



Okwadha & 2 others v Universities' Academic Staff Union (UASU) (Petition E214 of 2024) [2025] KEELRC 2715 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2715 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E214 OF 2024
MN NDUMA, J
OCTOBER 2, 2025**

BETWEEN

**DR GEORGE OKWADHA 1ST PETITIONER
DR JOHN OTIENO AWINO 2ND PETITIONER
MR SAMWEL OYUHU 3RD PETITIONER**

AND

UNIVERSITIES' ACADEMIC STAFF UNION (UASU) RESPONDENT

JUDGMENT

1. The Petitioners are lecturers at the University of Nairobi who are aggrieved by provisions of a revised constitution of UASU which was registered on 5th September 2014 by the Registrar of Trade Unions.
2. In particular, the Petitioners impugn Articles 8(c) 9(c) 9(d); 14(e) 14(1) of the said constitution and seeking the following orders:-
 - a. A declaration that the process through which the Articles 8(c), 9(c), (d), 11(c), 14(e), (i) and 19(a) of the revised UASU constitution 2014, was passed is in violation of *the Constitution* of Kenya.
 - b. A declaration that Articles 8(c), 9(c), (d), 11(c), 14(e), (i) and 19(a) of the revised UASU constitution 2014 are unconstitutional to extent that they violate Articles 10(1) and (2), 27 (1) and (2), 41(1) and 47 of *the Constitution* of Kenya.
 - c. That Articles 9(c) and (d) of the revised UASU constitution 2014;
 - i. Failed to meet the constitutional requirements of public participation.
 - ii. The effect of all the above actions is to render the said law illegal and null and void ab initio.



- d. A permanent injunction restraining the Respondent either jointly or severally by themselves, officers subordinate to them, agents, assigns, representatives, employees, servants or otherwise howsoever from taking any steps to enforce or in any way implement the impugned Articles 8(c), 9(c), (d), 11(c), 14(e), (i) and 19(a) of the revised UASU constitution 2014.
 - e. Costs of the suit
 - f. Any other or further orders that the Honourable Court may deem fit to grant.
3. Clause 8(c) is said to be ambiguous; 9(d) is faulted for providing two term limit to elected union officials 14(e) is said to be discriminatory; 14(1) is said to be hazy and ambiguous hence the reliefs sought.
 4. The Petitioner alleges that these revised provisions violates their fundamental rights and freedoms including 1(1) and 10(2) (a) which provides for sovereignty of the people and national values and principles of governance for not holding public participation before revising *the constitution*.
 5. The Petitioner cites Articles 1, 2, 3, 10, 22, 23, 27, 38, 41(1); 47, 48, 81 and 258 as forming the foundation of the petition. It however singles out Articles 1(1) which provides that all sovereign power belongs to the people and 10(2) (a) which provides for national values for having been violated by the Respondent. The Petitioner does not in paragraphs 49 to 52 titled “violation of the Petitioners Fundamental Rights and Freedoms elaborate with precision and clarity the manner of violations of their rights and fundamental freedoms by the Respondent.
 6. This suit is not defended however the issue for determination is whether this petition discloses a cause of action from the pleadings set out in the petition in terms of the principles set out in the case of Anarita Karimi Njeru v Attorney General [No. 11 /1979] KCR 154, where the Court stated:-

“If a person seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (If only to ensure that Justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
 7. The Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR) said that;

“However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:



“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

8. This Petition does not set out with reasonable degree of precision the constitutional provisions allegedly violated as is laid in the above-mentioned authorities. There is for example references to Articles 2, 3, 10, 19, 20, 21, 22, 23, 27, 41, 47 & 258 of *the Constitution*, but there is little to no accompanying details as to the manner of the alleged infringement. It is also stated that the failure to provide public platform for public participation demonstrates a disregard for the constitutional provisions but there is scant details as to how this violates *the constitution*. And it is also stated that the revised constitution is discriminatory to the incumbents national officials as it subjects them to election twice with no foundational facts. It is also averred that Article 11(c) of revised UASU Constitution 2014 which states that the national delegates conference shall elect three trustees, from among delegates in whom shall be jointly vested all the property of the union is discriminatory to trustees compared to other officials, again with very little details provided on the violation.
9. Furthermore, the changes were made in the year 2014, more than ten (10) years ago and boggles the mind when the Petitioners realized the impugned provisions negate their constitutional rights. In addition, *the constitution* of the union is made and reviewed through established procedures set out in *the constitution* itself. There is no indication that these matters were ever raised as a grievance or dispute for resolution in any of the organs of the union.
10. In addition, this is a labour relations dispute which ought to be subjected to conciliation procedures under the *Labour Relations Act*, 2007. This petition does not disclose any such reference by the Petitioners to the appropriate labour office for resolution.
11. In the final analysis, the Petitioner has not proved on a balance of probability that the Respondents have violated Articles 1(1) and 10(2) a of *the Constitution* as alleged or at all.

The petition is dismissed for lack of merit with no order as to costs

DATED AT NAIROBI THIS 2ND DAY OF OCTOBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Otieno for Petitioner

Mr. Kemboi – Court Assistant

