



Universities Academic Staff Union (UASU) v Kenyatta University (Petition E173 of 2022) [2025] KEELRC 2443 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2443 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E173 OF 2022
HS WASILWA, J
SEPTEMBER 18, 2025**

**BETWEEN
UNIVERSITIES ACADEMIC STAFF UNION (UASU) PETITIONER
AND
KENYATTA UNIVERSITY RESPONDENT**

JUDGMENT

1. By a Petition dated 6th October 2022, the Petitioner sought for the following reliefs; -
 - a. A Declaration that the 1st Respondent's Memo Ref. KU/DVCACAD/CLR/VOL.7 dated 8th September 2022 is unconstitutional, null and void in relation to Articles 10,41,30,47 and 232 of *the Constitution*.
 - b. A Declaration that the Respondents have infringed on the Petitioners constitutional rights under Articles 10,30,41,47 and 232 of *the Constitution*.
 - c. A Permanent Injunction be issued against the Respondents whether by themselves, their servants and or agents or whomsoever is acting on their behalf from implementing the Memo Ref. KU/DVCACAD/CLR/VOL.7 without the inclusion of the Petitioners input.
 - d. Any other or further order this Honourable Court may deem fit to grant in the circumstances
 - e. Interest at court rates on (c) above from the date of filing suit until settlement in full.
 - f. Cost of the suit.

Petitioner's Case

2. The Petitioner avers that it represents members of University Academic Staff in all public universities including the Respondent's academic staff. It is also a member of the Employers Federation of



- Public Universities called Inter Public Universities Councils Consultative Forum (IPUCCF) which the Respondent is a member and has a binding Collective Bargaining Agreement (CBA) with the Petitioner.
3. The Petitioner avers that it entered into a CBA with the public universities which has been duly recognised and registered securing the terms and conditions of their academic staff. Thus, it is a key stakeholder and ought to be involved at all times when such issues arise as required by law for purposes for securing the interest of their members.
 4. It is the Petitioner's case that its exclusion on matters touching on the university academic staff salaries, benefits or other terms and conditions of employment is an infringement of the academic staff's right to CBA guaranteed by *the Constitution*, the *Employment Act* and international best practices in labour relations.
 5. The Petitioner avers that the Respondent prepared a Memo Ref. KU/DVCACAD/CLR/VOL.7 dated 8th September 2022 – Revised Academic Staff Workload Units advising that the University Council had approved a revised additional workload to the lecturers effective 1st Semester 2022/2023 academic year.
 6. It is the Petitioner's case that the Respondent did not involve it nor seek its input in preparation of this memo nor its content although it was bound to affect the staff's terms and conditions of service in respect to workload.
 7. The Petitioner avers that the effect of the impugned memo is that the lecturers will take up additional units compulsorily without room of negotiation or additional remuneration even though extra workload in all universities is an optional decision by respective lecturers at additional remuneration as agreed between the university and lecturer.
 8. The Petitioner avers that it is a necessary stakeholder on matters touching on terms of service and remuneration of the academic staff of public universities as there is an existence of a registered CBA between members of the Petitioner and public universities including the 1st Respondent.
 9. The Petitioner avers that other than the extra workload teachings being voluntary assignments, the Respondent did not consult it before coming up with the decision to compel the lecturers to compulsorily teach the extra workloads before agreeing on remuneration.
 10. The Petitioner avers that in protest to the memo, it wrote to the Respondent on 27th September 2022 citing lack of consultation and exclusion in the process leading to the impugned memo and the Respondent is yet to respond to its concerns but insists on implementation of the memo unless restrained by the court.
 11. The Petitioner avers that it has legitimate expectation that the Respondent would contact it at the opportune time to present its views before the impugned memo could be effected; and that the Respondent would comply with the law before proceeding to enforce the memo as against its members.
 12. The Petitioner avers that the Respondent's actions are unreasonable, unlawful and impractical since all public universities teach a maximum of three units per semester. The Petitioner's members are already teaching the approved units per semester which is over and above the other public universities thus additional units for extra workload would be a violation of fair labour practices and would be discriminatory as it would remunerate differently staff of equal qualifications.
 13. It's the Petitioner's case that the Respondent's action infringes on the academic staff's right to collective bargaining rights guaranteed under Article 41 (5) of *the Constitution*. Further, it touches directly on



the terms and conditions of academic staff contrary to Article 232 of *the constitution* that requires the involvement of people in policy making for accountability and transparency.

14. The Petitioner avers that the Respondent's demands are an affront on their employment contracts and the provision of the CBA. The impugned memo intends to violate the current and existing CBA between the Respondent and IPUCCF.
15. The Respondent intends to unilaterally change without consultation and if not stopped, it will continue to unilaterally alter the terms of service and conditions of work against the Petitioner's members without further consultation which ought to be brought to an end by this court.
16. It is the Petitioner's case that the implantation of the memo will be unconstitutional as it violated Article 30(2) of *the Constitution* which prohibits performance of forced labour thus it ought to be restrained. Additionally, it intends to do away with the union's rights of representation of the teaching staff of public universities and deprive the union of its bargaining power and its members rights and freedom of association contrary to express provision of *the Constitution*.

Respondent's Case

17. In opposition to the Petition, the Respondent filed a Replying Affidavit dated 20th June 2024 and further affidavits dated 13th November 2024 and 24th February 2025 sworn by Professor Nelson Wawire, the Respondent's Acting Deputy Vice Chancellor (Administration)
18. The Respondent avers that itself and other public universities operate on scarce resources due to reduced government funding and reduced student numbers, which information is in the public domain.
19. At some point, some public universities had to pay staff half salaries, however, the Respondent did not take such drastic steps but endeavoured to improve its efficiency without increasing the workload of its staff.
20. The Respondent avers that the impugned memo does not increase the lecturers' workload but it remains at 40 hours per week but in fact observes that the workload of academic members of staff remains at 40 hours per week.
21. The Respondent avers that the Petitioner's complaints deals with allocation and re-allocation of duties to staff members by its management which are at the Respondent's discretion and not this court's.
22. The Respondent avers that before issuing the subject memo, the university management consulted widely with stakeholders and members of staff. The memo was part of wider restructuring efforts at the Respondent university.
23. The Respondent's members of staff supported its efforts to increase efficiency at the university as they understand that failure to take such steps may result to its non-operation in future that may lead to more drastic consequences to its staff, students, other stakeholders and the general public.
24. The Respondent avers that UASU, Kenyatta University Chapter is not operational due to leadership wrangles and litigations including Nairobi ELRC Petition Number E043 of 2021 Frankline Kaburu Kinoti & Others v Universities Academic Staff Union (UASU) Executive, Kenyatta University Chapter & 3 Others hence the Petitioner's mistaken belief there has been no stakeholder consultation as it has been engrossed in internal wrangles.
25. The Respondent avers that considering various orders given in Nairobi ELRC Petition No. E043 of 2021 (Frankline Kaburu Kinoti & Others V UASU Executive, Kenyatta University Chapter & 3



Others), the Petitioner union has no officials capable of authorizing the filing of the petition. Further, in ELRC Petition No 153 of 2022 (Dr. Wilfrida A. Itolodo V Kenyatta University) which was similar to the Application herein was heard on merit and dismissed. Consequently, the petition has been filed without authority and ought to be struck out with costs to the Respondent.

26. It is the Respondent's case that public interest is in favour of disallowing the petition as it is a public university whose core duty is to provide education opportunities to members of the public in the country and train the country's workforce. This would be jeopardised if it is stopped from taking steps aimed at improving efficiency at the university.
27. The Respondent avers that it implemented the impugned memo with effect from 1st semester of 2022/2023 academic year, thus, the court cannot suspend reorganization of work after implementation for almost 2 years as it would introduce unnecessary confusion into the Respondent's academic programmes and prejudice its students.
28. The Respondent avers that the petition was filed prematurely as the Petitioner has not exhausted dispute resolution mechanisms provided in the applicable Recognition Agreement and CBA and the court ought to strike it out under the doctrine of constitutional avoidance.
29. The Respondent avers that it is currently engaging the Petitioner in another round of negotiations towards a new CBA and the concerns raised in this petition are part of the issues in discussion and the same ought to be resolved amicably through negotiations.
30. It is the Respondent's case that this petition is res judicata as the issues raised in this suit relates to the judgment delivered on 21st February 2025 by Hon. Mr. Justice Ongaya in Milimani ELRC Petition Number E098 of 2024 Dr. Wilfrida A. Itolodo v Kenyatta University.

Petitioner's Submissions

31. The Petitioner submitted that in the process of preparing a unilateral memo touching on its members without consultation, the Respondent breached the national values and principles of governance under Article 10 of *the Constitution* which are participation of the people, inclusiveness, good governance and transparency.
32. The Petitioner submitted that its members are granted the right to form, join or participate in activities and programmes of a trade union and the right to engage in collective bargaining. The Respondent's actions undermined these rights which amounts to unfair labour practices and unfair remuneration contrary to Articles 41(1) and (2) of *the Constitution*.
33. The Petitioner submitted that the procedure adopted by the Respondent in coming up with the impugned memo and refusing to respond to the Petitioner and its members concerns is unreasonable, unlawful and unfair and in violation of their right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair under Article 47 of *the Constitution*.
34. It is the Petitioner's submissions that the Respondent is bound by the principles of public service that requires the involvement of the people in policy making, accountability and transparency, however, it failed to consult the Petitioner and its member prior to commencing proposed changes.
35. The Petitioner submitted that the Respondent's action of secretly generating the impugned memo which recommends forced labour without compensation is a clear breach of its duties under the law and the Petitioner's members' rights. As a result of this infringement, the hard-earned terms and conditions of service under the CBA will go down the drain.



36. The Petitioner submitted that its members will be condemned to earn a salary that does not match their workload which is discriminatory and degrading as they will be condemned to receive lower pay vis-à-vis their enhanced workload and compared to other staff in other public universities and in similar grades.
37. It is the Petitioner's submission that the unless this court's intervenes, the Respondent will proceed with the intended implementation of the changes which will occasion injustice to the university academic staff's income vis-à-vis the workload in the presence of an existing CBA which stipulates otherwise without affording the Petitioner an opportunity to be heard by the court.
38. The Petitioner relied in the decisions made in *Universities Academic Staff Union v Murang'a University of Technology & another* (Petition E068 of 2022) [2023] KEELRC 9 (KLR) (12 January 2023) (Judgment) and *Universities Academic Staff Union (UASU) Tum Chapter v Technical University of Mombasa* [2019] KEELRC 683 (KLR) which discussed in detail the principles for grant of an injunction.
39. Based on these decisions, the Petitioner submitted that it has a prima facie case since the issue of introduction of a policy which changed the terms of service for the Respondent's employees without consulting is the issues in dispute which the Petitioner has high chances of succeeding in.
40. The Petitioner submitted that the Respondent through the impugned memo added more work to its staff without compensating them for the extra work done therefore to allow the state of affairs to stand as they will immensely prejudice the Petitioners' members.
41. It is the Petitioner's submission that the instant suit is different from ELRCPET/E098/2025 which was filed by Dr. Wilfrida Itolondo suing Kenyatta University in her individual capacity. Additionally, Dr. Wilfrida Itolondo has no capacity to represent the academic staff on behalf of the union (UASU) since she is not an official of the union. The Respondent has not produced any document in court to show that she is an official of the union and the Petitioner dissociates itself from ELRCPET/E098/2025 since it was not filed on its behalf or its members.
42. The Petitioner submitted that Dr. Wilfrida Itolondo filed a supporting affidavit in ELRCPET/E098/2025 as an employee of Kenyatta University as a Senior Lecturer of Education on her own behalf and on behalf of Kenyatta University employees as key stakeholders of the university and the general public, therefore, it is clear that she was not acting on behalf of the Petitioner. Additionally, Dr. Wilfrida Itolondo did not attach any authority from the Kenyatta University employees allowing her to act on their behalf.
43. It is the Petitioner's submission that the parties in the instant suit and ELRCPET/E098/2025 are different thus the petitions are different. The facts, grounds and prayers sought in the two petitions are different and none relates nor relies on the other. Additionally, the documents relied on are different thereby distinguishing the instant suit from ELRCPET/E098/2025. It relied in the court's sentiments in *Selecta Kenya Gmbh & Co. KG v Chase Bank Kenya Limited & 2 others* [2018] KEHC 10025 (KLR).
44. The Petitioner submitted that the two petitions are not similar in terms of parties, legal representation, pleadings, documents and deponents swearing the supporting affidavits thus the instant petition should be heard based on its merits and allowed as prayed.



Respondent’s Submissions

- 45. The Respondent submitted on four issues: the petition is not ripe for determination; the petition does not raise issues that would require interpretation of *the Constitution*; the necessity and process leading to the Memo dated 8th September 2022 and public interest.
- 46. On the first issue, the Respondent submitted that Clause 3 of the Recognition Agreement requires disputes similar to the instant one be resolved first by a Joint Negotiating Committee, this is restated under Clause 3 of the CBA. The Petitioner has failed to follow the procedure hence this dispute is not ripe for determination.
- 47. The Respondent relied in Hon. Mr. Justice Ongaya’s holding in *Itolondo v Kenyatta University [2025] KEELRC 484 (KLR)* where he stated:

“Be it as it may, the petitioner says nothing of the role of the Joint Negotiating Committee in view of the alleged breach of the cited provisions of the CBA. On the material on record, the Court finds that the petitioner has moved the Court in total disregard of the collective agreement between the union she is a member and the employer, the union. It appears to the Court that the petition is premature besides being abusive of due process of the court in the circumstances that, as already found, the union has already filed a petition to ventilate the collective dispute in issue.

.....

It appears to the Court that the respondent submission that the petition is trapped by the avoidance principle prevails because the dispute is properly covered by provisions of the agreements between the respondent and the union about resolution of the dispute such as the one about the impugned decision said to be unilateral variation of workload or working hours and then the attached compensation. The alleged violation of the Bill of Rights is found not established in the circumstances of the instant petition.”

- 48. It is the Respondents’ submission that the petition is not ripe for determination as the same was not referred to the Joint Negotiating Council as provided for in the Recognition Agreement and the CBA; this is in line with Article 159 of *the Constitution* that requires the court to promote alternative dispute resolution mechanisms. Consequently, the court should down its tools and refer the matter to Joint Negotiating Council.
- 49. On the second issue, the Respondent submitted that the issues raised in the petition revolve around the internal administrative and operational decisions of a public university concerning allocation of duties and staff management. These matters are best addressed through ordinary statutory and administrative legal frameworks thus there is no reason to resort to interpreting *the Constitution* in order to resolve the dispute herein.
- 50. The Respondents submitted that the doctrine of constitutional avoidance is well illustrated by the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2015] KESC 15 (KLR)* wherein the court stated:

“It is imperative that *the Constitution* be interpreted in a manner that avoids excessive reliance on constitutional issues where a matter can be determined on the basis of existing statutory provisions. The Principle of constitutional avoidance is to the effect that a court will not



determine a constitutional avoidance is to the effect that a court will not determine a constitutional issue when a matter may be properly decided on another basis.”

51. The Respondent submitted that Petitioner merely alleges that a memo altered their working conditions without providing any cogent nexus to the infringement of specific constitutional rights; such claims if any, are properly suited for resolution under labour law and collective bargaining mechanisms not constitutional litigation.
52. It is the Respondent’s submission that the petition is an ordinary employer-employee dispute into a constitutional challenge thereby convoluting and complicating the matter. This amounts to misuse of constitutional processes and undermines the efficiency and role of this court in addressing legitimate constitutional questions. Thus, the court should uphold the doctrine of constitutional avoidance and find the petition is improperly before this court.
53. The Respondent submitted that this petition is overtaken by events as it has implemented the impugned memo and its members of staff including lecturers have embraced the same since they all understand the need to improve efficiency at the university during these lean and difficult times. Since the memo has been implemented fully, seamlessly and with great support from the Respondent’s staff, allowing the petition would introduce confusion.
54. On the third issue, the Respondent submitted that the subject memo was issued after consultative and participatory process as it has produced various memos in court issued by the Respondent during consultations leading to the memo. Members of staff supported the proposals during consultations considering they were aware of the dire situation facing the Respondent and all other public universities.
55. The Respondent submitted that the Petitioner’s Kenyatta University chapter was not functional at the time the subject memo was issued and it is still not functional today due to leadership wrangles within the union. In the absence of a functional UASU office at the Respondent’s University meant that the Respondent was handicapped in consulting the union, however, such state of affairs does not the Respondent from consulting its members of staff (who may be the Petitioner’s members) directly. The Respondent called staff meetings which were open to all lecturers who are members of the Petitioner to attend and give views on the proposals aimed at keeping the university afloat.
56. It is the Respondent’s submission that it is impractical and insensitive to suggest that its management should await the Petitioner to conclude its leadership wrangles before it could make decisions aimed at rescuing the University from going under. Necessity and public interest demanded that the Respondent acts provided it consulted stakeholders such as members of staff as it did.
57. The Respondent submitted that it has demonstrated that it took steps to take the views of key stakeholders and that it invited members of staff including the Petitioner’s members to consultative meetings. This was enough public participation and consultation with members of staff.
58. On the fourth issue, the Respondent submitted that it is trite law that public interest prevails over private interest. The Respondent being a public university whose core duty is to provide education opportunities to members of the public throughout the country and to train the country’s workforce; frustrating its efforts to remain afloat would have far-reaching ramifications to students, staff and members of the public who have an interest in the university continued operation and to remain afloat and efficient.
59. I have examined all the averments and submissions of the parties herein. The main contention by the petitioners is that the respondents were attempting to implement a memo Ref No KU/DVCACAD/



CLR/Vol 7 without the petitioner's involvement. The petitioners contend that the respondents decided to issue the memo in question, which infringes on the petitioners constitutional rights to representation by their union.

60. The respondents raised two issues in opposition to this petition:- one that the memo has already been implemented and was implemented with effect from 1st semester of 2022/23 academic year and therefore this court cannot suspend reorganization of work after implementation for almost 2 years. The respondents also aver that this petition is res judicata the same being similar to ELRC Pet No E98/24 Holondo vs Kenyatta University decided on 21/2/25 by Justice Ongaya.
61. The respondents have not denied proceeding to implement the impugned circular/memo without consultation with the petitioner whose members are affected by the said circular. The respondents have contended that the Kenyatta University chapter of UASU is non existent due to leadership wrangles the petitioner however is no Kenyatta University chapter of UASU and the respondents have on principal admitted to proceeding to make changes to matters affecting the rights of the petitioners members without consulting the petitioner which in principal is a breach of their rights under article 41 of the Constitution which stats as follows:
41. (1) Every person has the right to fair labour practices. (2) Every worker has the right— (a) to fair remuneration; (b) to reasonable working conditions; (c) to form, join or participate in the activities and programmes of a trade union; and (d) to go on strike. (3) Every employer has the right— (e) to form and join an employers organisation; and (f) to participate in the activities and programmes of an employers organisation. (4) Every trade union and every employers' organisation has the right— (a) to determine its own administration, programmes and activities; (b) to organise; and (c) to form and join a federation. (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining
62. As concerns this petition being res judicata, in relation to ELRC Pet 098/24. I have considered the judgment of Judge Ongaya in the said petition. The petition related to the implementation of impugned circular and being a breach of clause 5(a) (iv) of 2013 to 2017 CBA on workload of the academic staff without involving the union. In deciding this petition, the Hon. Judge Ongaya made the following finding:.....
- “Petitioner being members of the union has not established a good ground to justify her pursuit of the collective grievance in the circumstance that the union has filed a suit for all union members affected by the impugned decision. The union is a body corporate per section 20 of the LRA 2008 with capacity to sue and be sued in its name. The union was therefore best placed to institute the suit as opposed to the petition with respect to the alleged breach of the cited provision of the collective agreement.....”
63. The Hon. J. Ongaya proceeded to dismiss the petition on the ground of locus of the petitioners but did not consider the merits on otherwise of the petition. The submission that this petition is res judicata is not correct position.
64. As concerns the submissions that the impugned memo has already been implemented, that may be correct but that does not correct any illegality already meted out against the petitioner's union members.
65. All that the petitioners sought of this petition is to be allowed to participate in the decision making process that affects their members whether it ultimately works for or against their members. This being the case, in view of the fact that the respondents admit not involving the petitioner's before making the unilateral decision to implement the memo Ref KU/DVCACAD/CLR/VOL7, it is my finding



that the respondents infringed on the petitioner's constitutional rights under articles 41 and 47 of *the Constitution*.

66. It is however my view that reversing implementation of a memo already implemented over 2 years ago would be counterproductive. I therefore direct that the respondents do engage the petitioners within the next 6 months in order to reach a resolution on how the memo would best continue being implemented taking into consideration the view and rights of the petitioners and their members.

67. In view of the nature of this petition, there would be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

