

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E083 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

DR. SHADRACK MUYA.....
PETITIONER

VS

THE BOARD,
KENYA MEDICAL RESEARCH INSTITUTE.....1ST
RESPONDENT
PUBLIC SERVICE COMMISSION OF KENYA.....2ND
RESPONDENT

JUDGMENT

- 1 By a Petition dated 5th May 2025, the Petitioner sought for the following reliefs; -
- a) *A declaration that the Kenya Medical Research Institute's Human Resource Policy & Procedures, specifically Clause 13.1.1 (C) to the extent that it provides for retirement at the age of 65 for its academic staff, is unconstitutional, null and void.*
 - b) *A declaration that the 1st Respondent Professor's scientists and other academic staff have a legitimate expectation to work until they attain the age of 74 years.*
 - c) *A declaration that the imminent early retirement of the 1st Respondent Professor Scientists and other academic staff is unconstitutional.*

- d) An order of prohibition barring the Respondents from retiring the 1st Respondent's Professor Scientists and other academic staff herein upon attaining the age of sixty-five (65) years.*
- e) Damages for violation of the Petitioner's fundamental rights and freedoms under Articles 27, 28 and 41 of the Constitution.*
- f) Costs of this suit.*
- g) Any other reliefs that this Honorable Court may deem fit to meet the ends of justice.*

Petitioner's Case

- 2 The Petitioner avers that he is a bonafide member of UASU and an employee of the Jomo Kenyatta University of Agriculture and Technology currently serving as the JKUAT-UASU Secretary.
- 3 He avers that UASU negotiated a Collective Bargaining Agreement with the IPUCCF and FKE; and Clause 2 of the CBA sets the retirement age for Lecturers, Senior Lecturers, Associate Professors and Professors as 74 years.
- 4 The Petitioner avers that pursuant to a Memorandum of Agreement dated 1st October 2020 between the Jomo Kenyatta University of Agriculture and Technology and the 1st Respondent, the 1st Respondent recognized JKUAT as a Centre approved to run stipulated specific JKUAT academic programs in Masters and PhDs. Vide the Memorandum of Agreement and in furtherance of KEMRI's desire to build

capacity for postgraduate research, JKUAT approved and appointed teaching staff under the collaboration.

- 5 The Petitioner avers that the union vide a letter dated 3rd April 2025, confirmed and listed KEMRI researchers who are bonafide members of UASU.
- 6 The Petitioner avers that the 1st Respondent has already issued retirement notices to some of its Professor scientists nearing the age Sixty-Five (65) years instead of Seventy-Four (74) years as per the Collective Bargaining Agreement with the IPUCCF and FKE.
- 7 It is the Petitioner's case that the 1st Respondent failure to vary, amend and/or set aside their Human Resource Manual and, specifically the provisions regarding retirement therein, violates Article 27 (1) of Constitution particularly the discrimination of setting up the professor scientists for retirement by failing and/or refusing to vary, amend and/or set aside their policy, specifically the provisions regarding retirement.
- 8 The Petitioner avers that having signed and registered a Collective Bargaining Agreement which set the retirement age for Lecturers, Senior Lecturers, Associate Professors and Professors as 74 years, the 1st Respondent has failed and/or refused to vary, amend and/or set aside the said policy, specifically the provisions setting retirement. This action and omission violate Article 41 (5) of the Constitution that entitles every person to the right to fair

labour practices and every trade union the right to engage in collective bargaining.

- 9 The Petitioner avers that the professor scientists had a legitimate expectation to work until they attained the age of 74 per the CBA duly registered and binding between all parties herein. Thus, the Respondents' actions and omissions are unconstitutional, null and void.

1st Respondent's Case

- 10 In opposition to the Petition, the 1st Respondent filed a Replying Affidavit dated 8th July 2024 sworn by Ben Sifuna, the Deputy Director Human Resource Management of the Kenya Medical Research Institute.
- 11 The 1st Respondent avers that it is established pursuant to the Kenya Medical Research Institute Order, Legal Notice Number 35 of 2021 to manage the affairs of the Kenya Medical Research Institute. It is classified as a Research Institute under section 16 (2), section 53 and Schedule Four of the Science Technology and Innovation Act 2013.
- 12 The 1st Respondent avers that it has a Human Resource Policy and Procedures Manual 2019 which sets out under paragraph 13.3 that the retirement age for non-scientists at 60 years and for scientists at 65 years.
- 13 It is the 1st Respondent's case that all its employees are bound by the terms and conditions of the employment

contract as stipulated by the provisions of the Employment Act.

- 14 The 1st Respondent avers that is guided by the Public Service Commission Act and the Public Service Regulations in setting the retirement age for its employees. Section 80 of the Public Service Commission Act and Regulation 70 the Public Service Regulations 2020 have set the mandatory retirement age for non-scientists at 60 years while the Public Service Commission is empowered to determine retirement age for lecturers and research scientists serving in universities and research institutions.
- 15 The 1st Respondent avers that the Petitioner anchors the Petition on the Collective Bargaining Agreement between the Universities Academic Staff Union (UASU), Inter-Public Universities Councils Consultative Forum (IPUCCF) and the Federation of Kenya Employers (FKE) which it does not subscribe to and therefore not bound.
- 16 The 1st Respondent avers that it has not entered into a Recognition Agreement or Collective Bargaining Agreement with the Petitioner Union. Further, it is not a member of IPUCCF or FKE, therefore, it not a party to the CBA or involved in its negotiation, execution, or implementation. As such, it is not bound by its terms, and any reliance on the CBA is misguided.

- 17 It avers that its relationship with JKUAT is governed by a memorandum of agreement under which JKUAT recognized it as a center approved to host specific postgraduate academic programs. Under this agreement, JKUAT retains exclusive responsibility for accreditation, approval, and appointment of academic staff serving under the JKUAT-accredited programs hosted at the 1st Respondent's Graduate School.
- 18 The Petitioner avers that it does not employ academic staff under the terms of the CBA in question and it is not a Public University or academic employer within the contemplation of the said agreement.
- 19 The Petitioner avers that the petition fails to disclose or demonstrate whether any of its employees is currently serving as an academic staff member approved or appointed by JKUAT within the 1st Respondent's Graduate School.
- 20 The Petitioner avers that the only retirement notice annexed to the petition refers to an individual who is neither recognized by the 1st Respondent as an appointed lecturer or academic staff under the institution's approved postgraduate programs, nor is there evidence that such person was engaged pursuant to the said Memorandum of Agreement.
- 21 It avers that the petition therefore lacks specificity and evidentiary support to sustain the claim that it has acted

contrary to any contractual or constitutional obligation in respect to retirement of academic staff.

22 It is the 1st Respondent's case that the petition is misconceived, speculative, and an abuse of the court process, as it attempts to enforce the terms of a CBA against a party that is neither a signatory to the CBA nor bound by its provisions.

2nd Respondent's Case

23 In opposition to the petition, the 2nd Respondent filed a replying affidavit dated 19th June 2025, sworn by its Secretary/CEO, Paul Famba.

24 The 2nd Respondent avers that Section 10 of the Employment Act provides that a written contract of service shall state the name, age, permanent address and sex of the employee and the name of the employer.

25 The 2nd Respondent's employees' contract of service indicates the name of the employer and employee; thus, the employee can only be bound to the terms of the contract he or she enters into with the employer indicated in said contract.

26 It is the 2nd Respondent's case that the Petitioner admitted that the scientists and researchers referred to in the petition are the 1st Respondent's employees, which is a state corporation responsible for carrying out research in

human health in Kenya. As a result, they are bound by the terms and conditions of their respective employment contracts which they entered into with the 1st Respondent's institution.

- 27 The 2nd Respondent avers that KEMRI's Human Resource Policy and Procedures Manual which sets the retirement age for scientists at sixty-five (65) years, fully applies to them.
- 28 The 2nd Respondent avers that Section 54 (3) of the Labour Relations Act provides: *"an employer, a group of employers or an employer's organization referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organization recognizes a trade union."* The Petitioner has not adduced any evidence to demonstrate the existence of a recognition agreement between UASU and KEMRI that satisfies the requirements set out under Section 54 of the Labour Relations Act.
- 29 The 2nd Respondent avers that pursuant to Section 59 of the Labour Relations Act, a collective agreement is only binding on the parties to that agreement. The Petitioner has not produced any evidence demonstrating the existence of a CBA between UASU and KEMRI, which is the employer in this matter. Consequently, the CBA relied upon by the Petitioner cannot be deemed binding upon KEMRI or its employees as KEMRI was not a party to the same.

- 30 It is the 2nd Respondent's case that by virtue of KEMRI and JKUAT entering into a Memorandum of Agreement aimed at building capacity for Masters and Post Graduate research does not in any way alter or convert the terms of employment of KEMRI employees to those applicable to JKUAT employees nor does it convert the terms of JKUAT employees to those of KEMRI.
- 31 The 2nd Respondent avers that the Petitioner has not provided any proof to the effect that there are researchers/scientists employed by the 1st Respondent's institution, who have been issued with retirement notices, to justify the orders sought in the petition.

Petitioner's Submissions

- 32 The Petitioner submitted that Section 59 (3) of the Labour Relations Act provides: - "The terms of the collective agreement shall be incorporated into the Contract of employment of every employee covered by the collective agreement."
- 33 The Petitioner submitted that it stand to suffer irreparably if the 1st Respondent is not restrained by issuance of an injunctive order directed to the 1st Respondent from retiring any of its Professors, Lecturers and Research Scientists under the KEMRI - JKUAT Faculty Collaboration, members of UASU and who have attained the age of sixty five (65) years pending the hearing of the petition on violation of rights enshrined in the Constitution.

34 It was submitted that the effect of a registered CBA is to give it validation in law and any attempt by a party to the same to hide behind internal circulars is bad in law and should not be allowed by this court to circumvent such an agreement.

35 The Petitioner submitted that the Professors, Research Scientists issued with retirement notices by the 1st Respondent and those that are about to be issued with retirement notices are still in employment with the 1st Respondent, thus, it tilts in their favour and should not be subjected to retire on attaining any other age other than age of 74 years as set out in the CBA.

1st Respondent's Submissions

36 The 1st Respondent submitted on three issues: whether the 1st Respondent is bound by the terms of the Collective Bargaining Agreement between the Universities Academic Staff Union (UASU) and the Inter-Public Universities Councils Consultative Forum (IPUCCF) and the Federation of Kenya Employers (FKE) dated 23rd November, 2024; what is the retirement age of Professor scientists employed by the 1st Respondent and serving under the KEMRI —JKUAT Faculty collaboration and as per the Memorandum of Agreement between JKUAT and the 1st Respondent that the entered into on 1st October 2020; and whether the Petitioner is entitled to the orders sought in the petition.

- 37 On the first issue, it was submitted that the 1st Respondent is not bound by the terms the Collective Bargaining Agreement between UASU, IPUCCF and FKE dated 23rd November 2024 as the 1st Respondent was not a party to the said CBA, was not involved in its negotiation, execution or implementation and therefore does not prescribe to the terms of the said CBA.
- 38 The 1st Respondent submitted that Section 2 of the Labour Relations Act defines a collective agreement as: "*a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employees or organization of employers.*" It is the employer of the professor scientists that the Petitioner alleges that he represents, however, it is not a public university but a state corporation and a research institute. It contends that it is a body corporate and is not a member of Inter-Public Universities Councils Consultative Forum (IPUCCF) and the Federation of Kenya Employers (FKE) who signed the CBA and are referred to in the said CBA as "*the employer*".
- 39 The 1st Respondent submitted that it was not a party to the CBA in question and hence it is not privy to the said CBA. It relies on the doctrine of privity of contract and submits that it is not bound at all to any of the terms of the CBA. Reliance was placed in

- 40 It is the 1st Respondent's submission that since it was not a party to the CBA in question, there are no rights and obligations that arise as regards it and it is not bound by the terms of the said CBA. The terms of the CBA are therefore not enforceable as against the 1st Respondent since it is a stranger to the CBA. In the circumstances, the petition lacks any merit and should be dismissed with costs to the Respondents.
- 41 On the second issue, the 1st Respondent submitted that it is not in dispute that the Professor scientists serving under the KEMRI-JKUAT Faculty collaboration are employees of the 1st Respondent and not JKUAT. These employees have a contract of employment between them and the 1st Respondent. Consequently, their retirement age is as provided in their individual contracts of employment and the Human Resource Policy and Procedures Manual of January, 2019.
- 42 The 1st Respondent avers that its Manual sets forth the principles and regulations that guide the administration of human resources and defines terms and conditions of service of its staff. It also states that it provides the guidelines for staff recruitment, selection, appointment, training, development, promotion and separation. At page xvii of the Manual (Preface), it is indicated that due to the fundamental changes in the management of Human Resource including the implementation of the reviewed Public Service Human Resource Policy and Procedures Manual, 2016, the Collective Bargaining Agreement (2013

— 2017) among other changes the 1st Respondent found it necessary to review its Human Resource Policy and Procedures Manual of 2011.

43 The 1st Respondent submitted that against this background, it is clear that it has been negotiating Collective Bargaining Agreements with a trade union within the research sector and who have a recognition agreement with the 1st Respondent. It asserts that the trade union is not UASU.

44 The 1st Respondent submitted that the Professor scientists referred to by the Petitioner have individual contracts of employment with the 1st Respondent clearly stipulating the terms and conditions of their employment. These Professor scientists are not employees of JKUAT which is a public university and are not unionisable academic staff as stated at the preamble of the CBA in question, which states: *“WHEREAS by the terms of the Recognition Agreement (RA) dated nth October, 2019 between the Employer and the Union, the Employer having recognized the Union as properly constituted as the only labour organization capable of representing the interest of Unionisable Academic Staff viz. Graduate Assistant/Research Assistant; Assistant Lecturer/Tutorial Fellow/Junior Research Fellow; Senior Lecturer/Senior Research Fellow; Associate Professor and Professor in all Public Universities and their Constituent Colleges on matters of Salaries, House Allowance and other terms and conditions of service.”*

- 45 The 1st Respondent submitted that the Petitioner has not produced any evidence that the Professor scientists are indeed members of UASU as provided under the Labour Relations Act.
- 46 It is the 1st Respondent's submission that for an employee to be a member, of a trade union, he/she must qualify to be a member of that trade union and as provided under the registered constitution of the said union. The employee must also comply with the requirements provided in the said constitution such as payment of membership \entry fees and subscriptions. The employee must also be working in the sector for which the trade union is registered and as per section 14 of the Labour Relations Act. It is only after the employee has complied with the said requirements that the said employee can be said to a bonafide member of the union.
- 47 It further submitted that under Regulation 3 of the Labour Relations (General) Regulations, 2014, every trade union is required in mandatory terms to keep a register of its members and a trade union that fails to do so commits an offence.
- 48 The 1st Respondent submitted that the Professor scientists listed at paragraph 9 of the supporting affidavit of the Petitioner sworn on 5th May, 2025 are not members of UASU JKUAT Chapter as alleged by the Petitioner The Petitioner ought to have produced a copy of the register of

the members of UASU JKUAT Chapter with the entries as required under the aforesaid Regulations and not produce a mere schedule as he purported to do in his supplementary affidavit.

- 49 It is the 1st Respondent's submission that in view of the doctrine of privity of contract, the Petitioner as the Secretary General, UASU JKUAT Chapter is a stranger to the contracts of employment between the 1st Respondent and the Professor scientists and hence cannot purport to represent the interest of the said the Professor scientists.
- 50 The 1st Respondent submitted that the CBA was executed on 23rd November, 2024 whereas the Memorandum of Agreement was executed on 1st October, 2020. The CBA which is the latter document did not refer to the Memorandum of Agreement hence these are two independent documents and the parties to each of these documents did not intend that the terms of these documents were to be read and/or applied together. Additionally, the CBA cannot apply retrospectively.
- 51 The 1st Respondent submitted that under Clause 2 of the Memorandum of Agreement there are other documents that the parties executed viz, Memorandum of Understanding and Financial Memorandum. These documents have not been produced and the Court cannot ably interpret the terms of the Memorandum of Agreement without the other documents.

- 52 The 1st Respondent submitted that under Clause 3 of the Memorandum of Agreement, the Agreement is for a term of 5 years from 1st October, 2020 and hence the Agreement expired on 30th September, 2025 and there is no evidence of renewal of a further term. This Court cannot therefore make a decision on' the basis of an expired document and hence the contents of the Memorandum of Agreement should be disregarded.
- 53 The 1st Respondent submitted that the Petitioner has attached a letter by JKUAT dated 30th January, 2025 and which contains a list of only 15 Professor scientists that were approved as lecturers by JKUAT under KEMRI —JKUAT Faculty collaboration. Under Clause 7.5 of the Memorandum of Agreement it is the responsibility of JKUAT to approve and appoint teaching staff and supervision faculty for the approved programs under the collaboration. Additionally, out of the list, only 1 Professor Scientist appointed as a lecturer under the JKUAT under KEMRI — JKUAT Faculty collaboration — Prof. Elizabeth A. Bukusi — has been issued with a retirement notice.
- 54 It is the 1st Respondent's submission that the Professor scientists that the Petitioner purports to represent are public officers and hence fall under the purview of the 1st Respondent as provided under Article 234 of the Constitution. Consequently, the setting of the retirement age for employees of the 1st Respondent is guided by the provisions of the Public Service Commission Act and the Public Service Regulations, 2020. Further, sections 79 & 80

of the Public Service Commission Act and Regulation 70 (1) (c) of the Public Service Regulations, 2020 have set the mandatory age for nonscientists at 60 years and the Public Service Commission is empowered to determine the retirement age for lecturers and research scientists serving in universities and research institutions in consultation with such universities, research institutions or equivalent institutions.

55 The 1st Respondent submitted that pursuant to Regulation 70 (1) of the Public Service Regulations, 2020 it has formulated a Human Resource Policy and Procedures Manual of January, 2019 in consultation with the Public Service Commission which contains the terms and conditions of employment of its employees. This includes the issue of retirement from service. Section 13 of the Manual provides for Employee Separation through retirement, resignation, termination of employment, expiry of contract, dismissal, death and redundancy/abolition of office. Clause 13.1.1 of the Manual states: "*An employee can retire on the following grounds: - (a) On attaining the retirement age of fifty (50) years; (b) On attaining the mandatory retirement age of sixty (60) years for non — Scientists; (c) On attaining the mandatory retirement age of sixty - five (65) years for Scientists and also persons with disability; (d) At any time on either medical grounds or re-organization and abolition of office.*"

56 It is the 1st Respondent's submission that it is not in breach of the Constitution, any statutory law or other Government

policy in issuing the retirement notices in question as the Professor Scientists are required to retire upon attaining the mandatory retirement age of sixty - five (65) years. Therefore, the retirement age of Professor scientists employed by the 1st Respondent and serving under the KEMRI — JKUAT Faculty collaboration and as per the Memorandum of Agreement between JKUAT and the 1st Respondent entered into on 1st October, 2020 is 65 years.

57 On the final issue, the 1st Respondent submitted that against the background laid down in its submissions, the Petitioner is not entitled to the prayers sought.

2nd Respondent's Submissions

58 The 2nd Respondent submitted on two issues: whether there was a legitimate expectation for the professors and scientists employed by the 1st Respondent to retire upon attaining the age of 74; and whether the Petitioner is entitled to the reliefs sought.

59 On the first issue, the 2nd Respondent submitted that since an employment contract indicates the name of the employer and the employee as provided in Section 10 of the Employment Act, the employee can only be bound to the terms of the contract he or she enters into with the employer indicated in said contract.

60 The 2nd Respondent submitted that a recognition agreement between a trade union and an employer must

satisfy Section 54 of the Labour Relations Act which provides:

“(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

(2) A group of employers, or an employers’ organisation, including an organisation of employers in the public sector, shall recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers’ organisation within a sector.

(3) An employer, a group of employers or an employer’s organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers’ organisation recognises a trade union.”

- 61 The 2nd Respondent submitted that Section 59 of the Labour Relations Act provides that a collective agreement binds for the period of the agreement: the parties to the agreement; all unionisable employees employed by the employer, group of employers or members of the employers’ organization party to the agreement; or the employers who are or become members of an employers’ organization party to the agreement, to the extent that the agreement relates to their employees.

62 The 2nd Respondent submitted that the question of legitimate expectation was addressed in ***Republic v Principle Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO [2019] KEHC 10312 (KLR)*** wherein it was observed that meet the threshold for legitimate expectation, one has to satisfy: the existence of a representation which is clear, unambiguous and devoid of relevant qualification; the expectation must be reasonable in the sense that a reasonable person would act upon it; the expectation was induced by the decision-maker; and that it was lawful for the decision maker to make such representation.

63 It is the 2nd Respondent's submission that the Petitioner herein together with the professors, scientists, on whose behalf he has filed the petition, have not satisfied the above requirements for their claim for legitimate expectation to stand as they are basing the same on a CBA to which KEMRI is not a party, yet it is the employer. A pre-requisite that has to be in existence for the provisions of the CBA to be applicable to them. Accordingly, there was no clear, unambiguous, or reasonable representation, nor was any expectation induced by the decision-maker, who in this case is the employer, for there to be a legitimate expectation of retiring at the age of seventy-four (74) as alleged by the Petitioner.

64 The 2nd Respondent submitted that by virtue of KEMRI and JKUAT entering into a Memorandum of Agreement aimed

at building capacity for Masters and Post Graduate research, does not in any way alter or convert the terms of employment of KEMRI employees to those applicable to JKUAT employees nor does it convert the terms of JKUAT employees to those of KEMRI.

- 65 The 2nd Respondent submitted that there was no legitimate expectation for the professors/scientists employed by the 1st Respondent to retire upon attaining the age of 74 as their terms and conditions of employment are governed by their employer's human resource policies, which set their retirement age at 65 years. Thus, they cannot claim to have had a legitimate expectation based on the CBA between IPUCCF and UASU as their employer has no recognition agreement with UASU, nor was it a party to the said CBA for it to be bound by it.
- 66 On reliefs, the 2nd Respondent submitted that having established that there was no legitimate expectation for the professors/scientists employed by the 1st Respondent to retire upon attaining the age of 74, the Petitioner is not entitled to any of the reliefs sought in the petition.
- 67 The 2nd Respondent further submitted that the Petitioner has failed to plead with precision the specific particulars of any alleged constitutional violations by the 2nd Respondent as per the threshold set out in ***Anarita Karimi Njeru v Republic [1979]eKLR***.

68 I have considered the averments and submissions of the parties herein. The petitioner has averred that the respondents have in blatant disregard to the CBA between UASU & the 1st respondent decided to retire him and others before the time set at 74 years.

69 The petitioner has referred court to the said CBA at clause 2 which states as follows: “ the retirement age for all academic members of staff shall be harmonized and set as follows:-

“ (i) 70 years for Graduate Assistant Tutorial Fellow and Assistant Lecturers, and
(ii) 74 years for lecturers, senior lecturer, Assistant Professor and Professor.”

70 The petitioner has also averred that pursuant to the MOU dated 1st October 2020 between JKUAT and the 1st respondent, the 1st respondent was recognized as a Centre approved to run specific JKUAT programmes in Masters and PHDs and that in furtherance of this against JKUAT approved and appointed teaching staff under the collaboration.

71 From the documents produced by the petitioner herein on 16/1/2025 the 1st respondent wrote to VC, JKUAT confirming the KEMRI, JKUAT faculty with the names of the faculty members listed therein.

- 72 By virtue of these understanding, the listed faculty members are members of JKUAT- KEMRI MOU and as such are subject to JKUAT CBA with the 2nd respondents. In fact under the MOU clause 7.5, JKUAT undertook to “ *Approve and appoint teaching and supervision faculty for the approved programs under this collaboration.*”
- 73 Clause 8.6 provides that each party undertook to jointly and severally to “make honorary or adjunct appointments based on qualification and experience, and in accordance with the rules and regulations governing substantive appointments in the reciprocating institutions.”
- 74 My understanding of the MOU between JKUAT and the 1st respondent was to ensure faculty members were to be governed by the rules and regulations governing substantive appointments in the reciprocating institutions and in this case the institution is JKUAT.
- 75 Having considered the above, and in reliance to the CBA in place between the Intra Public Universities Councils consultative forum (IPUCCF) FKE and UASU the retirement of the faculty members serving under the MOU with the 1st respondent cannot be different from the faculty members serving at other universities. The said faculty members are subject to the provisions of the CBA and retire as per clause (2) above.
- 76 The petitioner has averred that the 1st respondents have decided to retire the 1st respondent professor scientists

and other academic staff at 65 years. This is definitely in breach of their labour rights under article 41 of the Constitution which provides for the preservation of Labour rights and fair labour practices. Purporting to retire an employee before their retirement age is breach of their labour rights and therefore null and void.

77 In view of this finding, I find for the petitioner and declare that the 1st respondent Professor Scientists and other academic staff have a legitimate expectation to work until the retirement age spelt out in the CBA. Any purported imminent early retirement of the said Prof Scientists and other academic staff is unconstitutional.

78 An order is hereby issued barring the respondents from retiring the 1st respondent professor Scientists and other academic staff herein upon attaining the age of 6 years. Since the said retirement has not been effected the clause for damages for breach is not warranted. There will be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 26th Day of November 2025.

**HELLEN WASILWA
JUDGE**