after the respondent attorney Mr. Roger Thomas conspired to delay the hearing. Mr. Roger Thomas was later terminated for financial corruption and other issues previously raised by the Petitioner Mr. Mua.

In response to the proposed hearing date – which was scheduled for a date almost five (5) months after the June 18, 2010 decision to discharge the Petitioner Mua – counsel for the Petitioner contacted Mr. Roger C. Thomas, Esq., General Counsel for PGCPSS. Petitioner's attorney requested Mr. Thomas to agree to a stay of the administrative hearing while Petitioner Mua submitted his claim for breach of contract to the Court for its review. By letter dated October 27, 2010, Mr. Thomas refused to agree to the requested stay and maintained that the administrative hearing would proceed on November 12, 2010, as scheduled. However, in the last minute, Mr. Roger Thomas cancelled the administrative appeal hearing after the Petitioner had assembled his witnesses for the administrative appeal hearing in a capricious and arbitrary manner prejudicing Petitioner Mua.

On November 8, 2010, The Petitioner filed on this date a complaint for breach of contract, setting forth Petitioners' material breach of the parties' employment agreement by failing to schedule an appeal hearing within the 30-day contractual period required by the Regulations. The Petitioner seeks reinstatement, back pay, lost benefits, costs, and attorneys' fees.

Absent the court's intervention on an *ex parte* basis, the Petitioner will suffer immediate, substantial, and irreparable harm if the administrative hearing is permitted to continue under wrong statute Maryland § 6-202. The circumstances of the Petitioner's appeal involve issues that are factually involved and substantively sensitive. The Petitioner's employment was terminated in retaliation for the Petitioner's Honesty whistleblowing actions, identifying and complaining about

substantial improprieties occurring in the PGCPS District school system. An administrative hearing on the Petitioner Mua's discharge appeal will require at least six days of testimony by Petitioner Mua and other potential witnesses; familiar with the wrongdoing of which Petitioner Mua complained. Such a proceeding will be expensive for both parties, disruptive, and a source of tremendous anxiety and consternation for Petitioner Mua as well as for potential witnesses who may be asked to testify about wrongdoing by PGCPS while still currently being employed by the school system. Already some potential witnesses have been terminated from their jobs and five (5) witnesses have died to date.

In light of PGCPS's material breach of the parties' employment agreement, PGCPS has waived the right to affirm its decision through a discharge appeal hearing, and Petitioner should be reinstated. The holding of an administrative appeal hearing under wrong statute of Maryland § 6-202 and now changed again to § 4-205 while this issue is pending before the court would be divisive, expensive, time-consuming, and prejudicial to Petitioner Mua. Upon the court's determination that Respondent materially breached their obligations to Petitioner Mua, the Petitioner will be entitled to reinstatement and the appeal hearing will be rendered moot.

Respondent has delayed the scheduling of a hearing on Petitioner Mua's discharge appeal for over two (2) years and MSBE delayed for another 12 months. Respondent has no legitimate interest in suddenly demanding the immediate scheduling of a hearing to the state level and now to this court after being responsible for substantial delay while Petitioner Mua sought to compel his

procedural rights. Both Respondent PGCBOE and MSBE have refused to resolve these issues in retaliation.

Respondent cannot have it both ways – the Respondent should not be permitted to schedule an administrative appeal hearing under the wrong statute pursuant to Maryland § 6-202 of the Education article as the Petitioner was not a teacher but support staff personnel when terminated wrongfully. MSBE should not be allowed to suddenly change the classification on the way to this court and prejudice Petitioner Mua from § 6-202 to § 4-205 erroneously.

The Respondent should not be allowed when they deem it in their best interests to put the Petitioner off, but then when such a tactic backfires and justifies a demand for reinstatement, suddenly claim that an administrative appeal hearing must be held imminently.

The lifting of a stay of the Federal case would serve the public interest in enforcing compliance by administrative agencies with their own administrative and contractual obligations to employees. When our public officials are permitted to deviate from their obligations at the expense of individuals, the result is increased cynicism by the public and an undermining of the individual's belief in principled, law-based government.

Petitioner counsel spoke with PGCPS's previous General Counsel Roger Thomas, Esq., on Friday, November 5, 2010, and advised him that counsel would be appearing in Chambers on Monday, November 8, 2010, at 1:30 p.m. to present

a Motion for breach of contract, and Mr. Thomas advised that he was available to appear at that time. A copy of the Complaint and the Motion was mailed to Mr. Thomas on the morning of November 8, 2010, prior to being filed with the Court.

However, Mr. Roger Thomas Esq. in July 2011 after a year when the administrative appeal hearing was taking place arranged to have the complaint for breach of contract dismissed without prejudice and without the Petitioner Mua's consent. Mr. Roger Thomas Esq. also intimidated witnesses for the Petitioner and told some of the witnesses not to appear for the administrative appeal hearing.

Mr. Roger Thomas Esq. also changed the job description for the Petitioner during the administrative appeal hearing in order to mislead the courts and the Board members. The Federal court dismissed the wrongful termination with prejudice, after the Respondent misled the court that petitioner was not a Technician but a teacher.

The Respondent misled the Federal court by stating that the Petitioner had not been terminated, therefore, the Petitioner had no cause of action necessary to continue the suit. After the claim for wrongful termination was granted with prejudice, the Petitioner was then terminated under the wrong statute, Maryland §6-202. Furthermore, the administrative appeal hearing decision was arbitrary, capricious and illegal because the record did not support it.

The Respondent played technicalities to game the legal system to the Petitioner's disadvantage. The Petitioner has been terminated a second time under the wrong classification and the Respondent keep insisting that, the Petitioner is a teacher under PGCEA union (teacher union), which is misleading.

The Petitioner is actually support staff personnel under non – certificated union, which is not open to teachers. The Petitioner hearing should have been scheduled in accordance with Md. Ann. Code, Educ. Article § 4-205 and not §6-202. The Petitioner finds himself in legal limbo with no recourse after respondent misled the court.

The U.S Federal Court stayed the case pending the conclusion of the state proceedings. Once the proceedings were over in the Maryland state court, Petitioner Mr. Mua moved the U.S District Court to lift the stay due to widespread fraud. However, the Federal court has failed to reopen the case despite showing of widespread fraud in Maryland during the proceedings. The Board of Education for Prince George's County hired interim CEO Dr. Monica Goldson who was the architect of the illegal activity. She then colluded with others tied to her including hiring of Mr. Christian Rhodes with extensive ties to the former Prince George's county Executive and the union conspirators to defeat justice which is an ongoing illegal activity currently in progress in Maryland.

The Petitioner Mua feels that the court failed to protect the Petitioner's right to fair representation and protection of his rights under the law. As a result of these

errors of the law, the decision of the Maryland State Courts must be reversed and the stay lifted in the best interest of justice.

Other violations currently tied to this case are in progress in Washington DC due to the Petitioner Mr. Mua's protected activity as a reporter and the petition has already notified the Washington DC Superior Court.

REASONS FOR GRANTING AN EXTENSION OF TIME:

The Petitioner Mr. Mua, is currently engaged full-time in a Washington DC Superior Court Case (See *the O'Neal Firm, LLP vs. Josephat Mua* No. 2013 SC3 00426). The Petitioner Mr. Mua who is not a lawyer by training has moved for an appeal proceedings after the January 22nd, 2019 hearing in Washington DC Superior Court. Transcripts were issued on February 15th, 2019 (See App C) and supplement brief is due this week which creates a conflict. The O'Neal Firm response is due anytime now after the appeal was launched.

1. In addition, this case presents an excellent opportunity to resolve many conflicts currently in progress in Maryland and in Washington DC. The Petitioner Mr. Mua was sued maliciously On August 29th, 2018 by the Association of Supervisory & Administrative School Personnel (ASASP) (See *Maryland Docket case # 453711V - Association of Supervisory & Administrative School Personnel (ASASP) vs. Josephat Mua*). That case is tied to other violations currently in progress against Petitioner Mr. Mua in Washington DC. For example, Catholic University of America has recently launched an investigation which is ongoing

and it has ties with the Board of Education for Prince George's County, the role of the Association of Supervisory & Administrative School Personnel (ASASP) and other lawyers associated with them. The Washington DC Superior Court and the U.S District Court will be reviewing the issues due to ongoing retaliation and widespread fraud tied to the Defendants. Due to ongoing litigation and rebuttals to any court filings, Petitioner Mr. Mua will likely be awash in discovery activities and briefing between now and the end of March.

2. Petitioner Mr. Mua has determined that this is a case important enough, both personally and professionally, that it warrants a petition for certiorari. Indeed, the case presents important issues regarding the parameters of the absolute immunity defense for public officials including foreign officials violating rights of American citizens on American soil. Additional time is needed because the undersigned has been sick requires sufficient time to prepare and organize the record and familiarize himself with the case law in this area with an assistance of a lawyer or law firm to draft, file, and have printed petition for certiorari.
3. Petitioner Mr. Mua has recently retained a lawyer to assist on the certiorari petition. The lawyer also needs help to fully familiarize himself with the record, the decisions below, and the relevant statutes and case law, it will be impossible for the new attorney to get up to speed on the complex issues and prepare an exemplary petition by April 29th, 2019.
4. Petitioner Mr. Mua plans also to engage in serious settlement discussions with the Board of Education for Prince George's County and Prince George's County

New County Executive Angela Alsobrooks who was given evidence during a time as the State Attorney for Prince George's County. There were also violations in which the Chief Judge for Prince George's County agreed in the fall of 2018 to review Prince George's County Circuit Court case No. *CAL1136992* (*See Mua vs Board of Education of Prince Georges County*). The latter case is tied to the current appeal after petitioner Mr. Mua moved to the U.S District court due to widespread fraud in Prince George's County. If there is settlement, there will be no need to file a petition for certiorari.

The undersigned sent an email to the Respondent counsels, requesting them to consent to the request for an extension of time within which to file a petition for certiorari. By the time of filing the Motion, the respondent counsels had not responded as it was the weekend with a Federal holiday for Monday February 18th, 2019.

CONCLUSION

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended sixty (60) days to and including ~~April 29th, 2019~~.

Respectfully submitted,

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Sunday, February 17, 2019

Refer to Supreme Court Rules 13.5 and Rule 30.