



**Gumbe v Vice-Chancellor, The Technical University of Kenya & another (Employment and Labour Relations Petition E010 of 2024) [2026] KEELRC 18 (KLR) (15 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 18 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**EMPLOYMENT AND LABOUR RELATIONS PETITION E010 OF 2024**  
**HS WASILWA, J**  
**JANUARY 15, 2026**

**BETWEEN**

**PROF LAWRENCE OTWEYO MIGIRE GUMBE ..... PETITIONER**

**AND**

**THE VICE-CHANCELLOR, THE TECHNICAL UNIVERSITY OF  
KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN OF COUNCIL, THE TECHNICAL UNIVERSITY OF  
KENYA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a Petition dated 26<sup>th</sup> January 2025, the Petitioner prayed the following orders: -
  1. A Declaration does issue that the deductions are illegal, null and void and contrary to Article 1, 2; 27; 28; 41; 47; and 50 of *the Constitution* of Kenya 2010 as read with the *Employment Act* of Kenya and the *Fair Administrative Action Act*.
  2. An Order of compensation does issue pursuant to Article 23 of *the Constitution* directing the Technical University of Kenya to pay damages to Prof. Lawrence Otweyo Migire Gumbe, the Petitioner herein, for the violation and contravention of his fundamental rights and freedom.
  3. An Order does issue pursuant to Article 23 of *the Constitution* directing the Technical University of Kenya and Vice Chancellor to withdraw the letter dated 5<sup>th</sup> January 2024 unconditionally.
  4. An Order awarding costs of the Petition to the Petitioner.
  5. Any other or further orders, writs and directions this Court considers appropriate and just to grant for the purpose of the enforcement of the Petitioner's fundamental rights and freedoms.



## **Petitioner's Case**

2. The Petitioner avers that he was employed by the Technical University in 2008 and subsequently, he was appointed as an adjunct professor.
3. He avers that he was later interviewed and appointed as a professor on contract terms, which process was done transparently and competitive.
4. The Petitioner avers that he has been earning a gross salary of Kshs. 385,525 which amounts to Kshs. 264,445 after statutory deductions.
5. The Petitioner avers that as a professor, he was engaged in: Curriculum development, teaching, graduate supervision, professional mentorship; Supervision of staff, industry linkages; Research and publication; and Chairing of University and faculty committees.
6. It is the Petitioner's case that as a professor, the allocation of duties is primarily carried out by the management of the University, under the leadership of the Vice Chancellor.
7. The Petitioner avers that on 4<sup>th</sup> January 2024, he received a letter from the Vice Chancellor directing that Kshs. 4,140,232.80 be deducted from his salary. However, the letter is silent on the time frame and amount to be deducted per month.
8. The Petitioner avers that prior to the abrupt, arbitrary and unilateral decision, he neither afforded an opportunity to be heard nor issued notice in breach of his right to fair labour practices and fair hearing under Articles 41 and 50 of *the Constitution*.
9. It is the Petitioner's case that the Respondents' actions have occasioned him great prejudice and an infringement of his fundamental rights and freedoms in that the actions by the Respondents are illegal and in contravention of *the Constitution*.
10. He avers that his right to fair administrative action as guaranteed under Article 47 of *the Constitution* as read with the provisions of the *Fair Administrative Action Act* as an adverse decision has been made against him which is unreasonable and without following the proper procedure and tenets of employment law.
11. The Petitioner avers that the Respondents' actions are contrary to Article 21 of *the Constitution* in that the University and Vice Chancellor have abdicated on their constitutional obligation to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights as pleaded herein in regard to the Petitioner.
12. The Petitioner avers that the planned salary deductions are un-procedural, unfair, and contrary to fair labour practices. Additionally, his right to human dignity as guaranteed under Article 28 of *the Constitution* was infringed.

## **Respondents' Case**

13. In opposition, the Respondents filed a replying affidavit dated 5<sup>th</sup> November 2025, sworn by Ruth Kirwa, the 1<sup>st</sup> Respondent's Chief Legal Officer.
14. The Respondents aver that it formally appointed the Petitioner as a Professor vide the contract letter dated 19<sup>th</sup> December 2014, for a two-year term renewable on mutual agreement. However, it maintained that the Petitioner's claims of an earlier 2008 engagement are not supported by the Respondent's records.



15. The Respondents aver that its letter of 5<sup>th</sup> January 2024, was a lawful communication regarding the recovery of funds paid to the Petitioner for periods during which he did not render teaching services.
16. However, the Petitioner filed a Notice of Motion application dated 26<sup>th</sup> January 2024, seeking, inter alia, orders to restrain the Respondents from effecting any salary deductions. This Court delivered a ruling on 5<sup>th</sup> April, 2024, wherein it issued orders prohibiting the Respondents from withholding the Petitioner's salary.
17. The Respondents aver that in compliance with the court order of 5<sup>th</sup> April, 2024, they have at all times forthwith ceased and desisted from any and all recovery efforts from the Petitioner's salary and processed and paid the Petitioner his full salary and all terminal benefits due to him upon his retirement, without any unlawful deductions.
18. The Respondents contend that consequently, the Petitioner's primary grievance regarding the interference with his salary and the threat of deductions is now spent, moot, and entirely overtaken by events. Their lawful actions were superseded by their strict adherence to the Court's order, which has fully addressed the interim relief sought by the Petitioner.
19. It is the Respondents' case that the Petitioner's claim for a declaration that the deductions are illegal and an order to withdraw the letter of 5<sup>th</sup> January, 2024 have been rendered nugatory and are incapable of being granted.
20. The Respondents assert that they acted bona fide and in accordance with their right to recover funds paid for services not rendered. Their initial action was based on a genuine belief, supported by evidence, that a debt was owed to the institution.
21. The Respondents aver that upon the Court's intervention, they immediately complied, thereby respecting the Petitioner's rights and the authority of the Court. Therefore, the Petitioner has not suffered any violation warranting an award of damages; his rights were protected by the Court process, to which the Respondents dutifully adhered.
22. The Respondents aver that the Petitioner has not demonstrated any tangible loss or injury that persisted after the court's ruling of 5<sup>th</sup> April, 2024.
23. It is the Respondents' case that their actions cannot be construed as a violation of the Petitioner's rights under Articles 27, 28, 41, 47, and 50 of *the Constitution* as alleged. The Respondents merely initiated a lawful recovery process and promptly ceased the same in obedience to a court order.
24. The Respondents aver that the Petition has been stripped of its substantive cause of action and persists only as a claim for damages, which is wholly unmerited.

### **Petitioner's Submissions**

25. The Petitioner submitted that he has explained the facts of the case, the legal foundation of the petition and the contravention of *the constitution* and the law. He thus urged the court to find that he has proved his case on a balance of probabilities based on this basis.

### **Respondents' Submissions**

26. The Respondents submitted that a matter is moot when it no longer presents a live controversy or when the court cannot grant effective relief. The Court has consistently held that it will not determine academic or hypothetical questions.



27. They submitted that in the instant petition, prayer 1 (Declaration of illegality) and prayer 3 (Withdrawal of letter) relate to an action (salary deduction) that was permanently halted by court order delivered on 5<sup>th</sup> April, 2024 by Hon. Lady Justice Anna Ngibuini Mwaure, which prohibited them from withholding the Petitioner's salary. They complied and did not do any deductions at the time that the Petitioner retired and was being paid his dues. Therefore, the Court cannot issue a declaration on an action that no longer exists or order the withdrawal of a letter whose action was neutered by compliance with a court order.
28. The Respondents' submitted that their initial action was based on a legitimate belief, supported by university records, that a debt was owed. The right to recover public funds paid for services not rendered is inherent in the Respondents' fiduciary duty.
29. It is the Respondents' submission that absence of prior notice before the letter of 5<sup>th</sup> January 2024 is not, in itself, a constitutional violation. The Petitioner was not deprived of property at that stage; he was merely notified of an intention. He was afforded full due process by approaching this Court, which heard him and granted interim protection.
30. The Respondents submitted that the Petitioner's right to a fair hearing and fair administrative action granted under Articles 50 and 47 of *the Constitution* were fully honoured through this judicial process. The Respondents' prompt compliance with the court order demonstrates respect for due process and the rule of law.
31. The Respondents further submitted that the Petitioner's allegation of infringement of human dignity enshrined under Article 28 of *the Constitution* is exaggerated and unsupported. A lawful recovery notice, subsequently suspended by court order, does not amount to degrading treatment.
32. The Respondents submitted that for a claim of constitutional damages to succeed, the Petitioner must prove: an actual violation of a right; tangible loss or injury suffered as a result; and that alternative remedies are inadequate. The Petitioner fails on all counts as his rights were protected via court intervention; he admitted his salary was never deducted; and the court order provided complete and effective relief, as it stopped the deduction. No further remedy is needed.
33. The Respondents submitted that courts have consistently declined to award damages for transient or promptly remedied administrative actions, especially where, as here, the public body acted in good faith and promptly corrected course under judicial guidance.
34. The Respondent submitted that the Petitioner's emphasis on his long service, promotions, and contract renewals, while commendable, is not disputed. However, it is irrelevant to the core legal issue, whether the threatened deduction, which never materialized, gives rise to a claim for constitutional damages. It does not.
35. The Respondents submitted that they have demonstrated that the Petition is devoid of a live cause of action. The core dispute was extinguished by the court's order of 5<sup>th</sup> April, 2024 and the Respondents' full compliance. The Petitioner has not demonstrated a persistent violation of his fundamental rights warranting the extraordinary remedy of constitutional damages. Therefore, continuing with this litigation serves no useful purpose and wastes judicial time and resources.
36. I have examined the averments and submissions of the parties herein. The petitioner contends that the respondent had issued a direction for recovery of over 4 million from his salary without any explanation and which was an infringement of his rights.



37. The respondents aver that after issuance of impugned letter, the petitioner sought intervention of court which stayed their action and they desisted from making any deductions from the petitioner's salary and therefore the petitioner did not suffer any damage to warrant the orders sought.
38. The respondents contend that the claim by the petitioner was rendered nugatory as they had acted in good faith but they adhered strictly to the court order which was fully addressed in the interim relief sought by the petitioner.
39. It is indeed true that after the petitioner filed this petition the respondents were ordered to halt any planned implementation of their decision contained in the letter dated 5<sup>th</sup> January 2024 of illegally recovering Kshs 4,140,232.80/-.
40. The respondent had actually taken the decision to recover the said money without giving the petitioner any opportunity to be heard on when the decision had been made. The decision was only revoked upon the petitioner filing this petition.
41. From the onset, the respondent acted unlawfully by not according the petitioner a hearing which was in breach of article 41 of *the constitution* and without going through a hearing contrary to article 47 of *the constitution*. By the time the petitioner filed this petition, the respondent had not accorded him any fairness and even contested the petition until the court had to render a ruling. It is apparent in the circumstances that the rights of the petitioner were breached and he is therefore entitled to payment of damages which I grant at kshs 500,000/-. The respondents will also pay costs of this petition plus costs at court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF JANUARY, 2026.**

**HELLEN WASILWA**

**JUDGE**

